

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

MARK FARRELL, MAYOR

GROUND LEASE

among

**the CITY AND COUNTY OF SAN FRANCISCO,
as Landlord**

and

**MP SHORELINE ASSOCIATES LIMITED PARTNERSHIP,
a California limited partnership, and**

**MP SHOREBREEZE ASSOCIATES, L.P.,
a California limited partnership, collectively as Tenant**

**for the lease of
SFPUC Parcel 201A, Mountain View, California
_____, 2018**

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

**Ike Kwon - President
Vince Courtney - Vice President
Ann Moller Caen – Commissioner
Francesca Vietor – Commissioner
Anson B. Moran – Commissioner**

**Harlan L. Kelly, Jr.
General Manager of San Francisco Public Utilities Commission**

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SAN FRANCISCO PUBLIC UTILITIES COMMISSION

GROUND LEASE

THIS GROUND LEASE (this “**Lease**”) dated for reference purposes only as of _____, 2018, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), acting by and through its Public Utilities Commission (“**SFPUC**”), MP Shoreline Associates Limited Partnership, a California limited partnership and MP Shorebreeze Associates, L.P., a California limited partnership, as joint tenants (each, a “**Co-Tenant**” and collectively, “**Tenant**”).

City and Tenant hereby agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the “**Basic Lease Information**”). Each item below shall be deemed to incorporate all of the terms set forth 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: _____, 2018

Landlord: CITY AND COUNTY OF SAN FRANCISCO, acting by and through its Public Utilities Commission

Tenant/Co-Tenant: MP SHORELINE ASSOCIATES LIMITED PARTNERSHIP, a California limited partnership and MP SHOREBREEZE ASSOCIATES, L.P., a California limited partnership

Premises (**Section 3.1**): That real property located in Mountain View, California, as more particularly described in the attached **Exhibit A** and shown in the attached **Exhibit B**, together with any appurtenances.

Term (**Section 4.1**): Approximately sixty (60) years
Commencement Date:

Lease Term Expiration Date: [_____]

Base Rent (**Section 5.1**):

Lease Years	Base Rent (Annual)
1 - 5	\$100,874.00
6 - 10	\$116,940.00
11-15	\$135,566.00
16 - 20	\$157,158.00
21 - 25	\$182,189.00
26 - 30	\$211,207.00
31-35	\$244,847.00
36 - 40	\$283,844.00
41 - 45	\$329,053.00
46 - 50	\$381,463.00

51 - 55 \$442,220.00
56 - 60 \$512,655.00

Adjustment Dates (**Section 5.2**): First (1st) day of the fifth Lease Year, the first day of each subsequent fifth Lease Year thereafter, the first day of any Holdover, the yearly anniversary of such date during any Holdover and, at City's election, the effective date of a Transfer

Use (**Section 7.1**): Parking, landscaping, and Temporary Staging and Improvements for the Adjacent Housing Complex and for no other purpose whatsoever.

Security Deposit (**Section 24**): None

Tenant's Share of Property Taxes (**Section 6.1**): One Hundred Percent (100%)

Notice Address of City (**Section 25.1**):
Real Estate Services Division
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director
Re: L3888A - Mid-Peninsula Shorebreeze Apartments

with a copy to:
Office of the City Attorney
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 234
San Francisco, California 94102-4682
Attn: Real Estate & Finance Team
Re: Mid-Peninsula Shorebreeze Apartments

Key Contact for City: Real Estate Director

Telephone No.: (415) 487-5210

Notice Address of Tenant (**Section 25.1**):
MP Shoreline Associates Limited Partnership
c/o MidPen Housing Corporation
303 Vintage Park Drive, Suite 250
Foster City, California 94404
Attn: Asset Management
Re: SFPUC Shorebreeze Apartments

And
MP Shorebreeze Associates, L.P.,
c/o MidPen Housing Corporation
303 Vintage Park Drive, Suite 250
Foster City, California 94404
Attn: Asset Management
Re: SFPUC Shorebreeze Apartments

Key Contact for Tenant: MidPen Housing Corporation
303 Vintage Park Drive, Suite 250
Foster City, California 94404
Attn: Asset Management
Re: SFPUC Shorebreeze Apartments

Telephone No.: (650) 356-2900

Email Address: pmreports@midpen-housing.org

Brokers (**Section 25.8**): N/A

2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

“**Additional Charges**” means any and all real and personal property taxes, possessory interest taxes, and other costs, impositions, and expenses described in **Section 6** (Taxes, Assessments, and Other Expenses) or otherwise payable by Tenant under this Lease.

“**Adjacent Housing Complex**” means the following two developments, located at 460 North Shoreline Boulevard, Mountain View, California, including the buildings and other improvements owned by Tenant and located on Tenant’s property adjacent to the Premises:(1) the existing 120-unit low-income housing development; and (2) the proposed construction of the Expansion Phase (which, when complete, will add an additional 50 new units). Each development is owned separately by one of the Co-Tenants. All of the Adjacent Housing Complex units are “rent restricted” with one onsite manager unit in each development (as defined in Internal Revenue Code §42(g)(2)). The Adjacent Housing Complex, occupied by individuals whose income is eighty percent (80%) or less than the area median gross income for the City of Mountain View, California, is commonly known as the Shorebreeze Apartments.

“**Adjustment Date**” means the annual date for adjusting the Monthly Base Rent as specified in Basic Lease Information and **Section 5.2** (Adjustments to Base Rent).

“**Agents**” means, when used with reference to either Party to this Lease, the officers, directors, employees, agents, and contractors of such Party, and their respective heirs, legal representatives, successors, and assigns.

“**Alterations**” means any Improvements, as defined below, including, without limitation, Temporary Staging and Improvements, as defined below, made, constructed or installed on, over or under the Premises by or on behalf of Tenant during the Term of this Lease or the term of the Existing Lease, including any modifications of pre-existing Improvements.

“**Assignment**” has the meaning given in **Section 16.1** (Restriction on Assignment and Subletting).

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

“**Basic Lease Information**” means the information with respect to this Lease summarized in **Section 1** (Basic Lease Information).

“**Base Rent**” means the annual Base Rent specified in the Basic Lease Information and described in **Section 5.1** (Base Rent), as adjusted from time to time in accordance with **Sections 5.2** (Adjustments to Base Rent) and **5.3** (Fair Market Rent Adjustments to Base Rent).

“**City**” means the City and County of San Francisco, a municipal corporation.

“**CMD**” means the San Francisco Contract Monitoring Division (formerly known as the San Francisco Human Rights Commission).

“**Commencement Date**” is the date set forth in the Basic Lease Information as the Commencement Date. In this Lease, the Commencement Date is the same date as the Effective Date, as defined in **Section 4.4**.

“**Co-Tenant**” shall refer to each Tenant individually.

“**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.

“**Effective Date**” means the date on which this Agreement becomes effective pursuant to **Section 4.4** (Effective Date).

“**Encumber**” means create any Encumbrance; “**Encumbrance**” means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

“**Encumbrancer**” means a mortgagee, beneficiary of a deed of trust, or other holder of an Encumbrance.

“**Environmental Laws**” means any present or future federal, state, or local Laws or policies relating to Hazardous Material (including its use, handling, transportation, production, disposal, discharge, or storage) or to human health and safety, industrial hygiene, or environmental conditions in, on, under or about the Premises (including any permitted Alterations) and any other property, including soil, air, and groundwater conditions.

“**Event of Default**” means any one of the events of default described in **Section 17.1** (Events of Default).

“**Existing Lease**” means that certain Right of Way Lease dated as of February 26, 1980 by and between City and Mountain View Apartments, a limited partnership, as subsequently assigned on September 28, 1984 to Mountain View Associates Limited Partnership, a District of Columbia limited partnership, and as subsequently assigned on July 24, 1997 to MidPen Housing Corporation (formerly known as Mid-Peninsula Housing Coalition), a California nonprofit benefit corporation (“**Existing Tenant**”). Tenant is the same entity as the Existing Tenant under the Existing Lease.

“**Expansion Phase**” means the development of 50 new apartment units, comprising the expansion of the Adjacent Housing Complex and the related Alterations as described herein. .

“**Expiration Date**” means the date on which the Term will expire, unless terminated earlier pursuant to the terms of this Lease. If this Lease does not terminate early, the Expiration

Date will be the date specified in the Basic Lease Information as the Initial Term Expiration Date.

“Fair Market Rent” has the meaning given in **Section 5.3**.

“General Manager” means the General Manager of the SFPUC.

“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 any material or substance defined as a “hazardous substance,” “pollutant,” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA,” also commonly known as the “Superfund” law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any “hazardous waste” listed pursuant to 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 Land, any Alterations constructed on the Land by or on behalf of Tenant, or are naturally occurring substances on, in, or about the Land; and petroleum, including crude oil or any crude-oil fraction, and natural gas or natural gas liquids.

“Hazardous Material Claims” means any and all enforcement, Investigation, Remediation, or other governmental or regulatory actions, agreements, or orders threatened, instituted, or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the SFPUC, their respective Agents, or the Premises or any Alterations, relating to damage, contribution, cost recovery compensation, loss, or injury resulting from the presence, release, or discharge of any Hazardous Material, including Losses based in common law. Hazardous Material Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, attorneys’ fees and costs, consultants’ fees and costs, and experts’ fees and costs.

“Holdover” means any period after the expiration of the Lease during which the Premises continue to be used or occupied by or on behalf of Tenant (whether with or without City’s consent).

“Improvements” means any and all buildings, structures, fixtures, and other improvements to the Premises (including Alterations and the Temporary Staging and Improvements) made, constructed, installed or placed on, over or under the Premises, by or on behalf of Tenant only with prior written SFPUC consent pursuant to this Lease or the Existing Lease, including signs, billboards, or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings, utility infrastructure, and landscaping. “Improvements” includes any trailers, mobile homes, and permanent tent facilities that are affixed to the Premises so that they cannot be removed without structural or other material damage to the Premises.

“Indemnify” means indemnify, protect, defend, and hold harmless forever.

“Indemnified Parties” means City, including, but not limited to, all of its boards, commissions, departments, agencies, and other subdivisions, including its SFPUC, and all of its and their respective Agents, and their respective heirs, legal representatives, successors, and assigns, and each of them.

“**Initial Lease Term**” means the period commencing on the Commencement Date and expiring on the Expiration Date set forth in the Basic Lease Information.

“**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 any portion of the Premises or any Alterations or that have been, are being, or threaten to be Released into the environment. Investigation shall include preparation of site history reports and sampling and analysis of environmental conditions in, on, under, or about the Premises or any Alterations.

“**Invitees**” when used with respect to Tenant means Tenant’s clients, customers, invitees, guests, members, licensees, assignees, and subtenants.

“**Land**” means the real property described in the attached **Exhibit A**.

“**Landlord**” means the City and County of San Francisco.

“**Law**” means any law, statute, ordinance, resolution, regulation, proclamation, order, or decree of any municipal, county, state, or federal government or other governmental or regulatory authority with jurisdiction over any portion of the Premises, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

“**Lease**” means this Lease as it may be amended in accordance with its terms.

“**Lease Year**” means each twelve (12)-month period following the Commencement Date, except that (i) if the Commencement Date occurs on a day other than the first day of the calendar month, the first Lease Year shall begin on the Commencement Date and end on the last day of the twelfth (12th) full calendar month thereafter, and (ii) the final Lease Year shall end on the day this Lease expires or terminates, even if less than twelve (12) full months.

“**Leasehold Mortgage**” means any mortgage, deed of trust, or other security instrument and any obligation relating thereto, which secures Tenant’s repayment of any loan to, and associated obligations of, Tenant, and in which all or any part of the security consists of an encumbrance on the leasehold estate created by this Lease, the Improvements, Tenant’s fixtures on the Premises, or Tenant’s equipment or other personal property used on or about the Premises.

“**Losses**” means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits, and other proceedings, judgments and awards, and costs and expenses, including reasonable attorneys’ and consultants’ and experts’ fees and costs.

“**Market Adjustment Date**” has the meaning given in **Section 5.3**.

“**Official Records**” means the recorded real property records maintained by the Office of the Clerk Recorder of the County of Santa Clara, California.

“**Party**” means City or Tenant; “**Parties**” means both City and Tenant.

“**Project**” means the improvement of the Premises for parking, circulation, and landscaping uses, including access by current and future residents and guests of the Adjacent Housing Complex.

“**Premises**” has the meaning given in **Section 3.1** (Leased Premises). The Premises shall include any Improvements existing on the Premises and owned by City. However,

notwithstanding anything to the contrary in this Lease, the Premises do not include (i) the SFPUC Facilities, (ii) any water, water rights, riparian rights, water stock, mineral rights, or timber rights relating to the Premises, or (iii) any Alterations except to the extent SFPUC's General Manager or his or her designee states in writing that an Alteration shall remain on and become part of the Premises.

"Release" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, migrating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing Improvements or any Alterations, or in, on, under, or about any portion of the Premises or any of the SFPUC Facilities.

"Remediation" when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor, or otherwise control any Hazardous Material located in, on, under, or about the Premises or the SFPUC Facilities or that have been, are being, or threaten to be Released into the environment. Remediate includes 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 Base Rent, as adjusted from time-to-time pursuant to the provisions of **Sections 5.2** (Adjustments to Base Rent) and **5.3** (Fair Market Rent Adjustments to Base Rent), together with any and all Additional Charges.

"SFPUC" means the Public Utilities Commission of the City and County of San Francisco.

"SFPUC Facilities" means any and all water pipelines, drainage pipelines, hatch covers, wells, electrical or telecommunications lines or conduits, and any other overhead, surface and subsurface facilities of any kind owned by City or the SFPUC and now or later located in, under, on, or about the Premises for the conveyance, transmission, storage, transportation, or distribution of water, power, or telecommunication, together with all associated appurtenances and monuments.

"Sublease" has the meaning given in **Section 16.1** (Restriction on Assignment and Subletting).

"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, by voluntary sale or conveyance in lieu of condemnation, or in settlement of a condemnation action.

"Temporary Staging and Improvements" means the installation of construction materials, and equipment, made, constructed, installed or placed on, over or under the Premises for the temporary construction staging area on the Premises in connection with the development of the Adjacent Housing Complex. Temporary Staging and Improvements may include placement of a trailer and construction vehicles on the Premises, and the construction of a temporary road on the Premises to transfer materials and equipment to the Adjacent Housing Complex, all to be made, constructed, installed and placed in accordance with the terms and conditions of Tenant's Staging Plans, as approved by Landlord in advance in writing, and this Lease. No trailer, vehicle or heavy equipment may be placed directly on top of a SFPUC water transmission pipeline or within 20 feet of the edge of a water transmission pipeline.

"Tenant" means, collectively, the Party identified as Tenant in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Tenant shall also refer to the successors and assigns of Tenant's interests under

this Lease, including but not limited to any permitted subtenants, provided that the rights and obligations of Tenant's successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

"Tenant's Personal Property" means the personal property of Tenant described in **Section 8.3** (Tenant's Personal Property).

"Term" means the term of this Lease as determined under **Section 4.1** (Term of Lease).

"Transfer" means an Assignment or Sublease.

"Transferee" means an assignee under an Assignment or a subtenant under a Sublease, as described in **Section 16** (Assignment and Subletting).

"Unmatured Event of Default" means any default by Tenant under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default under this Lease.

3. PREMISES; ACCESSIBILITY DISCLOSURES; AS IS CONDITION

3.1 Leased Premises

Subject to the terms, covenants, and conditions of this Lease, City leases to Tenant and Tenant leases from City the real property described in the attached **Exhibit A**, together with those Improvements (but not Alterations or SFPUC Facilities) existing on the Premises and owned by City as of the Commencement Date (the **"Premises"**), excluding from such lease and reserving during the Term unto City and its successors and assigns the rights described in **Section 3.2** (Rights Reserved to City). The Premises are shown generally on the attached **Exhibit B**. Any acreage stated in this Lease with respect to the Premises is an estimate only, and City does not warrant it to be correct. For all purposes of this Lease, however, the Parties agree that any such acreage shall be deemed to be correct. Nothing in this Lease is intended to grant Tenant any right whatsoever to possess, use, or operate any portion of the SFPUC Facilities. City and Tenant hereby acknowledge and agree that each Co-Tenant shall have the same rights to lease the Premises as joint tenants.

3.2 Rights Reserved to City

Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises:

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including all standing trees and downed timber;

(c) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in, on, or under the Premises, including, but not limited to, oil and gas and rights, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in

such manner as not to damage the surface of the Premises or to interfere with the permitted use of the Premises by Tenant, without Tenant's prior written consent;

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace, and reconstruct the SFPUC Facilities;

(e) The right to grant future easements and rights-of-way over, across, under, in, and upon the Premises as City determines to be in the public interest, provided that any such easement or right-of-way shall not interfere materially with Tenant's permitted use of the Premises as authorized by this Lease, and provided that any such easement 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 as a result of the grantee's use of such easement or right-of-way;

(f) Without limiting the generality of Subsection (e) above, the right to grant future easements, rights-of-way, permits, and/or licenses over, across, under, in, and upon the Premises for the installation, operation, maintenance, repair, and removal of (i) equipment for furnishing cellular telephone, radio, or other telecommunications services, including antennas, radio, devices, cables, and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs, and/or advertising kiosks, provided that any such easement or right-of-way shall not materially interfere with Tenant's permitted use of the Premises as authorized by this Lease, and provided further that the grant of any such easement 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 as a result of the grantee's use of such easement or right-of-way; and

(g) All rights of access provided for in **Section 20** (Access by City).

3.3 Subject to Municipal Uses

Tenant acknowledges that the property of which the Premises are a part constitutes a portion of City's right-of-way for the SFPUC Facilities or the SFPUC water, power, or wastewater enterprise, which City holds for the purposes of transporting and distributing water and/or power or for other uses. Tenant's rights under this Lease are subject to City's use of the Premises for such purposes and for other City uses. So long as there is no Event of Default or Unmatured Event of Default on the part of Tenant outstanding under this Lease, and subject to the terms and conditions of this Lease, City shall use reasonable efforts to avoid interfering with Tenant's quiet use and enjoyment of the Premises. The use of the term "right-of-way" or similar terms in this Lease shall not be deemed to imply that City holds less than fee title to the Premises or otherwise call into question the nature of City's title to any of its property. City shall in no way be liable for any damage to or destruction of Tenant's property and/or Alterations resulting from any pipeline break or other malfunction with respect to the SFPUC Facilities or from any construction, alteration, repair or maintenance activities with respect to the SFPUC Facilities. At City's request, Tenant shall remove immediately any of Tenant's Personal Property or Alterations on the Premises to allow City's access to the SFPUC Facilities. In addition, Tenant shall also remove or cause to be removed from the Premises all personal property of Tenant's tenants and other occupants in the Adjacent Housing Complex. If City deems it necessary, at City's sole discretion, City may remove any such property or improvements and City shall not be responsible for restoring or returning the same to its prior condition; provided, however, that City shall use reasonable efforts to minimize damage to such property or Improvements made by Tenant.

3.4 Accessibility Disclosures

California Civil Code Section 1938 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.

3.5 As Is Condition of Premises

(a) Inspection of Premises

Tenant represents and warrants that Tenant is in possession of the Premises under the Existing Lease and is familiar with all aspects of the Premises, and Tenant has had the opportunity to conduct a thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use. Tenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

(b) As Is; Disclaimer of Representations

Tenant acknowledges and agrees that the Premises are being leased and accepted strictly in their "**AS IS, WITH ALL FAULTS**" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements, and other title matters affecting any portion of the Premises, whether or not of record. Tenant acknowledges and agrees that neither City, SFPUC, nor any of their Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: **(i)** title or survey matters affecting the Premises, **(ii)** the physical, geological, seismological, or environmental condition of the Premises, **(iii)** the quality, nature, or adequacy of any utilities serving the Premises, **(iv)** the present or future suitability of the Premises for Tenant's business and intended uses, **(v)** the feasibility, cost, or legality of constructing any Alterations on the Premises if required for Tenant's use and permitted under this Lease, or **(vi)** any other matter whatsoever relating to the Premises or their use, including any implied warranties of merchantability or fitness for a particular purpose.

4. TERM

4.1 Term of Lease

The Premises are leased for a term (the "**Term**") commencing on the date specified in the Basic Lease Information as the Commencement Date, subject to this Lease becoming effective pursuant to **Section 4.4** (Effective Date). The Term shall end on the Initial Lease Term Expiration Date specified in the Basic Lease Information, unless sooner terminated or extended pursuant to the provisions of this Lease. If Tenant properly exercises any Extension Option, "**Term**" as used in this Lease, shall include the applicable Extension Term, and "**Expiration Date**" shall mean the date the last such Extension Term expires.

4.2 Commencement Date and Expiration Date

The dates on which the Term commences and expires pursuant to this Lease are referred to respectively as the "**Commencement Date**" and the "**Expiration Date.**" Such dates are further defined in **Section 2**. If the Commencement Date occurs on a date other than the Commencement Date specified in the Basic Lease Information, then promptly following the actual Commencement Date, Tenant shall deliver to City a written notice substantially in the form attached as **Exhibit C**, confirming the actual Commencement Date, but Tenant's failure to do so shall not affect the commencement of the Term.

4.3 Termination of Existing Lease

The Existing Lease shall terminate automatically upon commencement of the Term of this Lease, and all rights and duties of the parties under the Existing Lease shall end effective as of that date, except that (i) any covenants that are expressly stated in such lease to survive expiration or sooner termination of the Existing Lease shall survive, and (ii) Tenant's obligation to Indemnify City and the other Indemnified Parties contained in the Existing Lease shall survive the termination of the Existing Lease with respect to all Losses incurred or arising from or connected with circumstances, actions or omissions that occurred prior to the termination of the Existing Lease.

4.4 Effective Date

This Lease shall become effective on the last to occur of the following (the "**Effective Date**"): (a) the date SFPUC adopts a resolution approving this Lease, (b) the effective date of a Board of Supervisors resolution or ordinance approving this Lease, and (c) the date the Parties have duly executed and delivered this Lease.

5. RENT

5.1 Base Rent

Beginning on the Commencement Date and throughout the Term, Tenant shall pay to City the monthly Base Rent specified in the Basic Lease Information (the "**Base Rent**"), subject to periodic adjustment as provided in **Sections 5.2** and **5.3**. The Base Rent shall be payable in monthly installments on or before the first day of each month, in advance, at the San Francisco Public Utilities Commission, Customer Service Bureau, Attention: Real Estate Billing, 525 Golden Gate Avenue, 3rd Floor, San Francisco, California 94102, ref: L3888A, or such other place as City may designate in writing. If the Commencement Date occurs on a day other than the first day of a calendar month, or if the Lease expires or terminates on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

5.2 Annual Adjustments to Base Rent

Base Rent shall be paid as set forth in **Section 1** (Basic Lease Information); provided, however, in the event of a Market Adjustment as defined in **Section 5.3(a)** below, the monthly Base Rent payable during the Lease Year (or Holdover period, as the case may be) shall immediately increase to an amount equal to one hundred and four percent (104%) of the Base Rent that was payable each month during the immediately preceding Lease Year or Holdover period, as applicable, immediately preceding such Adjustment Date (disregarding any temporary abatement of rent that may have been in effect during such preceding Lease Year or Holdover).

5.3 Fair Market Rent Adjustments to Base Rent

(a) **Fair Market Rent Adjustments.** In addition to the adjustments to Base Rent set forth in **Section 5.2**, the Base Rent payable by Tenant shall be adjusted to the "**Fair Market Rent**" (as determined below) effective (i) as of the date of an Adjacent Housing Complex Change in Use as described in **Section 7.4(r)** below; (ii) as of the date of a Change in 501(c)(3) Status as described in **Section 7.4(s)** below; and (iii) as of any Transfer Adjustment Date, as defined in **Section 16.3**. Each such adjustment shall be referred to herein as a "**Market Adjustment**" and each such adjustment date may be referred to herein as a "**Market Adjustment Date**."

During the thirty (30) days following either (i) City's receipt of Tenant's written notice of a Market Adjustment Date or (ii) City's written notice to Tenant of a Market Adjustment, the Parties shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to negotiate the Fair Market Rent for the Premises. The Parties may, by an instrument in writing, mutually agree to extend such thirty (30) day period for a reasonable number of days to resolve their disagreement if the Parties are negotiating in good faith and would be unable to resolve their differences within such thirty (30) day period. Tenant shall continue to pay Base Rent in the amounts required pursuant to this Lease until the Fair Market Rent has been finally determined pursuant to this Section, at which time Tenant shall pay the shortage amount to City.

Notwithstanding the foregoing, in no event shall the Base Rent after a Market Adjustment as of any Market Adjustment Date be less than one hundred four percent (104%) of the Base Rent in effect immediately prior to such Market Adjustment Date (disregarding any temporary abatement of rent that may then have been in effect), except that if a Transfer Adjustment Date is a date other than any of the dates described in items (i) and (ii) above, the Base Rent after the Market Adjustment shall in no event be less than the Base Rent in effect immediately prior to such Transfer Adjustment Date (disregarding any temporary abatement of rent that may then have been in effect).

The new Base Rent shall thereafter continue to be subject to the annual adjustments pursuant to **Section 5.2** and Market Adjustments pursuant to this **Section 5.3**.

Notwithstanding anything to the contrary in this **Section 5.3**, the increase in Base Rent to the Fair Market Rent shall not be conditioned upon notice of the Market Adjustment Date being given by either Party to the other, it being understood and agreed that the increase in Base Rent to the Fair Market Rent shall occur and be effective as of each Market Adjustment Date, even if the Fair Market Rent is later determined retroactively to the Market Adjustment Date.

(b) Payments Prior to Fair Market Rent Determination. If the Fair Market Rent has not been finally determined pursuant to this Section 5.3 by the Market Adjustment Date, then Tenant shall continue to pay the then current Base Rent, as adjusted in accordance with Section 5.2 above, until such time as the Fair Market Rent is finally determined, at which time Tenant shall pay any unpaid shortfall to City.

(c) Fair Market Rent. As used herein, "Fair Market Rent" for the Premises shall be determined in accordance with the following procedures, definitions, and requirements:

(i) The Parties acknowledge that the Premises provide parking and landscaping. Given these facts, the fair market value of the fee interest in the Premises shall be determined as follows: The fair market value of the Premises shall be determined on an average per square foot or per acre basis, as appropriate, based on the highest and best use of the land. The fair market value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold, on the effective date of the valuation, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to sell or buy, giving due consideration to all available economic uses of the property at the time of the valuation. The fair market value shall be (i) determined based on sales of comparable property within Santa Clara County (the "Market Area"), and/or (ii) derived from ground rental rates for comparable property within the Market Area, by dividing the ground rental rate by an appropriate capitalization rate for the comparable property. For this purpose, "comparable property" means land within the Market Area (whether or not currently improved), comparable to the land underlying the Premises in size, location, current zoning, and suitability

for parking, landscaping, and emergency vehicle access in connection with the Adjacent Housing Complex.

(ii) The per square foot or per acre fee value determined above shall be discounted by ten percent (10%) to account for the actual diminution in market value of the Premises as a result of City's retained rights described in Section 3.2 and the existence of the SFPUC Facilities, as defined in Section 2.

(iii) The discounted per square foot or per acre fee value shall be multiplied by the total square footage or acreage of the Premises, and the resulting product shall be multiplied by the then-prevailing market yield for ground leases of property located in the Market Area to determine the annual Fair Market Rent for the Premises as of a Market Adjustment Date.

(d) **Process for Determination of Fair Market Rent and Arbitration.** If the Parties have not agreed on the Fair Market Rent determination within any of the thirty (30)-day time periods set forth in **Sections 5.4, 5.5 and 5.6** below, then Tenant and City will each appoint an appraiser who meets the qualifications set forth below to act on its behalf and the two appraisers shall independently determine the Fair Market Rent by written appraisal in strict compliance with the terms of this **Section 5.3**, within thirty (30) days after the appointment of the last of such appraisers ("**Appraisal Period**"). If one Party fails to designate an appraiser who meets the qualifications set forth below within ten (10) business days after receipt of a second (2nd) written request to do so by the other Party, then the determination of Fair Market Rent of the one appraiser will be binding on both Parties. Tenant shall advise City via electronic notice, as specified in the Basic Lease Information (as such electronic notice address may be changed from time to time by notice given by City to Tenant), of Tenant's designated appraiser ("**Tenant's Designated Appraiser**") and City shall endeavor to promptly respond to Tenant via electronic notice, as specified in the Basic Lease Information (as such electronic notice address may be changed from time to time by notice given by Tenant to City) and advise Tenant of City's designated appraiser ("**City's Designated Appraiser**"). Each appraiser will make an independent determination of the Prevailing Market Rate. The appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Fair Market Rent. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither party shall communicate with the appraiser appointed by the other party regarding the instructions contained in this Section before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this Section or the interpretation of the Lease, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the party appointing such appraiser. There shall not be any arbitration or adjudication of the instructions to the appraisers contained in this Lease. Each appraiser shall complete, sign and submit its written appraisal setting forth its determination of Fair Market Rent to both Parties in writing during the Appraisal Period. If the difference between the two determinations is ten percent (10%) or less of the higher appraisal, then the average of the two determinations shall be the Base Rent for the Premises effective as of the applicable Market Adjustment Date.

(e) If the difference between Tenant's Designated Appraiser's and City's Designated Appraiser's Fair Market Rent value conclusion is greater than ten percent (10%) of the higher appraisal, then within ten (10) business days following expiration of the Appraisal Period, City and Tenant shall appoint a third appraiser who meets the qualifications set forth below (the "Joint Appraiser") and the three appraisers shall meet and confer (either in person, via telephone or by other reasonable method) and agree on the Fair Market Rent in strict compliance with the terms of this **Section 5.3** within twenty (20) days following appointment of the Joint

Appraiser. The agreement of a majority of the appraisers on the Fair Market Rent shall be binding upon the Parties.

(f) If the Parties are unable to agree on a Joint Appraiser, then City's Designated Appraiser shall have fifteen (15) business days following the expiration of the Appraisal Period in which to prepare a list of four (4) qualified appraisers (the "**City's Designated Appraiser's List**") and submit the City's Designated Appraiser's List to the Tenant's Designated Appraiser. The Tenant's Designated Appraiser shall have fifteen (15) business days following the expiration of the Appraisal Period in which to prepare a list of four (4) qualified appraisers (the "Tenant's Designated Appraiser's List") and submit the Tenant's Designated Appraiser List to the City's Designated Appraiser. The City's Designated Appraiser List and the Tenant's Designated Appraiser List shall be collectively known as the "Designated Appraiser Lists". City's Designated Appraiser shall have ten (10) business days from receipt of the Tenant's Designated Appraiser List in which to strike up to two (2) names from the Tenant's Designated Appraiser List. The Tenant's Designated Appraiser shall have ten (10) business days from receipt of the City's Designated Appraiser List in which to strike up to two (2) names from the City's Designated Appraiser List. The remaining names on the Designated Appraiser Lists shall comprise the joint appraiser list (the "**Joint List**"). If a Party's Designated Appraiser fails to submit a Designated Appraiser List within the time specified, such Designated Appraiser List shall not be considered in compiling the Joint List. Tenant and City shall have ten (10) business days from receipt of such Joint List in which to agree on the Joint Appraiser. If Tenant and City are unable to find a mutually agreeable appraiser on the Joint List, then an appraiser on the Joint List shall be chosen randomly using a method mutually agreeable to the Parties.

(g) Each of the appraisers specified herein shall be a member of the Appraisal Institute (MAI) with not less than five (5) continuous years of recent experience appraising commercial properties with experience in San Francisco and Santa Clara Counties, shall have significant experience with ground leases and shall be impartial and competent. All appraisals prepared hereunder shall be in conformity with the Uniform Standards of Professional Appraisal Practice, Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.

(h) City and Tenant shall each pay the costs of its appointed appraiser and one-half of the cost of the Joint Appraiser, if any, plus one-half of any other costs incurred in the arbitration (excluding such party's own attorneys' fees and experts' costs), notwithstanding the provisions of **Section 25.12** (Attorneys' Fees).

(i) The Parties shall have the right to deliver to the appraisers any opinions of value, appraisals or other relevant written information concerning the Fair Market Rent such Party wishes to provide. Neither of the first two (2) appraisers nor the third appraiser shall have any power to modify any of the provisions of this Lease and all must base their decision on the definitions, standards, assumptions, instructions and other provisions contained in this Lease. Subject to the provisions of this Section, the parties will cooperate to provide all appropriate information to the appraisers and the third appraiser. The first two appraisers (but not the Joint Appraiser) can utilize the services of special experts, including experts to determine such things as property condition, market rates, leasing commissions, renovation costs and similar matters.

(j) **Conclusive Determination.** Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Fair Market Rent by the foregoing process shall be conclusive, final and binding on the Parties.

(k) **Waiver.** Each Party waives any claims against the appraiser appointed by the other Party, and against the third appraiser, for negligence, malpractice or similar claims in the performance of the appraisals or arbitration contemplated by this Section.

5.4 Base Rent Increase Due to Adjacent Housing Complex Change in Use (Section 7.4(r))

The Parties recognize and agree that City agreed to the below market Base Rent under this Lease based in part on the Premises being used to benefit the existing low-income Adjacent Housing Complex. Therefore, in the event that all or a portion of the Adjacent Housing Complex or any future redevelopment or replacement of the Adjacent Housing Complex ceases to be used or operated as low income or affordable housing under applicable Laws (an “**Apartment Complex Change in Use**”), Tenant shall immediately notify City. Upon an Apartment Complex Change in Use, the Base Rent shall be recalculated to an amount equal to one hundred percent (100%) of the Fair Market Rent of the Premises, as Fair Market Rent is defined and determined under **Subsections 5.3(c)-(f)** above and this **Section 5.4** or such lesser amount as determined by the City in its sole discretion, and the new Base Rent shall be effective as of the date on which Tenant first offers a unit in the Apartment Complex for rent, use or sale at or around a fair market rent or sale price (the “**Apartment Complex Change Effective Date**”). Nothing in this **Section 5.4** shall be construed as a waiver of **Section 7.1**.

5.5 Base Rent Increase Due to Change in 501(c)(3) Status (Section 7.4(s))

The Parties recognize and agree that City agreed to the below market Base Rent under this Lease based in part on Tenant’s status as a nonprofit entity. On or before January 15th of each year during the Term, Tenant shall furnish a written statement to City, certified as true by Tenant’s President or Chief Financial Officer that Tenant remains a nonprofit entity. If there is a change in Tenant’s organizational status, Tenant shall promptly provide notice to City certifying the current name, type of entity and jurisdiction of formation of Tenant. In the event of a reorganization or Transfer to a Transferee that is not a nonprofit entity, the Base Rent of the Premises shall be adjusted to be equal to one hundred percent (100%) of the then Fair Market Rent of the Premises, as Fair Market Rent is defined and determined under **Subsections 5.3(c)-(f)** above and this **Section 5.5** or such lesser amount as determined by the City in its sole discretion, and the new Base Rent shall be effective as of the effective date of the reorganization or other Transfer. Nothing in this **Section 5.5** shall be construed as a waiver by City of the provisions of **Section 16**.

5.6 Base Rent Increase Due to Assignment or Sublease (Section 16.3)

In the event of an Assignment or Sublease as set forth in **Section 16.3** below, except for a Permitted Transfer (as defined in **Section 16.7** below), the Fair Market Rent of the Premises shall be determined in accordance with this **Section 5.6** and **Section 5.3** above. On the date that City receives Tenant’s Notice of Proposed Transfer, the Base Rent thereafter owed by Tenant shall be at a rate equal to two hundred percent (200%) of the Base Rent in effect on the date that Tenant’s Notice of Proposed Transfer is received by City until the Fair Market Rent has been finally determined pursuant to this Section, at which time Tenant shall pay any shortage amount to City. Notwithstanding anything to the contrary in this **Section 5.6** or **Section 16.3** below, the increase in Base Rent due to an Assignment or Sublease shall not be conditioned upon notice of the Assignment or Sublease being given by Tenant to City, it being understood and agreed that the increase in Base Rent to the Fair Market Rent shall automatically occur and be effective as of the Assignment/Sublease Effective Date (as defined in **Section 16.3** below).

If the Parties have not agreed on the Fair Market Rent within the thirty (30) day-period (or extended period) set forth above in this Section, then Fair Market Rent shall be determined in accordance with the procedures set forth in **Section 5.3(d)** above.

5.7 Late Charge

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

5.8 Default Interest

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

5.9 Net Lease

This Lease is a “**net lease.**” Accordingly, Tenant shall pay to City the Base Rent, Additional Charges, and any other payments required by this Lease, without prior demand and without abatement, deduction, counterclaim, or setoff. Under no circumstances, whether now existing or subsequently arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to Tenant’s use or occupancy of the Premises and any permitted Alterations or this Lease, except as may otherwise be expressly set forth in this Lease. Without limiting the foregoing, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City otherwise would be or could become liable by reason of its estate or interests in the Premises and any Alterations, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use, or occupancy of any portion of the Premises or any permitted Alterations. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or otherwise relieve Tenant from any of its obligations under this Lease, or give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or subsequently conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction, or suspension of payment of such sums on account of any such occurrence or situation.

5.10 Processing Fee and Other Fees

Upon execution of this Lease, Tenant shall pay SFPUC the sum of Five Thousand and No/100 Dollars (\$5,000.00) as a fee for processing this Lease. Tenant shall also reimburse City for all fees and costs, including attorney’s fees and costs, incurred by City in seeking the approvals necessary to enter into this Lease, including completion of environmental reviews and review and approval of this Lease by the Commissioners of the SFPUC, the San Francisco Board of Supervisors, and the Mayor of San Francisco, as applicable, within thirty (30) days following

the date of City's invoice. Tenant shall also reimburse City for all fees and costs, including attorney's fees and costs, incurred by City in (i) negotiating, preparing, drafting and obtaining any estoppel certificates requested by Tenant pursuant to **Section 21** below; (ii) seeking any consents requested by Tenant under the terms of this Lease; and (iii) preparing and obtaining any other documents required by City or requested by Tenant under the terms of this Lease.

6. TAXES, ASSESSMENTS, AND OTHER EXPENSES

6.1 Taxes and Assessments, Licenses, Permit Fees, and Liens

(a) Payment Responsibility

Tenant shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees, and other charges and impositions of every description levied on or assessed against all or any part of the Premises, any Alterations, Tenant's Personal Property, the leasehold estate, or any subleasehold estate, or Tenant's use of the Premises or any Alterations. Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days before delinquency, subject to Tenant's right to contest the validity of such charge pursuant to Subsection (c) below. With respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, however, Tenant shall reimburse City for payment of such sums immediately upon demand.

(b) Taxability of Possessory Interest

Without limiting the foregoing, Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

(c) No Liens

Tenant shall not allow or suffer a lien for any taxes payable by Tenant pursuant to this Lease to be imposed upon the Premises or upon any equipment or other property located on the Premises without promptly discharging the same. Tenant may have a reasonable opportunity to contest the validity of any such taxes provided Tenant, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty-five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of the City and County of San Francisco ("**City Attorney**"). The bond shall insure payment of any judgment that may be rendered should Tenant be unsuccessful in any such contest. Tenant shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any such proceeding or contest. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) Reporting Requirement

Tenant agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease. Each Lease Year unless and until an Adjacent Housing Complex Change in Use has occurred, Tenant shall annually file with the Santa Clara County Tax Assessor's Office claim form BOE-236, Exemption of Leased Property Used Exclusively for Low-Income Housing, and form BOE-236-A, Supplemental

Affidavit for BOE-236, Housing—Lower-Income Households, and Tenant shall send Landlord copies of such filed forms within ten (10) business days after filing.

6.2 Other Expenses

Tenant shall be responsible for any and all other charges, costs, and expenses related to its use, occupancy, operation, or enjoyment of the Premises or any Alterations permitted by this Lease, including the cost of any utilities or services necessary for Tenant's permitted use of the Premises.

6.3 Evidence of Payment

Upon City's request, Tenant shall furnish to City, within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment of such charges.

7. USE; COVENANTS TO PROTECT PREMISES AND SFPUC FACILITIES Tenant's Permitted Use

Tenant may use the Premises and any Alterations permitted by this Lease only for the use specified in the Basic Lease Information, and for no other purpose.

7.1 Temporary Construction Staging and Improvements

Tenant may install on and use the Premises for certain Temporary Staging and Improvements until the date that the Expansion Phase is complete, provided that the terms and conditions of this Lease shall apply to such use, including, without limitation, **Sections 3.3, 7.5 and 8.1**. Not less than 120 days prior to the placement and installation of the Temporary Staging and Improvements on the Premises, Tenant shall submit to City, for City's review and approval in its sole discretion, plans and specifications identifying the precise location of the electrical lines and temporary road on the Premises ("**Tenant's Staging Plans**"), and such plans shall also be subject to the review and approval of other governmental authorities as required. Tenant shall reimburse City, upon demand, for any fees and costs incurred by City for review of Tenant's Staging Plans or any other documents or requests pertaining to the Temporary Staging and Improvements, including without limitation, the fees and costs of City's third party consultants and attorneys. Tenant's Staging Plans shall contain sufficient level of detail as required by City in its sole discretion, such detail to include, without limitation, showing all proposed sub-surface disturbances and improvements. As a condition to approval of Tenant's Staging Plans, City may impose requirements and/or require modifications as determined by City in its reasonable discretion, in which case Tenant shall modify its plans and resubmit the plans for City's final approval. Once Tenant's Staging Plans have been approved by City, such plans shall not be modified without the prior written consent of City, which may be granted or withheld in City's sole and absolute discretion. City's approval of the Temporary Staging and Improvements and Tenant's Staging Plans shall not (i) constitute the approval by any other governmental authority that is required for the Temporary Staging and Improvements, (ii) waive, affect or limit any provisions of this Lease, including without limitation, **Sections 3.3 and 7.5**, which permit City to remove Alterations (including, without limitation, the Temporary Staging and Improvements) if City deems it necessary at City's sole discretion, and/or (iii) be interpreted as City's approval of any other future Alterations to the Premises.

City or City's representative may, at any time, review and inspect the Temporary Staging and Improvements. Any damage to the Premises caused by Tenant, its contractors, subcontractors, or Agents pertaining to the Temporary Staging and Improvements shall be promptly repaired by Tenant, at Tenant's sole expense, in a good and workmanlike manner satisfactory to City. In furtherance of the foregoing, Tenant shall perform, at Tenant's sole cost, any Remediation that is required as a result of the Temporary Staging and Improvements. Tenant shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of, occasioned by, or in any way attributable to the Temporary Staging and Improvements, except to the extent caused solely and directly by the gross negligence or willful misconduct of City or its Agents. Upon completion of the Expansion Phase, the Temporary Staging and Improvements shall be promptly removed by Tenant in accordance with **Section 22.1** (Surrender of the Premises).

Tenant expressly acknowledges and agrees that pursuant to **Sections 3.3** and **7.5**, City may itself remove or require that Tenant, its contractors or subcontractors remove the Temporary Staging and Improvements and Tenant, its contractors and/or its subcontractors may incur Losses as a result of such removal. Tenant is hereby advised to take such right granted to City and the possible Losses which may result if such right is exercised by City into consideration when designing and locating the Temporary Staging Improvements. City shall in no event be liable to Tenant, its contractors or its subcontractors for any Losses pertaining to the Temporary Staging and Improvements, including, without limitation, any Losses resulting from a casualty or condemnation or any Losses resulting from the removal of the Temporary Staging and Improvements in accordance with **Sections 3.3** and/or **7.5**, and no such Losses shall entitle Tenant to any abatement in Rent or to terminate this Lease. In no event shall City be required to construct, install and/or replace any of the Temporary Staging and Improvements.

The contractors and subcontractors engaged by Tenant to perform the Expansion Phase shall execute an agreement in favor of City in a form acceptable to City in its sole and absolute discretion, whereby the contractors and subcontractors expressly acknowledge and agree (i) to be bound by the provisions in this Lease applicable to such contractors and subcontractors, including without limitation, **Section 3.3** (Subject to Municipal Uses), **Section 7.5** (Covenants Regarding Use), **Section 18** (Waiver of Claims; Indemnification) and **Section 19** (Insurance), (ii) that pursuant to **Sections 3.3** and **7.5**, City may remove, or require that the contractors or subcontractors remove, the Temporary Staging and Improvements at any time and the contractors and subcontractors may incur Losses as a result of such removal, and (iii) City shall in no event be liable to contractors or subcontractors or any third party for any Losses incurred pertaining to the Temporary Staging and Equipment, including, without limitation, any Losses resulting from the Temporary Staging and Equipment having to being removed in accordance with **Sections 3.3** and/or **7.5**.

7.2 Reserved

7.3 Expansion Phase

Tenant intends to build 50 net new units (after the demolition of 12 townhomes on site), of family housing in accordance with City of Mountain View requirements (the "**Expansion**

Phase”). The proposed Expansion Phase will be subject to development review and any building or other permit required by the Mountain View Municipal Code.

7.4 Covenants Regarding Use

As a material inducement to City to enter into this Lease, Tenant covenants with City as follows:

(a) No Unlawful Uses or Nuisances

Tenant shall not use or occupy any of the Premises or any Alterations, or permit their use or occupancy, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy, or hazardous use or any use in violation of the conditions of any certificate of occupancy. Tenant shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Alterations permitted by this Lease.

(b) Covenant Against Waste

Tenant shall not cause or permit any waste, damage, or injury to the Premises.

(c) Covenant to Protect SFPUC Facilities

At all times during the Term, Tenant shall use extreme care to protect the SFPUC Facilities from any damage, injury, or disturbance. Tenant shall mark at its own expense the location of City’s water transmission pipelines within the Premises. If Tenant or any of its Agents or Invitees damages, injures, or disturbs any portion of the SFPUC Facilities (including monuments), Tenant shall immediately notify City of that occurrence. Without limiting any of its other rights under this Lease or at Law or equity, City may take all actions it deems proper to repair such SFPUC Facilities (including relocation of monuments) at Tenant’s sole expense. Upon City’s request, Tenant shall promptly remove or alter to City’s satisfaction and at Tenant’s sole cost, any Alterations, including, without limitation, the Temporary Staging and Improvements or Tenant’s Personal Property placed on the Premises by or on behalf of Tenant as necessary to avoid interference with City’s use of the Premises for municipal utility purposes. Alternatively, subject to the General Manager’s approval at his or her sole discretion, Tenant must pay City for the costs determined by the General Manager that City will incur as a result of such interference.

City may adopt from time to time such rules and regulations with regard to Tenant’s facilities and operations placed upon, or occurring on or about, the Premises, including, without limitation, the Temporary Staging and Improvements, as City may determine are necessary or appropriate to protect the SFPUC Facilities or prevent or safeguard against the corrosion or failure of the SFPUC Facilities. Upon receipt of a copy of such rules and regulations, Tenant shall fully comply with them.

(d) Covenant to Protect Water Courses

Tenant shall not cause any ponding on the Premises or any flooding on adjacent land. Tenant shall not engage in any activity that causes any change, disturbance, fill, alteration, or impairment to the bed, bank, or channel of any natural water course, wetland, or other body of water on, in, under, or about the Premises, nor shall Tenant engage in any activity that would pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

(e) Covenant Against Dumping

Tenant shall not cause or permit the dumping or other disposal on, under, or about the Premises of landfill, refuse, Hazardous Material, or other materials that are unsightly or could pose a hazard to human health or safety, native vegetation or wildlife, or the environment.

(f) Covenant to Protect Trees or Other Native Vegetation

Tenant shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the SFPUC's prior, written approval.

(g) No Tree Planting

Tenant shall not plant any trees on the Premises, nor plant any other vegetation on the Premises except as otherwise expressly provided in this Lease.

(h) Covenant Against Hunting or Fishing

Tenant shall not engage in or permit any hunting, trapping, or fishing on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by SFPUC and provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific predator or problem animals. Tenant shall not use poison bait, cyanide guns, traps, or other similar non-selective control techniques. In no event may Tenant use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

(i) Integrated Vegetation Management Policy

Tenant shall not perform any landscaping of the Premises or plant any plantings without first obtaining SFPUC's written consent pursuant to **Section 8.1(a)**. Any landscaping and plantings on the Premises must comply with SFPUC's Right of Way Integrated Vegetation Management Policy.

(j) Restrictions on Use of Pesticides

Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM plan that **(i)** lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, **(ii)** describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance, and **(iii)** identifies, by name, title, address and telephone number, an individual to act as Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: **(a)** provide for the use of pesticides only as a last resort, **(b)** prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides

included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant's staff or contractors.

If Tenant or Tenant's contractor will apply pesticides to outdoor areas at the Premises, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm.Weed Control>.

(k) Weed Control

Tenant shall not introduce any noxious weeds on or about the Premises. Tenant shall control noxious weeds, provided that Tenant may use chemical herbicides only if such use complies with the requirements of **Subsection (j)** above.

(l) Maintenance of Roads

Tenant shall keep all roads on the Premises open and in the same condition as such roads are now in, ordinary wear and tear excepted, and shall not interfere with any travel on such roads.

(m) Covenant Against Burning

Tenant shall not burn any weeds, debris, or other substances on or about the Premises.

(n) No Off-Road Vehicles

Tenant shall not use or permit the use of off-road vehicles on any portion of the Premises except on existing roads and in the manner for which such roads are intended.

(o) Restrictions on Heavy Equipment and Vehicles

To prevent damage to any subterranean SFPUC Facilities installed on or about the Premises, Tenant shall strictly adhere to the following restrictions when using, or allowing the use of, vehicles and equipment, including, without limitation, the Temporary Staging and Improvements, within twenty feet (20') of any subterranean SFPUC Facilities:

(i) The depth of soil cover over the tops of any subterranean SFPUC Facilities must be at least three feet (3') for steel cylinder pipe and four feet (4') for reinforced pre-stressed concrete cylinder pipe to accommodate the loading as defined below in Subsection (ii) below. If any equipment with axle loading exceeds the weight stated in Subsection (ii) below or if the depth of soil cover is less than stated above, Tenant shall submit to SFPUC for review and approval, engineering calculations prepared by a registered civil engineer to provide adequate protection of subterranean SFPUC Facilities showing that the subterranean SFPUC Facilities will not be adversely affected.

(ii) The effects of vehicle and equipment loads to subterranean SFPUC Facilities must not exceed the effects of the "AASHTO Standard H-10 Loading." H-10 loading

is defined as loading caused by a two-axle truck with a gross weight of ten tons (20,000 lbs.), axles fourteen feet (14') apart, and rear axle carrying eight tons (16,000 lbs.). Tenant shall be responsible to provide SFPUC adequate evidence that Tenant's equipment and vehicles meet the foregoing requirements.

(iii) Tenant shall not use any pick, plow or other sharp tool over or near the SFPUC Facilities nor use any vibrating compaction equipment unless it first obtains SFPUC's prior written approval.

(iv) If the depth of the soil cover over any subterranean SFPUC Facilities (determined by potholing or other proof procedure) is less than the minimum stated in Subsection (i) above, unless SFPUC approves an alternate method, all excavation and grading over the subterranean SFPUC Facilities shall be performed manually. For any machinery excavation and grading over and within twenty feet (20') on each side of the centerline of the subterranean SFPUC Facilities (measured on the surface), Tenant shall first submit a written proposal together with all supporting calculations and data to SFPUC for review and approval. In any case, the two feet (2') of soil around the subterranean SFPUC Facilities shall be removed manually or by other methods approved by SFPUC with due care as provided above.

(p) Watershed Management Plan

Tenant shall comply with any and all other regulations or requirements resulting from City's development of a watershed management plan, and any modifications or additions to such plan, provided that such regulations or requirements do not unreasonably interfere with Tenant's use and enjoyment of the Premises as contemplated by this Lease.

(q) Emergency Vehicle Access

In order to avoid overburdening the emergency vehicle ingress and egress ("EVA") route on the Premises, Tenant agrees that, in connection with any new development, redevelopment, reconstruction or remodeling of the Adjacent Housing Complex during the Term of this Lease, including, without limitation, the Expansion Phase, in the event that Tenant receives written notice from City that City did not receive approvals from City of Mountain View, its fire marshal and its city attorney, SFPUC's risk management and any other approvals that City deems necessary in City's sole and absolute discretion (collectively referred to hereafter as the "EVA Approvals") that a second means of EVA to serve and benefit the Adjacent Housing Complex shall not be required, Tenant shall install on the Adjacent Housing Complex property at no cost to City, a second means of EVA to serve and benefit the Adjacent Housing Complex in accordance with City's requirements. Nothing herein shall be construed as a requirement that (i) City maintain an EVA route on the Premises to serve and benefit the Adjacent Housing Complex, or (ii) City obtain the EVA Approvals. Tenant hereby waives all claims for any damage or liability arising out of (a) Tenant's use or inability to use City's EVA route on the Premises, (b) the inability of City to obtain the EVA Approvals, and (c) the requirement that Tenant install a second means of EVA as may be obligated herein. In the event Tenant fails to install on the Adjacent Housing Complex property a second means of EVA if required pursuant to this **Section 7.5(q)**, City shall have the right to deny Tenant's use of City's EVA on the Premises until such time as Tenant installs such second EVA.

(r) Change in Adjacent Housing Complex

Tenant recognizes and agrees that City agreed to the below market Base Rent under this Lease based in part on the Premises being used in connection with the existing Adjacent Housing Complex, which operates as low income affordable housing under applicable Law. Therefore, if less than one hundred percent (100%) of the residential units in the Adjacent

Housing Complex are “rent restricted” (as defined in Internal Revenue Code §42(g)(2)) and occupied by individuals whose income is eighty percent (80%) or less than the area median gross income (an “**Adjacent Housing Complex Change in Use**”), Tenant shall immediately notify City. On the first day of each Lease Year, Tenant shall deliver to Landlord a certification executed by Tenant’s Chief Financial Officer certifying that an Adjacent Housing Complex Change in Use has not occurred. Upon an Adjacent Housing Complex Change in Use, City shall recalculate the Base Rent to an amount equal to one hundred percent (100%) of the Fair Market Rent of the Premises determined pursuant to the procedure set forth in **Section 5.4** above or such lesser amount as determined by the City in its sole discretion, and the new Base Rent shall be effective as of the date on which the Adjacent Housing Complex Change in Use occurred (the “**Adjacent Housing Complex Change Effective Date**”); provided, however, in no event shall the Base Rent after the recalculation to Fair Market Rent be less than the Base Rent in effect immediately prior to the Adjacent Housing Complex Change Effective Date.

(s) Change in 501(c)(3) Status

Tenant recognizes and agrees that City agreed to the below market Base Rent under this Lease based in part on Tenant being a non-profit organization that is tax exempt under Section 501(c)3 of the Internal Revenue Code (a “**501(c)(3) Entity**”). Therefore, if at any time Tenant ceases to qualify as a 501(c)(3) Entity under applicable Law (a “**Change in 501(c)(3) Status**”), Tenant shall immediately notify City. On the first day of each Lease Year Tenant shall deliver a certification to Landlord executed by the Chief Financial Officer of Tenant certifying that a Change in 501(c)(3) Status has not occurred. Upon a Change in 501(c)(3) Status, City shall recalculate the Base Rent to an amount equal to one hundred percent (100%) of the Fair Market Rent of the Premises determined pursuant to the procedure set forth in **Section 5.5** above or such lesser amount as determined by the City in its sole discretion, and the new Base Rent shall be effective as of the date on which the Change in 501(c)(3) Status occurred (the “**Change in 501(c)(3) Status Effective Date**”). For the purposes of this **Section 7.5(s)** and the obligations described herein, references to Section 501(c)(3) of the Internal Revenue Code shall be deemed to include any future Internal Revenue Code statute that is substantially similar to and the functional equivalent of Section 501(c)(3). Notwithstanding anything in this **Section 7.5(s)** to the contrary, City acknowledges and agrees that each Co-Tenant qualifies as a 501(c)(3) entity for so long as each Co-Tenant’s general partner or managing member, as applicable, is an Affiliate (as hereinafter defined) of MidPen Housing Corporation, Mid-Peninsula The Farm, Inc. or MV Central Park Apartments, Inc.

(t) Adjacent Housing

Tenant shall not use the Premises to fulfill any open space, setback, parking or third party development requirements, including the requirements of any governmental authority in connection with obtaining entitlements, permits, licenses or other approvals for or in connection with any improvements or redevelopment to Adjacent Housing Complex. City acknowledges and agrees that Tenant may use the Premises to provide supplemental parking for the Adjacent Housing Complex. Tenant shall Indemnify City, the other Indemnified Parties and Premises against any and all Losses arising out of Tenant’s failure to comply with the foregoing provision. Within thirty (30) days following the date of City’s invoice, Tenant shall reimburse City for any costs, fees and expenses, including attorney’s fees and costs, incurred by City in monitoring compliance with and enforcing this paragraph, including reviewing and commenting on any environmental review documents, development plans and permit applications.

8. IMPROVEMENTS AND ALTERATIONS

8.1 Construction of Alterations

(a) Conditions and Requirements for Alterations

Tenant shall not construct, install or permit any Alterations (including modifying any existing Improvements and including the Temporary Staging and Improvements) in, to, or about the Premises, without City's prior written consent in each instance, which City may give or withhold at its reasonable discretion. Subject to City's consent as provided above, any permitted Alterations shall be done at Tenant's sole expense **(i)** in strict accordance with plans and specifications approved in advance by City in writing, **(ii)** by duly licensed and bonded contractors or mechanics approved by City, **(iii)** in a good and professional manner, **(iv)** in strict compliance with all applicable Laws, including, without limitation, applicable Environmental Laws, and **(v)** subject to all other conditions that City may reasonably impose, including provision of such completion security as is acceptable to City. In no event shall the making, construction or installation of any such Alterations impair the use or operation of any portion of the SFPUC Facilities, or City's access to the Premises or the SFPUC Facilities. Before the commencement of any work on the Premises to make any permitted Alterations, at its sole expense, Tenant shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to City. No material change from the plans and specifications approved by City may be made without City's prior, written consent. City and its Agents may observe and inspect the course of such construction at all times. Upon completion of such Alterations, Tenant shall furnish City with a complete set of final as-built plans and specifications. Tenant shall require from each contractor and subcontractor performing any work on or about the Premises insurance as specified in **Section 19** (Insurance).

(b) Local Hiring Requirements

If the estimated cost of an Alteration exceeds Seven Hundred Fifty Thousand Dollars (\$750,000), unless otherwise exempt, Tenant shall comply with the Local Hiring Policy set forth in San Francisco Administrative Code Section 6.22(G) (the "**Local Hiring Policy**") in the construction or performance of the Alteration. Before starting any such Alteration, Tenant shall contact City's Office of Economic Workforce and Development ("**OEWD**") to verify the Local Hiring Policy requirements that apply to the Alteration, and Tenant shall comply with all such requirements. Failure to comply shall be deemed a breach of this Lease, and may subject Tenant to penalties as set forth in the Local Hiring Policy.

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

8.2 Ownership of Alterations

Any Alterations constructed on or affixed to the Premises by or on behalf of Tenant pursuant to the terms and limitations of **Section 8.1** (Construction of Alterations) shall be and remain Tenant's property during the Term. Before the Expiration Date or immediately upon any earlier termination of this Lease, Tenant shall remove all such Alterations from the Premises in accordance with the provisions of **Section 22.1** (Surrender of the Premises), unless City, at its sole option and without limiting any of the provisions of **Section 8.1**, requires as a condition to approval of any such Alterations that such Alterations remain on the Premises at the expiration or termination of this Lease or unless City, as a condition of such approval, reserves the right to elect by notice to Tenant not less than thirty (30) days before the end of the Term to have such Alterations remain on the Premises.

8.3 Tenant's Personal Property

All furniture, furnishings, equipment and other articles of movable personal property (including any trailer or mobile home) installed in the Premises by or for the account of Tenant that can be removed without structural or other material damage to the Premises (all of which are referred to in this Lease as “**Tenant's Personal Property**”) shall be and remain the property of Tenant and may be removed by it subject to the provisions of **Section 22.1** (Surrender of the Premises). At least ten (10) days before delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Personal Property and shall deliver to City satisfactory evidence of such payment.

9. REPAIRS AND MAINTENANCE

9.1 Tenant Responsible for Maintenance and Repair

Tenant assumes full and sole responsibility for the condition, operation, repair, maintenance, and management of the Premises and any Alterations from and after the Commencement Date. City shall not under any circumstances be responsible for the performance of any repairs, changes, or alterations to the Premises or any adjoining property (including access roads, utilities, and other infrastructure serving the Premises), nor shall City be liable for any portion of the cost of any such repairs, changes, or alterations. Tenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, that may be necessary to maintain the Premises including the existing Improvements and any permitted Alterations at all times in clean, safe, attractive, and sanitary condition and in good order and repair, to City's reasonable satisfaction and so that the Premises shall be at least equal in quality, value, and utility to the Premises as it exists on the Commencement Date. If any portion of the Premises or any of City's property located on or about the Premises is damaged by any of the activities conducted by Tenant or its Agents or Invitees under or pursuant to this Lease, at its sole cost, Tenant shall immediately repair any and all such damage and restore the Premises or City's property to its previous condition.

9.2 Utilities

Except for the SFPUC Facilities, City has no responsibility or liability of any kind with respect to any utilities that may be on or about the Premises. With respect to the use of the Premises by or on behalf of Tenant, its Agents, and its Invitees, Tenant has the sole responsibility to locate any utility facilities and protect them from damage. All electricity necessary for operations in or on the Premises shall be purchased from the SFPUC at the SFPUC's standard rates charged to third parties unless the SFPUC determines, in its sole judgment, that it is not feasible to provide such service to the Premises. With respect to services needed for Tenant's operations at the Premises, Tenant shall make all arrangements directly with the utility companies for, and shall pay for, any and all utilities and services furnished to or used by it, including gas, electricity, water, sewage, telephone service, trash collection, and janitorial service, and for all deposits, connection, and installation charges. Tenant shall be responsible for installation and maintenance of all facilities required in connection with such utility services. All electricity necessary for operations in the Premises shall be purchased from SFPUC, at SFPUC's standard rates charged to third parties, unless SFPUC determines, in its sole judgment, that it is not feasible to provide such service to the Premises. SFPUC is the provider of electric services to City property, and the Interconnection Services Department of SFPUC's Power Enterprise coordinates with Pacific Gas and Electric Company and others to implement this service. To arrange for electric service to the Premises, Tenant shall contact the Interconnection Services Department in the Power Enterprise of the SFPUC. Any and all utility improvements shall be subject to the provisions of **Section 8.1** (Construction of Alterations) and such improvements shall be deemed Alterations. During the Term, Tenant shall be obligated to repair and maintain

any and all utility systems and improvements located on or within the Premises (except for the SFPUC Facilities) in good operating condition. City shall not be liable for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle Tenant to any abatement in Rent or to terminate this Lease.

9.3 Maintenance of Fences

Tenant shall maintain in good condition and repair at its expense any existing fences along or about the property line of the Premises.

9.4 No Right to Repair and Deduct

Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep any part of the Premises or any adjoining property (including access roads, utilities, and other infrastructure serving the Premises) in good order, condition, or repair, or to abate or reduce any of Tenant's obligations under this Lease on account of any part of the Premises or any adjoining property (including access roads, utilities, and other infrastructure serving any part of the Premises) being in need of repair or replacement. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 and any similar Laws with respect to any right of Tenant to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Tenant to make repairs or replacements and deduct the cost of any such repairs or replacements from Rent.

10. LIENS

Tenant shall keep the Premises and all of City's property free (including the SFPUC Facilities) from any liens arising out of any work performed, material furnished, or obligations incurred by or for Tenant. If, within five (5) days following the imposition of any such lien, Tenant does not cause the lien to be released of record by payment or posting of a proper bond, in addition to all other remedies provided under this Lease and by Law or equity, City shall have the right, but not the obligation, to cause the same 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 it incurs in connection therewith (including reasonable attorneys' fees) shall be payable to City by Tenant upon demand. At all times, City may post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and material supplier's liens. Tenant shall give City at least fifteen (15) days' prior, written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, upon posting of an adequate bond or other security acceptable to City, Tenant may contest any such lien, and, in such case, City shall not seek to satisfy or discharge such lien unless Tenant has failed to do so within ten (10) days after final determination of the validity of such lien. Tenant shall Indemnify City, the other Indemnified Parties, and the Premises against any and all Losses arising out of any such contest.

11. COMPLIANCE WITH LAWS

11.1 Compliance with Laws

At no cost to City, Tenant shall maintain the Premises and any Alterations, and conduct its use and operations on and about the Premises, in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include all Laws relating to health and safety and disabled accessibility including the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq. and Title 24 of the California

Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit, and other building code requirements. The Parties acknowledge and agree that Tenant's obligation to comply with all laws as provided in this Lease is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section shall include Tenant's responsibility to make substantial or structural repairs and alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Tenant's particular use of the Premises. Without limiting **Section 5.9** (Net Lease), no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. 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.

11.2 Regulatory Approvals

(a) Responsible Party

Tenant understands and agrees that Tenant's use of the Premises may require authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining City's written consent. Tenant shall bear all costs associated with applying for, obtaining, and maintaining 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. Tenant shall pay and discharge immediately any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

(b) City Acting as Owner of Real Property

Tenant acknowledges that City, acting by and through its SFPUC, is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from any governmental authority or agency (including City departments, boards, or commissions) having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises and any permitted Alterations to be used and occupied in accordance with all applicable Laws, as provided further above.

11.3 Compliance with City's Risk Management Requirements

Tenant shall not do anything, or permit anything to be done, in or about the Premises or any Alterations permitted under this Lease that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. At its expense, Tenant shall faithfully observe any and all reasonable requirements of City's Risk Manager with respect to such obligations and with the requirements of any policies of public

liability, fire, or other policies of insurance at any time in force with respect to the Premises and any Alterations as required by this Lease.

11.4 Reports

Tenant shall submit a report and provide such documentation to City as City may from time to time request regarding Tenant's operations and evidencing compliance with this Lease and all Laws.

12. FINANCING; ENCUMBRANCES; SUBORDINATION

12.1 Encumbrance of City's Fee Interest

The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) Encumbrance by City

To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Tenant to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance, so long as no Event of Default or Unmatured Event of Default is outstanding under this Lease.

(b) Encumbrance By Tenant

Tenant shall not under any circumstances whatsoever Encumber in any manner any portion of: the Premises, the SFPUC Facilities, City's estate in the Premises or City's interest under this Lease, and Tenant shall have no right to require City to Encumber any such estate or interest.

12.2 Leasehold Encumbrances

12.2.1 Tenant's Right to Encumber Leasehold. Tenant shall, upon the prior written consent of the City, which consent shall not be unreasonably withheld, have the right from time to time to enter into a Leasehold Mortgage subject to the terms and conditions of this **Section 12.2**. However, Tenant's rights to enter into a Leasehold Mortgage shall be suspended as long as Tenant is in default hereunder and has received written notice of such default from City.

Tenant shall promptly provide City with a fully executed complete copy of each Leasehold Mortgage, and all related loan documents (including copies of all appraisals), and any and all amendments thereto.

12.2.2. Lender's Rights During Term of Leasehold Mortgage. For the express benefit of City and as a condition to Lender's rights under this **Section 12.2.2**, all secured parties under a Leasehold Mortgage (hereinafter referred to as "**Lender**") shall provide to City contemporaneously with service on or delivery to Tenant copies of all notices of default and notices of foreclosure and sale under the Leasehold Mortgage and all notices and documents pertaining to obtaining title in lieu of foreclosure.

For the express benefit of Lender, the parties agree as follows during the term of any Leasehold Mortgage:

(a) Not a Violation or Assumption of Lease. The execution of any Leasehold Mortgage, or the foreclosure thereof or any sale thereunder or conveyance by Tenant to Lender, or the exercise of any right, power or privilege reserved therein, in accordance with the requirements of this Section 12.2, shall not constitute a violation of any of the Lease terms or conditions, or any assumption by Lender, personally, of Tenant's obligations hereunder except as otherwise provided in subsection (c) below.

(b) Reserved.

(c) Lender's Right to Record and Enforce Leasehold Mortgage. City agrees that Lender may record any such Leasehold Mortgage and may enforce it and upon foreclosure sell and assign Tenant's interest in this Lease and the Improvements, if any, to another, provided that City must consent in writing to any such sale and assignment in accordance with the provisions of Section 16 (Assignment and Subletting). Furthermore, Lender may acquire title to the leasehold estate hereunder and Tenant's interest, if any, in the Improvements in any lawful way. If Lender acquires Tenant's leasehold estate hereunder by foreclosure or other appropriate proceedings or by a proper conveyance from Tenant, Lender shall take subject to all of the provisions of this Lease, including but not limited to the provisions set forth in **Section 7.5 (r)** (Adjacent Housing Complex Change in Use), **Section 7.5(s)** (Change in 501(c)(3) Status) and **Section 16** (Assignment and Subletting), and shall assume personally all of the obligations of Tenant hereunder.

(d) Succession to Tenant's Interest. If Lender acquires Tenant's leasehold estate hereunder by foreclosure or other appropriate proceedings or by a conveyance from Tenant in lieu of foreclosure, Lender shall attorn to City, and Lender may assign, upon written notice to the City, Tenant's leasehold estate hereunder by sale or otherwise. Following any such assignment by Lender, the assignee shall be subject to all the terms and conditions of this Lease, including but not limited to the provisions set forth in **Section 16** [Assignment and Subletting] below, and City shall recognize the assignee as Tenant hereunder; provided, however, that City's recognition as Tenant of any foreclosure sale Purchaser, or assignee from Lender after Lender acquires Tenant's leasehold estate is conditioned on duplicate copies of all written notices and documents given to and served on Tenant having been provided to City as required by this **Section 12.2.2**, Lender's having performed Tenant's obligations that accrued during the period that Lender held the leasehold estate, and such Purchaser or assignee agreeing in writing (in form and substance acceptable to City) to attorn to City and assume and perform all of Tenant's obligations under this Lease from and after such purchase or assignment. In the event Lender becomes Tenant under this Lease, Lender shall not be liable for Tenant's obligations that arise after Lender has transferred and assigned the Lease to another party in accordance with the terms and conditions of this Lease except for obligations that accrue after Lender acquired Tenant's interest and prior to the assignee's written assumption of Tenant's obligations.

(e) No Release of Tenant's Liability. No such foreclosure or other transfer of Tenant's leasehold estate nor the acceptance of any Rent by the City from another shall relieve, release or in any manner affect Tenant's liability hereunder.

(f) Right to Cure.

(i) Lender's Conditional Right to Notice. A Lender shall not be entitled to any notice or copy of any notice from City to Tenant under this Lease, unless such Lender shall have provided written notice to City, in accordance with **Section 25.1**, of the Lender address or addresses to which such notice, copy of such notice, and/or request for

consent shall be sent (“**Lender’s Notice Address**”), which address or addresses may be changed by such Lender from time to time by written notice to City. The cure periods that would otherwise apply to a Tenant default under **Section 17.1** shall be extended for Lender’s benefit under the following provisions of this **Section 12.2.2(f)** only if Lender shall have furnished City with notice of Lender’s Notice Address prior to expiration of the cure period specified in City’s notice of such default to Tenant. Nothing in this **Section 12.2.2(f)** shall require City to forebear from exercising City’s right to exercise self-help to remedy an Event of Default for Tenant’s account and at Tenant’s expense pursuant to **Section 17.3**, provided that Tenant’s failure to timely reimburse City pursuant to **Section 17.3** shall be considered a monetary default subject to **Section 12.2.2(f)(ii)**.

(ii) Monetary Default. If an event of default under **Section 17.1(a)** occurs, Lender shall have the right, but not the obligation, to remedy such default within thirty (30) days after City delivers written notice to Lender’s Notice Address specifying Tenant’s default.

(iii) Nonmonetary Default. In the event of a non-monetary default of Tenant, Lender shall have the right, but not the obligation, to cure such default within thirty (30) days after City delivers written notice to Lender’s Notice Address specifying Tenant’s default, or, if within such 30-day period such default cannot reasonably be cured, if Lender shall have commenced to cure such non-monetary default within such thirty (30) day period and is diligently prosecuting the same, Lender shall have a reasonable time beyond thirty (30) days within which to cure such non-monetary default, but in no event more than ninety (90) days after delivery to Lender’s Notice Address of City’s notice specifying the default.

(iv) Cures Requiring Possession. Notwithstanding **Section 12.2.2(f)(iii)** to the contrary, in the event of a nonmonetary default that cannot be cured without possession of the Premises, the time allowed Lender to cure such default shall be deemed extended as provided in this subparagraph, provided the Lender (A) initiates foreclosure or other appropriate proceedings to obtain possession or control of the Premises within sixty (60) days after City delivers written notice to Lender’s Notice Address specifying Tenant’s default, (B) cures all other defaults reasonably capable of cure within such 60-day period (except that all monetary defaults must be cured within thirty (30) days after City delivers written notice to Lender’s Notice Address specifying the monetary default(s)), and (C) complies with all other covenants and conditions of this Lease reasonably capable of compliance by Lender, within the timeframes set forth in this Lease. If Lender satisfies the foregoing conditions, the time allowed Lender to cure such nonmonetary default shall be extended to include the reasonable period of time required by Lender or a purchaser of the leasehold at a foreclosure sale (“**Purchaser**”) to obtain possession of the Premises with due diligence, but in no event more than one hundred twenty (120) days after City delivers written notice to Lender’s Notice Address specifying Tenant’s default. In those instances in which Lender is prohibited by any process or injunction or any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the time allowed the Lender to prosecute such foreclosure or other proceeding shall be extended for the period of such prohibition, provided that Lender uses due diligence in attempting to remove such prohibition. Lender shall not be required to continue such possession or continue such foreclosure proceedings if the default that prompted the service of such a notice has been cured.

(v) No Obligation to Cure. Lender shall have no obligation to cure any default of Tenant, but City shall have no obligation to forbear from exercising its remedies during an extended cure period under **Section 12.2.2(f)(ii), (iii)** or **(iv)** above unless Lender shall have provided City with advance notice of Lender’s Notice Address in accordance with **Section 12.2.2(f)(i)** and satisfied the conditions in the applicable subparagraph(s).

(vi) **City's Acceptance of Performance by Lender or Purchaser.** City agrees to accept performance by the Lender or Purchaser of all cures, conditions and covenants as though performed by Tenant, and agrees to permit the Lender or Purchaser access to the Premises to take all such actions as may be necessary or useful to perform any condition or covenants of the Lease or to cure any default of Tenant, reserving, however, the right to require Lender or Purchaser to provide reasonable evidence of its legal right to enter the Premises. City's obligation to recognize Lender or Purchaser as Tenant is subject to **Subsection 12.2.2(d)** above.

(vii) **Tolling or Waiver of Certain Defaults.** So long as Lender is diligently and timely proceeding with a foreclosure or other exercise of its remedies under the Leasehold Mortgage in accordance with **Section 12.2.2(f)(iv)**, City shall not exercise its remedies to terminate the Lease or terminate Tenant's right to possession on account of: any Default Not Susceptible of Lender Cure, as defined below, or any Junior Lien Default, as defined below. However, during the pendency of a Default Not Susceptible of Lender Cure or Junior Lien Default, City shall be entitled to exercise its remedies with respect to other defaults, subject to Lender's cure rights under **Sections 12.2.2(f)(i)-(iv)**. Once Lender or a Purchaser lawfully obtains title to Tenant's leasehold interest and possession of the Premises, such pending Default Not Susceptible of Lender Cure or such Junior Lien Default, as applicable, shall be deemed waived. A "**Default Not Susceptible of Lender Cure**" is any nonmonetary default that is personal to Tenant and consequently not susceptible of cure by Lender, such as a bankruptcy proceeding affecting Tenant, a prohibited Transfer, or a failure to deliver financial information within Tenant's control. A "**Junior Lien Default**" is any default under this Lease that consists of Tenant's failure to satisfy or discharge any lien, charge, or encumbrance that (A) attaches to the leasehold estate but not the fee estate; and (B) is junior to the Leasehold Mortgage, and (C) this Lease prohibits.

(g) **Notice of Lender's Interest; Request for Notice of Default and Notice of Sale.** Lender shall give written notice in accordance with **Section 25.1** to the City of Lender's Notice Address and the existence and nature of its security interest. Failure to give such notice shall constitute a waiver of Lender's rights hereunder. Immediately after a Leasehold Mortgage on all or a portion of the leasehold estate is recorded, Tenant, at its own expense, shall cause to be recorded in the Official Records a request that the City receive written notice of any default and/or notice of sale under the Leasehold Mortgage. In addition, Tenant shall furnish to the City complete copies of the Leasehold Mortgage and the note or other obligation secured thereby and any modifications, amendments or extensions thereto.

(h) **City's Consent to Transfer of Leasehold Interest.** Except as set forth above to the contrary with respect to an initial transfer by Lender, no transfer of Tenant's leasehold interest hereunder shall occur, whether by written instrument or otherwise, unless the City shall first consent in writing

(i) **Leasehold Provision Regarding Insurance.** The Leasehold Mortgage shall provide that any proceeds from fire or extended coverage insurance shall be used for repair of the Premises, if required hereunder, before repaying all or part of the outstanding Leasehold Mortgage.

(j) **Tenant's Reimbursement of City's Review Costs.** Tenant shall reimburse the City for any costs incurred by the City in connection with the review and approval of any proposed Leasehold Mortgage, or any transactions related thereto.

(k) **No Encumbrance of City's Estate.** Notwithstanding any other provisions of this Lease, Tenant shall not under any circumstances encumber the City's estate or interest in the Premises. Any such attempted encumbrance shall be void and shall constitute a material default under this Lease.

(l) Notice of Modification, Amendment, Early Cancellation or Surrender. As long as there exists a Leasehold Mortgage on Tenant's leasehold estate, there shall be no amendment, modification, early cancellation or surrender of the Lease by joint action of City and Tenant without City or Tenant first delivering to Lender's Notice Address not less than thirty (30) days prior written notice of such amendment, modification, cancellation or surrender.

(m) New Lease. If this Lease terminates before its stated expiration date due to Tenant's bankruptcy, then City shall, within ten (10) business days, give notice of such termination to each Lender's Notice Address of which City has received notice, 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. Upon a Lender's request given within ten (10) business days after receipt of such notice, the City shall enter into a new lease ("**New Lease**") with the most senior Lender making such request. The New Lease 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, including any applicable rights of renewal and in the same form as this Lease. The New Lease shall require the Lender to perform any unfulfilled obligation of Tenant under this Lease which is reasonably susceptible of being performed by such Lender. Upon the execution of the New Lease, the Lender shall pay all reasonable expenses, including attorneys' fees and costs incurred by the City, in connection with the default and termination, the recovery of possession of the Premises, and the preparation of the New Lease.

(n) No Merger. Subject to City's termination rights under this Lease, so long as the Lender holds a Leasehold Mortgage encumbering Tenant's interest under this Lease, the fee title to the Premises and the estate created by this Lease, shall not merge unless the Lender expressly consents to the merger in writing. This provision shall apply even if Tenant or Landlord or any third party acquires both the fee title and this Lease.

(o) Lender's Limited Liability for Tenant's Obligations. The Lender shall not be liable to perform Tenant's obligations under this Lease, unless and until the Lender succeeds to Tenant's interest under this Lease or enters into a New Lease, but City shall have no obligation to forbear from exercising its remedies during an extended cure period under **Section 12.2.2(f)(ii), (iii) or (iv)** above unless Lender shall have provided City with advance notice of Lender's Notice Address in accordance with **Section 12.2.2(f)(i)** and satisfied the conditions in the applicable subparagraph(s). The Lender shall not be liable for any obligations accruing under this Lease following the effective date of its assignment of its interest to an assignee as provided in **Section 12.2.2(d)** and such assignee's written assumption of the obligations of Tenant, or for any obligations accruing under this Lease prior to the date Lender forecloses.

13. DAMAGE OR DESTRUCTION

13.1 Damage to or Destruction of the Improvements

In the case of damage to or destruction of the Premises by fire or any other casualty, whether insured or uninsured, at its sole cost and with reasonable promptness and diligence, Tenant shall, unless otherwise authorized by City in writing, restore, repair, replace, or rebuild the Premises as nearly as possible to the same condition, quality, and class the Premises were in immediately before such damage or destruction, unless such damage or destruction was caused solely and directly by the gross negligence or willful misconduct of City or its Agents, in which case the City shall restore the Premises. With respect to any damage to or destruction by fire or any other casualty to any Alterations permitted by this Lease made by or on behalf of Tenant during the Term, at its option and at its sole cost, Tenant may restore, repair, replace, or rebuild such Alterations to the condition such Alterations were in before such damage or destruction,

subject to any changes made in strict accordance with the requirements of **Section 8.1** (Construction of Alterations). If Tenant does not notify City in writing within thirty (30) days after the date of such damage or destruction of Tenant's election to restore, repair, replace, or rebuild any such damaged or destroyed Alterations as provided above, however, at its sole cost, Tenant shall promptly demolish such Alterations and remove them (including all debris) from the Premises in compliance with the provisions of **Section 22.1** (Surrender of the Premises).

13.2 Abatement in Rent

In the event of any damage or destruction to the Premises or any permitted Alterations, there shall be no abatement in the Base Rent or Additional Charges payable pursuant to this Lease except if such damage or destruction was caused solely and directly by the gross negligence or willful misconduct of City or its Agents.

13.3 Waiver

The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or any permitted Alterations), and City and Tenant each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the California Civil Code or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions of this Lease.

14. INTENTIONALLY OMITTED

15. EMINENT DOMAIN

15.1 General

If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties 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, each Party hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

15.2 Total Taking; Automatic Termination

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

15.3 Partial Taking; Election to Terminate

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

(b) If a partial Taking of a substantial portion of the SFPUC Facilities or any of City's adjoining real property, but not the Premises, occurs, City may terminate this Lease in its entirety.

(c) Either Party electing to terminate under the provisions of this Section shall do so by giving 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.

15.4 Termination of Lease; Rent and Award

Upon termination of this Lease in its entirety pursuant to **Section 15.2** (Total Taking; Automatic Termination), or pursuant to an election under **Section 15.3** (Partial Taking; Election to Terminate), then: (a) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any period that constitutes the unexpired Term. However, Tenant may make a separate claim, and may 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.

15.5 Partial Taking; Continuation of Lease

If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 15.3** (Partial Taking; Election to Terminate), then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (a) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises before the Date of Taking, and (b) City shall be entitled to the entire Award in connection with such Taking (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant shall have no claim against City for the value of any period that constitutes the unexpired Term. However, Tenant may make a separate claim, and may retain 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 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 sixty (60) consecutive days, this Lease shall remain unaffected by such Taking, and Tenant shall continue to pay Rent and to perform all of the terms, conditions, and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award.

16. ASSIGNMENT AND SUBLETTING

16.1 Restriction on Assignment and Subletting

Except as expressly set forth herein, Tenant shall not directly or indirectly (including by merger, acquisition, sale, withdrawal of any general partner or other transfer of any controlling interest in Tenant or any entity controlling 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, the business conducted on the Premises, any Alterations, or its leasehold estate created by this Lease (each, an “**Assignment**”), or permit any portion of the Premises or any Alterations to be occupied by anyone other than itself, or sublet any portion of the Premises or any Alterations on the Premises (each, a “**Sublease**”), without City’s prior, written consent in each instance, which City may withhold at its sole discretion. Any Assignment or Sublease, without City’s prior written consent, shall be voidable at City’s option at its sole and absolute discretion; and the General Manager may terminate this Lease immediately by sending written notice to Tenant. For purposes of this **Section 16**, “control” or a “controlling interest” shall mean direct or indirect ownership of 50% or more of all of the voting stock of a corporation or 50% or more of the legal or equitable interest in any other business entity, or the power to direct the operations of any entity (by equity ownership, contract or otherwise).

Tenant further agrees and understands that the intent and purpose of this Lease is to allow for use or uses as provided in the Basic Lease Information, and not for the purpose of creating an investment in property, or obtaining a profit or income, including without limitation a profit from the operation of the Adjacent Housing Complex, provided that notwithstanding the foregoing, Tenant shall be permitted to receive nominal income from renting reserved parking spaces on the Premises. Therefore, while Tenant may charge to a City-approved assignee or sublessee an amount in excess of that rent which is at the time being charged by City to Tenant, all rental income or other consideration received by Tenant that is attributable to the value of the leasehold estate created by this Lease over and above that Rent charged to Tenant by City shall be paid directly to City with no profit, direct or indirect, to Tenant attributable to the value of the leasehold estate created by this Lease.

16.2 Notice of Proposed Transfer

If Tenant desires to enter into an Assignment or a Sublease, then it shall give written notice (a “**Notice of Proposed Transfer**”) to City of its intention to do so. The Notice of Proposed Transfer shall include a copy of the proposed Assignment or Sublease (or, in the case of a merger or other change of control, a detailed description of the proposed change), identify the proposed Transferee, and state the terms and conditions under which Tenant is willing to enter into such proposed Assignment or Sublease, including a copy of the proposed Assignment or Sublease agreement. Tenant shall provide City with financial statements for the proposed Transferee and such additional information regarding the proposed Transfer as City may reasonably request.

16.3 City’s Response

Within twenty (20) business days after City’s receipt of the Notice of Proposed Transfer and any such additional information requested by City (the “**Response Period**”), by written notice to Tenant, City may elect to: (a) sublease the portion of the Premises specified in the Notice of Proposed Transfer on the terms and conditions set forth in such notice, except as otherwise provided in **Section 16.4** (Sublease or Recapture Premises), or (b) terminate this Lease as to the portion (including all) of the Premises that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Base Rent (a “**Recapture**”). If City does not elect option (b), City may elect, by notice to Tenant within the Response Period, to adjust the Base Rent to the then current Fair Market Rent in accordance with the procedure and requirements set forth in **Section 5.6**, as a condition of approval of the proposed Transfer. If City elects such adjustment, then effective commencing on the effective date of the Transfer to the eligible Transferee (the “**Transfer Adjustment Date**”), the Base Rent shall be adjusted to the Fair Market Rent, but in no event less than the Base Rent in effect immediately prior to the Transfer Adjustment Date (disregarding any temporary abatement of rent then in effect). If the Fair Market Rent has not been finally determined by the effective date of the Transfer, the Transferee shall continue to pay the Base Rent in effect immediately prior to the Transfer until such time as

the Fair Market Rent is finally determined, at which time the Transferee shall pay any shortage to City.

If City declines to exercise either of the options provided in clauses (a) and (b) above, then, for a period of ninety (90) days following the earlier of City's notice that it will not elect either such option or the expiration of the Response Period, Tenant may enter into such Assignment or Sublease, subject to City's prior, written approval of the proposed Transferee and the terms and conditions of the proposed Transfer. The Parties recognize and agree that the purpose of this Lease is to allow for the permitted uses and not to create an investment in property, and, therefore, City may condition its consent to any Assignment or Sublease on the receipt of some or all of the consideration realized by Tenant under any such Assignment or Sublease (or the amount of such consideration attributable to the Premises if the transaction includes other properties) in excess of the Base Rent and Additional Charges payable pursuant to this Lease, after deducting the proportionate share of any reasonable broker's commissions or transaction costs incurred by Tenant. Tenant shall provide City with such information regarding the proposed Transferee and the proposed Assignment or Sublease as City may reasonably request. The Parties also recognize and agree that City agreed to a below market Base Rent in this Lease for the originally named Tenant entity only. Therefore, City shall have the right to condition its consent to any Assignment or Sublease on Tenant's agreement to recalculate the Base Rent to an amount equal to one hundred percent (100%) of the Fair Market Rent of the Premises determined pursuant to the procedure set forth in **Section 5.6** above. The recalculated Base Rent shall commence on the effective date of such Assignment or Sublease (the "**Assignment/Sublease Effective Date**"); provided, however, in no event shall the Base Rent after the recalculation to Fair Market Rent be less than the Base Rent in effect immediately prior to the Assignment/Sublease Effective Date.

Notwithstanding the foregoing, if following City's decline to exercise the foregoing options, Tenant desires to enter into such Assignment or Sublease on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer, then Tenant shall give City a new Notice of Proposed Transfer, which notice shall state the terms and conditions of such Assignment or Sublease and identify the proposed Transferee, and City shall again be entitled to elect one of the options provided in clauses (a) and (b) above at any time within fifteen (15) business days after City's receipt of such new Notice of Proposed Transfer.

If City elects either of the options provided in clauses (a) or (b) above, at its sole option, City may enter into a lease, sublease, or assignment agreement with respect to the Premises (or portion of the Premises specified in such new Notice of Proposed Transfer) with the proposed Transferee identified in Tenant's notice.

Notwithstanding the foregoing, if any Event of Default or Unmatured Event of Default by Tenant exists at the time of Tenant's Notice of Proposed Transfer, then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its rights or remedies pursuant to this Lease or at Law or in equity.

16.4 Sublease or Recapture Premises

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

(a) Sublease

In the case of a Sublease, **(i)** City may use the portion of the Premises covered by the Notice of Proposed Transfer (the "**Sublease Premises**") for any legal purpose, **(ii)** the rent payable by City to Tenant shall be the lesser of that set forth in the Notice of Proposed Transfer

or the Rent payable by Tenant under this Lease at the time of the Sublease (or the amount of such Rent proportionate to the Sublease Premises if for less than the entire Premises), (iii) City may make alterations and improvements to the Sublease Premises as it may elect, and City may remove any such alterations or improvements, in whole or in part, before or upon the expiration of the Sublease, provided that City shall repair any damage or injury to the Sublease Premises caused by such removal, (iv) City may further sublease or assign the Sublease Premises to any party, without Tenant's consent, and (v) Tenant shall pay to City on demand any costs incurred by City in physically separating the Sublease Premises (if less than the entire Premises) from the balance of the Premises and in complying with any applicable Laws relating to such separation.

(b) Recapture

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

16.5 Effect of Transfer

No Sublease or Assignment by Tenant, nor any City consent to a Sublease or Assignment, shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. At its sole and absolute discretion, City may determine that any Sublease or Assignment that does not comply with this Section is void and, at City's option, shall constitute a material Event of Default by Tenant under this Lease. City's acceptance of any Rent or other payments from a proposed Transferee shall not constitute City's consent to such Sublease or Assignment or its recognition of any Transferee, or its waiver of any failure of Tenant or other transferor to comply with this Section.

16.6 Assumption by Transferee

Each authorized Transferee shall assume all of Tenant's obligations under this Lease and shall be and remain liable jointly and severally with the assignor or sublessor for the payment of Rent, and for the performance of all of the terms, covenants, and conditions to be performed by Tenant under this Lease. No Assignment shall be binding on City unless Tenant or Transferee shall deliver to City a copy of the fully executed Assignment and an executed instrument that contains a covenant of assumption by such Transferee satisfactory in substance and form to City, and consistent with the requirements of this Section. A Transferee's failure or refusal to execute such instrument of assumption, however, shall not release such Transferee from its liability as set forth above. Tenant shall reimburse City on demand for any of City's reasonable costs incurred in connection with any proposed Transfer, including the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

16.7 Permitted Transfer

Notwithstanding anything to the contrary contained in this Article 16, provided that no Event of Default or Unmatured Event of Default by Tenant exists at the time of the effective date of the Permitted Transfer (as defined below), the prohibition set forth in **Section 16.1** shall not apply, and consequently Landlord's consent need not be sought, in connection with (i) the assignment or sublease of this Lease to a partnership or limited liability company whose general partner or managing member, as applicable, is an Affiliate (as hereinafter defined) of MidPen

Housing Corporation, Mid-Peninsula The Farm, Inc. or MV Central Park Apartments, Inc.; (ii) the assignment or sublease of this Lease to MidPen Housing Corporation, Mid-Peninsula The Farm, Inc., or MV Central Park Apartments, Inc. (or an Affiliate thereof); or (iii) withdrawal or removal of a Co-Tenant's general partner (such assignment a "**Permitted Transfer**"); provided that in any of such events:

(a) the Tenant Successor (as hereinafter defined), in Landlord's reasonable judgment, is a reputable entity and has a net worth computed in accordance with generally accepted accounting principles consistently applied at least equal to the net worth of Tenant immediately before the Permitted Transfer, or the net worth of Tenant upon the execution of this Lease, whichever is greater;

(b) at least thirty (30) business days before the effective date of the Permitted Transfer, Tenant notifies Landlord of such Permitted Transfer and delivers to Landlord any documents or information reasonably requested by Landlord relating thereto, including, without limitation, proof reasonably satisfactory to Landlord of such net worth and reputation;

(c) The Tenant Successor agrees, by written instrument in form reasonably satisfactory to Landlord, to be bound by all the terms and conditions of this Lease and the obligations of Tenant hereunder from and after the effective date of the assignment, including, without limitation, the covenant against further assignment and subletting except in accordance with Article 16;

(d) Such assignment shall be for a good business purpose and not principally for the purpose of transferring this Lease; and

(e) If an Adjacent Housing Complex Change in Use occurs as a result of the Permitted Transfer then **Section 5.4** (Base Rent Increase Due to Adjacent Housing Complex Change in Use (**Section 7.5(r)**)) shall apply; and

(f) If a Change in 501(c)(3) Status occurs as a result of the Permitted Transfer, then **Section 5.5** (Base Rent Increase Due to Change in 501(c)(3) Status (**Section 7.4(s)**)) shall apply.

For all purposes hereof, if there is an assignment or sublease of this Lease or a removal of Co-Tenant's general partner as described in this **Section 16.7** such entity thereafter holding Tenant's interest under this Lease shall be herein defined as the "**Tenant Successor.**" "**Affiliate**" as used in this **Section 16.7** means any person or entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under the common control with, MidPen Housing Corporation, Mid-Peninsula The Farm, Inc., or MV Central Park Apartments, Inc. .

No Permitted Transfer by Tenant shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. At its sole and absolute discretion, City may determine that any Permitted Transfer that does not comply with this Section is void and, at City's option, shall constitute a material Event of Default by Tenant under this Lease. City's acceptance of any Rent or other payments from a Tenant Successor shall not constitute City's recognition of any Tenant Successor or its waiver of any failure of Tenant or Tenant Successor to comply with this Section.

Each authorized Tenant Successor shall assume all of Tenant's obligations under this Lease and shall be and remain liable jointly and severally with Tenant for the payment of Rent, and for the performance of all of the terms, covenants, and conditions to be performed by Tenant under this Lease. Tenant shall reimburse City on demand for any of City's reasonable costs

incurred in connection with any Permitted Transfer, including reasonably attorney's fees and the costs of making investigations as to the acceptability of the Tenant Successor.

In addition, notwithstanding anything to the contrary contained herein, transfers of a Co-Tenant's limited partner interests shall be a Permitted Transfer without any of the required conditions described above.

16.8 Indemnity for Relocation Benefits

Without limiting **Section 16.6** (Assumption by Transferee) and **Section 16.7** (Permitted Transfer), Tenant shall cause any Transferee and Tenant Successor to waive in writing any entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee and Tenant Successor.

16.9 IPM Plan and Form CMD-12B-101

As a condition to any Assignment, Sublease or Permitted Transfer, the approved Transferee or Tenant Successor, as applicable, shall execute Form CMD 12B-101 (as such term is defined in **Section 25.22** (Non Discrimination in City Contracts and Benefits Ordinance)) with supporting documentation and secure the CMD's approval of such form. As a condition to any Assignment, Sublease or Permitted Transfer, the approved Transferee or Tenant Successor, as applicable, shall assume the IPM plan of Tenant or submit a new IPM plan in accordance with the requirements of **Section 7.5(i)** (Pesticides Prohibition) or obtain an exemption, through SFPUC. Any transferee or successor must also comply with all other provisions of this Lease, including but not limited to the insurance provisions.

17. DEFAULT; REMEDIES

17.1 Events of Default

Tenant shall be held jointly and severally liable for all obligations under this Lease. Any of the following shall constitute an event of default ("**Event of Default**") by Tenant under this Lease:

(a) Rent

Any failure to pay any Rent or other sums as and when due, provided Tenant shall have a period of three (3) days from the effective date of City's written notice of such failure within which to cure any default in the payment of Rent or other sums; provided, however, that City shall not be required to provide such notice regarding Tenant's failure to make such payments when due more than twice during any calendar year, and any such failure by Tenant after Tenant has received two such notices in any calendar year from City shall constitute a default by Tenant under this Lease without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) Covenants, Conditions, and Representations

Any failure to perform or comply with any other covenant, condition, or representation made under this Lease, provided Tenant shall have a period of fifteen (15) days from the effective date of City's written notice of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to

completion and Tenant uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two defaults of the same obligation City shall not be required to provide any notice regarding Tenant's failure to perform such obligation, and any subsequent failure by Tenant after Tenant has received two such notices shall constitute a default by Tenant under this Lease without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure;

(c) Vacation or Abandonment

Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) Bankruptcy

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

17.2 Remedies

Upon the occurrence of an Event of Default by Tenant, City shall have the following rights and remedies, in addition to all other rights and remedies available to City at Law or in equity:

(a) Terminate Lease and Recover Damages

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

(b) Continue Lease and Enforce Rights

The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes of this Lease, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises, the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, from time to time, City may sublet any part of the Premises for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City may deem advisable at its sole discretion, with the right to make alterations and repairs to the Premises. Upon each

such subletting, in addition to Base Rent and Additional Charges due under this Lease, Tenant shall be immediately liable for payment to City of the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing under this Lease for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this Subsection shall be deemed a waiver of any Tenant default and, notwithstanding any such subletting without termination, at any time thereafter, City may elect to terminate this Lease for such previous default.

(c) Appointment of Receiver

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

17.3 City's Right to Cure Tenant's Defaults

If Tenant defaults in the performance of any of its obligations under this Lease, then, at any time thereafter, City may remedy such Event of Default for Tenant's account and at Tenant's expense by giving Tenant at least three (3) days' prior oral or written notice (except in the event of an emergency as determined by City, when no such notice shall be required). Promptly upon demand, Tenant shall pay to City, as Additional Rent, all sums expended by City, or other costs, damages, expenses, or liabilities incurred by City, including reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Tenant's obligations under this Section shall survive the termination of this Lease. Nothing in this Lease shall imply any duty of City to do any act that Tenant is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any of City's rights or remedies on account of such Event of Default.

17.4 Special Administrative Charges

Without limiting City's other rights and remedies set forth in this Lease, at law, or in equity, if Tenant **(i)** constructs or installs any Alteration without City's written approval as required by **Section 8** (Improvements and Alterations) of this Lease, **(ii)** fails to make a repair required by **Section 9** (Repairs and Maintenance) on a timely basis, or **(iii)** fails to provide evidence of the required insurance coverage described in **Section 19** (Insurance) below on a timely basis, then, upon City's written notice of such failure or unauthorized action, Tenant shall pay, as Additional Charges, the respective amount specified in the table below in consideration of City's administrative cost and expense in providing notice or performing inspections. If Tenant fails to remove the unauthorized Alteration and restore the Premises or perform the necessary repair or provide the necessary document, as applicable, within the time period set forth in such notice and City delivers to Tenant additional written notice requesting such document or evidence of such repair, or performs additional inspections to verify compliance, then Tenant shall pay to City, as Additional Charges, the respective amount specified in the table below for each additional written notice City delivers to Tenant requesting such corrective action.

<u>Violation</u>	<u>Lease Section</u>	<u>Initial inspection and/or notice</u>	<u>Follow up inspection and/or notice</u>
Construction of Alterations that are not approved by City	8	\$700.00	\$800.00
Failure to make required repairs	9	\$600.00	\$700.00
Failure to obtain/maintain insurance	19	\$600.00	\$700.00

Such administrative fees shall be due and payable as Additional Rent. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense that City will incur in connection with providing notices or performing inspections as set forth above and that City's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. City shall have the right to adjust such administrative charges on an annual basis upon sixty (60) days' prior notice to Tenant; provided that failure by City to provide such notice shall be of no effect.

17.5 Co-Tenant and Limited Partner Right to Notice and Cure.

Notwithstanding anything to the contrary contained herein, each Co-Tenant's limited partner shall have the right, but not the obligation, to cure any Tenant default hereunder. In addition, upon providing written notice to City in accordance with **Section 25.1**, such limited partner shall have the right to receive notice from the City of any Tenant default hereunder, concurrently with the written notice of default provided to Tenant. In addition, each Co-Tenant and its limited partner shall have the right to cure any default by the other Co-Tenant hereunder.

18. WAIVER OF CLAIMS; INDEMNIFICATION

18.1 Waiver of Claims

Tenant covenants and agrees that City shall not be responsible for, or liable to Tenant for, and, to the fullest extent allowed by Law, Tenant hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident, or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever. Nothing in this Lease shall relieve City from liability to the extent that such loss or damage was caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental, or punitive damages. Without limiting the foregoing:

(a) Tenant expressly acknowledges and agrees that the Rent payable under this Lease does not take into account any potential liability of City for any consequential or incidental damages including lost profits arising out of disruption to any Improvements or Tenant's uses of the Premises pursuant to this Lease. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages resulting from the acts or omissions of City or its Agents, and Tenant expressly assumes the risk with respect to such acts or omissions. Accordingly, without limiting any of Tenant's indemnification obligations or other waivers contained in this Lease and as a material part of the consideration for this Lease, Tenant fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including lost profits), and covenants not to sue for such damages City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized by this Lease, including

any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents.

(b) In connection with the foregoing releases, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

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

Tenant acknowledges that the releases contained in this Lease include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Tenant realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of California Civil Code Section 1542, or any statute or other similar law now or later in effect. Tenant's releases contained in this Lease shall survive any termination of this Lease.

18.2 Tenant's Indemnity

On behalf of itself and its successors and assigns, Tenant shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to, or death of a person, including Tenant's Agents and Invitees, or loss of or damage to property (including the SFPUC Facilities) howsoever or by whomsoever caused, occurring in or on the Premises; (b) any default by Tenant in the observation or performance of any of the terms, covenants, or conditions of this Lease to be observed or performed on Tenant's part; (c) the use, occupancy, conduct, or management, or manner of use, occupancy, conduct, or management by Tenant, its Agents, or its Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (d) the condition of the Premises or any Alterations; (e) any construction or other work undertaken by Tenant on or about the Premises or any Alterations whether before or during the Term; or (f) any acts, omissions, or negligence of Tenant, its Agents, or its Invitees, or of any trespassers, in, on, or about the Premises or any Alterations; all regardless of the sole negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further except only such Losses as are caused exclusively by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include reasonable fees of attorneys, consultants, and experts and related costs and City's costs of investigating any Loss. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the expiration or sooner termination of the Lease.

19. INSURANCE

19.1 Tenant's Insurance

Tenant shall procure and maintain throughout the Term of this Lease, and pay the cost of, insurance in the following amounts and coverages:

(a) Property Insurance

Property insurance, on an all-risk form, including earthquake and flood, for one hundred percent (100%) of the full insurable value of the Premises and the permitted Improvements, with any deductible not to exceed Ten Thousand Dollars (\$10,000) each occurrence. Such insurance shall include Tenant and City as named insureds as their respective interests may appear. With respect to City's interest, such insurance shall, include rental interruption coverage in an amount equal to twelve months Base Rent. "Full insurable value" shall mean the actual replacement cost of the Improvements and the existing improvements; which are included in the Premises (excluding foundation and excavation costs but without deduction for physical depreciation). It shall be determined at inception and each renewal by Insurer selected and paid by Tenant and reasonably acceptable to City; provided, however, that City shall have the right, at any time, to ascertain the full insurable value at its own expense, except that in the event such full insurance value exceeds the value of the then existing amount of insurance coverage procured by Tenant, Tenant shall pay the expense of determining the full insurable value.

(b) Commercial General Liability Insurance

Tenant shall procure and maintain and cause any contractor performing work on the Premises to procure and maintain commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and broad-form all perils property damage, including contractual liability, independent contractors, liquor liability, personal injury, products, and completed operations, and no exclusion for explosion, collapse and underground (XCU).

(c) Builder's Risk Insurance

During construction of Alterations, Tenant shall procure and maintain or cause its contractor to procure and maintain builder's risk insurance on an all-risk form, including earthquake and flood, for one hundred percent (100%) of the completed value of any Alterations, including materials in transit and storage off-site, if such construction is beyond the scope of the coverage for remodeling or renovation in Tenant's property policy. Such policy shall include as named insureds Tenant, City, any contractor in connection with such construction and subcontractors of all tiers, with any deductible not to exceed Ten Thousand Dollars (\$10,000) each occurrence.

(d) Worker's Compensation Insurance

Tenant shall procure and maintain and cause any contractor performing work on the Premises to procure and maintain workers' compensation insurance in statutory amounts, with employer's liability coverage not less than One Million Dollars (\$1,000,000) each accident. Regarding workers' compensation, Tenant waives subrogation which any insurer of Tenant may acquire from Tenant by virtue of the payment of any loss. Any contract between Tenant and a contractor for work to be performed on the Premises shall include a provision by which the contractor waives subrogation which any insurer of the contractor may acquire from the contractor by virtue of the payment of any workers' compensation loss. Each workers' compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Tenant and its Agents related to this Lease or the Premises.

(e) Business Automobile Liability

Tenant shall procure and maintain and cause any contractor performing work on the Premises to procure and maintain business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury

and property damage, including owned, non-owned, and hired vehicles as applicable, if Tenant or the contractor uses or causes to be used any vehicles in connection with its use of the Premises.

(f) Environmental Pollution Liability

If Tenant intends to or is required to perform any Hazardous Material Remediation on or about the Premises, then Tenant shall first notify City of the proposed work and, following City's approval, Tenant or its contractor shall maintain in force, throughout the performance and completion of the Remediation, environmental pollution liability insurance with limits not less than \$1,000,000 each occurrence combined single limit (true occurrence form), including coverages for on-site or off-site third party claims for bodily injury and property damage, or such higher limits as may be reasonably required by City's Risk Manager based upon the scope of work.

(g) Other Insurance

City reserves the right to change amounts and types of insurance as permitted use of the property may change from time to time.

19.2 General Requirements

All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

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

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

(c) All liability insurance policies required by this Lease shall be endorsed to provide the following:

(i) Name City, its officers, agents, and employees, as additional insureds, as their respective interests may appear with respect to the Premises or under this Lease.

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

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

(e) All insurance policies required to be maintained by Tenant under this Lease shall be endorsed to provide written notice of cancellation, material reduction in

coverage, or material depletion of insurance limits for any reason, including intent not to renew or to reduce coverage to both Tenant and City. Tenant shall also provide a copy of any notice of intent to cancel or materially reduce, or cancellation, material reduction, or depletion of, its required coverage to City within one business day of Tenant's receipt and take prompt action to prevent cancellation, material reduction, or depletion of coverage, reinstate or replenish the cancelled, reduced, or depleted coverage, or obtain the full coverage required by **Section 19.1** from a different insurer meeting the qualifications of this Section.

19.3 Proof of Insurance

On or before the Commencement Date, Tenant shall deliver to City certificates of insurance and additional insured policy endorsements from insurers evidencing the coverages required by this Lease in a form satisfactory to City, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates thereafter at least ten (10) days before the expiration dates of expiring policies. Tenant and its contractors shall submit or cause their respective insurance brokers to submit requested information through the Exigis insurance verification program designated by City or any replacement program used by City for verification of tenant and contractor insurance coverage. If Tenant or its contractor fails to procure such required insurance, or to deliver such information, policies or certificates, at its option, City may procure the same for Tenant's account, and Tenant shall pay City the resulting cost within five (5) days after delivery to Tenant of invoices reflecting the amounts so paid by City. At City's request, Tenant shall promptly provide City with either (at Tenant's option): (i) complete copies of the policies, or (ii) copies, certified by the insurance carrier, of all relevant portions of Tenant's insurance policies pertaining to the coverage required to be carried by Tenant under this Lease and all relevant portions of the policies pertaining to the process and requirements for filing claims.

19.4 Review of Insurance Requirements

Tenant and City shall periodically review the limits and types of insurance carried pursuant to **Section 19.1** (Tenant's Insurance). If the general commercial practice in City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant with respect to risks comparable to those associated with the Premises, then, at City's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant to conform to such general commercial practice.

19.5 No Limitation on Indemnities

Tenant's compliance with the provisions of this Section shall not relieve or decrease in any way Tenant's indemnification obligations under **Sections 18.2** (Tenant's Indemnity) and **23.2** (Tenant's Environmental Indemnity), or any of Tenant's other obligations or liabilities under this Lease.

19.6 Lapse of Insurance

Notwithstanding anything to the contrary in this Lease, at City's sole and absolute discretion, City may elect to terminate this Lease upon the lapse of any required insurance coverage by written notice to Tenant.

19.7 Tenant's Personal Property

Tenant may insure Tenant's Personal Property at its expense.

19.8 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 Premises or otherwise.

19.9 Waiver of Subrogation

Notwithstanding anything to the contrary in this Lease, City and Tenant (each a "**Waiving Party**") each hereby waives any right of recovery against the other Party for any loss or damage relating to the Premises or any operations or contents in or on the Premises, whether or not such loss is caused by the fault or negligence of such other Party, to the extent such loss or damage is covered by third-party insurance that is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance held by the Waiving Party or its agents. Each Waiving Party agrees to obtain a waiver of subrogation rights endorsement from applicable insurance carriers issuing policies relating to the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

20. ACCESS BY CITY

20.1 Access to Premises by City

(a) General Access

City reserves for itself and its designated Agents the right to enter any portion of the Premises at all reasonable times upon not less than forty-eight (48) hours' written notice to Tenant (except in the event of an emergency) for any purpose. For nonemergency, noninvasive inspections of SFPUC Facilities, City may give such advance notice by telephone or email, to Tenant's Key Contact.

(b) Emergency Access

In the event of any emergency, as determined by City, at its sole option and without notice, City may enter the Premises and alter or remove Tenant's Personal Property and any Improvements, including any Alterations, on or about the Premises. City may use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from any portion of the Premises.

(c) No Liability

City shall not be liable in any manner, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions, or negligence of Tenant, its Agents, or its Invitees.

(d) No Abatement

Tenant shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

(e) Minimize Disruption

Subject to the terms and conditions of this Lease, City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant's use of the Premises pursuant to this Lease.

20.2 Pipeline and Utility Installations

Without limiting **Section 20.1** (Access to Premises by City), at all times, City may enter the Premises upon forty-eight (48) hours' advance, written or oral notice (except in cases of emergency as determined by City where no such notice is required), to inspect, use, install, maintain, operate, and remove SFPUC Facilities or any other public utility facilities; provided that City shall provide Tenant ninety (90) days prior written notice for any nonemergency activity that may disrupt Tenant's use of the Premises. For such nonemergency, noninvasive inspections of SFPUC Facilities, City may give such advance notice by written correspondence or email, to Tenant's Key Contact. City shall bear the expense of any such City activities, unless the need is occasioned by the acts, omissions, or negligence of Tenant, its Agents, subtenants, clients, customers or its Invitees. City shall not be responsible for any temporary loss or disruption of Tenant's use of the Premises occasioned by any such facility installations or other activities. Subject to the terms and conditions of this Lease, City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant's use of the Premises pursuant to this Lease, provided that such efforts do not materially increase the cost to City for such installations or activities

Further, should City's right for utility installation, as provided for in this Lease, necessitate relocation of Tenant's parking area on all or a portion of the Premises, Tenant agrees to provide at Tenant's cost and expense as a specific condition of this Lease, a temporary alternate parking area on Tenant's property adjacent to the Premises. In addition to those responsibilities already specified in this Section, Tenant shall assume full responsibility, including reimbursement to the City for any environmental or administrative proceedings, community protests, or other delays which arise due to Tenant's removal and/or relocation of parking facilities located on the Premises. This financial responsibility shall not extend to delays related to City's submittal of an environmental impact report insofar as it concerns actual installation of a pipeline by City, but shall extend to any costs resulting from Tenant's removal and/or relocation of parking facilities on the Premises. Without limiting City's rights under this Lease, if Tenant's use of the Premises is interrupted or disrupted for any reason, including without limitation, in connection with any utility installation, Tenant acknowledges and agrees that, at its sole cost, Tenant shall be responsible for: **(i)** any and all costs of alteration, removal, and/or restoration of Tenant's facilities or other improvements to a condition similar to that which existed prior to such interruption, disruption, alteration, or removal, and **(ii)** the implementation or satisfaction of any mitigation measures or obligations that may arise under any applicable Laws, including without limitation, the California Environmental Quality Act ("CEQA"), related to any interruption or disruption of Tenant's use of the Premises. City shall not be responsible for mitigation of any potential recreational use impacts or other impacts associated with any interruption or disruption of use of the Premises, or any related costs. If Tenant fails to perform its obligations under this Section promptly, at its sole option, City may elect to terminate this Lease by written notice, or to exercise any and all other rights or remedies available to SFPUC under this Lease or at law.

City would not be willing to enter into this Lease in the absence of Tenant's assurances under this **Section 20.2**, and Tenant expressly assumes any and all liability and/or obligations that may arise under this **Section 20.2**.

20.3 Roadways

City and its Agents may enter upon and pass through and across the Premises on any existing or future roadways and as City otherwise determines necessary or appropriate for purposes related to the inspection, operation, construction, maintenance, repair, or replacement of the SFPUC Facilities.

21. ESTOPPEL CERTIFICATES

From time to time during the Term, but not more than twice during any 12-month period, upon not less than twenty (20) days' prior, written request from a Party, the other Party shall execute, acknowledge, and deliver to the requesting Party, or such persons or entities designated by such requesting Party, a statement in writing certifying: **(a)** the Expiration Date of this Lease; **(b)** that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications); **(c)** that there are no known defaults under this Lease (or if so, specifying the same); and **(d)** the dates, if any, to which the Rent has been paid. Any such certificate shall be in one of the forms attached as **Exhibit C**, and may be relied upon by the requesting Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge, and deliver any such certificates requested of City. Tenant shall reimburse City for all costs, including staff time and attorney fees, reasonably incurred by City in responding to a Tenant or Lender request for an estoppel certificate, within thirty (30) days after City delivers to Tenant an invoice for such costs.

22. SURRENDER

22.1 Surrender of the Premises

Upon the Expiration Date or any earlier termination of this Lease pursuant to its terms, Tenant shall surrender to City the Premises, in good condition, order, and repair, free from debris and hazards, and free and clear of all liens, easements, and other Encumbrances created or suffered by, through, or under Tenant. On or before the Expiration Date or any earlier termination of this Lease, at its sole cost, Tenant shall remove any and all of Tenant's Personal Property from the Premises and demolish and remove any and all Alterations, including, without limitation, the Temporary Construction Staging and Improvements, from the Premises (except for the improvements existing prior to commencement of the Existing Lease and any other Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** (Ownership of Alterations)). In addition, at its sole expense, Tenant shall repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any such Alterations. In connection with any such repair, Tenant shall obtain any and all necessary permits and approvals, including any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal, or restoration work required by this Lease. Tenant's obligations under this Section shall survive the expiration or other termination of this Lease. At City's option, any items of Tenant's Personal Property remaining on or about the Premises after the Expiration Date or sooner termination of this Lease may be deemed abandoned and, in such case, City may assume ownership of such property or dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Tenant fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Tenant shall Indemnify City against all resulting Losses, including Losses incurred by a succeeding tenant resulting from Tenant's failure to surrender the Premises as required by this Section.

Tenant hereby waives any and all rights, benefits, or privileges of the California Relocation Assistance Law, California Government Code Sections 7260 et seq., the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Sections 4601 et seq., or under any similar Law now or hereafter in effect, except as provided in **Section 15** (Eminent Domain).

22.2 Automatic Reversion

Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or City, become City's property, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Tenant shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate under this Lease and to effect such transfer or vesting of title to the Premises or any permitted Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** (Ownership of Alterations).

23. HAZARDOUS MATERIALS

23.1 No Hazardous Materials

Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, or disposed of in, on, or about the Premises or any Alterations or transported to or from the Premises or any Alterations. Notwithstanding the foregoing, Tenant is permitted to bring onto the Premises (i) motorized automobiles and construction vehicles, containing fuel in the fuel tanks and motor oil, on those portions of the Premises improved for parking and driveway purposes in accordance with this Lease, and (ii) materials and products that may contain material considered hazardous, to the extent necessary and customarily used for installation, maintenance, operation or repair of permitted landscaping, parking area improvements, walkways and driveways, provided that any such products and materials shall be used with due care, in compliance with all applicable Legal Requirements, including Environmental Laws, all applicable provisions of this Agreement (including Section 7.2(j) [Restrictions on Use of Pesticides]), and SFPUC's reasonable requirements, and such products and materials are stored offsite when not in use. However, in no event shall Tenant permit any usage of such materials and substances in a manner that may cause the Premises or City's adjacent real property to be contaminated by any Hazardous Material. From time to time, City may request that Tenant provide adequate information for City to determine that any Hazardous Material permitted by this Lease is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material in, on, or about the Premises or any Alterations. Without limiting **Section 20** (Access by City), City and its Agents may inspect the Premises for Hazardous Material and compliance with the provisions of this Lease at all reasonable times upon reasonable, advance, oral or written notice to Tenant (except in the event of an emergency).

23.2 Tenant's Environmental Indemnity

If Tenant breaches any of its obligations contained in **Section 23.1** (No Hazardous Materials), or, if any act, omission, or negligence of Tenant or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under, or about the Premises (including any existing Improvements on the Premises), any Alterations, or any other City property, without limiting Tenant's general Indemnity contained in **Section 18.2** (Tenant's Indemnity), Tenant, on

behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Material Claims asserted during or after the Term and relating to such Release. The foregoing Indemnity includes all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if Tenant or any of Tenant's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under, or about the Premises or any other City property, immediately and at no expense to City, Tenant shall take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws as it relates to any environmental hazards generated by direct action of the Tenant or Subtenants during the Lease Term. Tenant shall provide City with written notice of, and afford City a full opportunity to participate in, any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

24. SECURITY DEPOSIT

Upon execution of this Lease, Tenant shall pay to City the sum specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms, covenants, and conditions of this Lease. City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises or SFPUC Facilities caused by Tenant, its Agents, or its Invitees to pay any fines assessed against Tenant under this Lease, or for any other failure of Tenant to perform any other terms, covenants, or conditions contained in this Lease, without waiving any of City's other rights and remedies under this Lease, at Law, or in equity. Should City use any portion of the security deposit to cure any Event of Default by Tenant or pay any fine of Tenant, then Tenant shall immediately replenish the security deposit to the original amount, and Tenant's failure to do so within five (5) days of City's request shall constitute a material Event of Default under this Lease. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Tenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease.

25. GENERAL PROVISIONS

25.1 Notices

Except as otherwise expressly provided in this Lease, any notice, consent, request, or approval given under or pursuant to this Lease shall be effective only if in writing and given by delivering such notice, consent, request, or approval in person or by sending it first-class or certified mail with a return receipt requested or via reliable commercial overnight courier, return receipt requested, with postage prepaid, to: **(a)** Tenant **(i)** at Tenant's address(es) set forth in the Basic Lease Information, if sent before Tenant's taking possession of the Premises, or **(ii)** at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or **(iii)** at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning, or surrendering the Premises; or **(b)** City at City's address set forth in the Basic Lease Information; or **(c)** to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other Party in accordance with the provisions of this Section at least ten (10) days before the effective date of such change. A properly addressed notice, consent, request, or approval transmitted by one of the foregoing methods shall be deemed received upon the confirmed date of delivery, attempted delivery, or rejected delivery, whichever occurs first. Any facsimile numbers provided are for convenience

of communication and neither Party may give an official or binding notice, consent, request, or approval by facsimile. The effective time of a notice, consent, request, or approval shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice, consent, request, or approval.

25.2 No Implied Waiver

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

25.3 Amendments

Neither this Lease, nor any term or provision of this Lease, may be changed, waived, discharged, or terminated, except by a written instrument signed by the Parties.

25.4 Authority

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

25.5 Joint and Several Obligations

The word "**Tenant**" as used in this Lease shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several.

25.6 Interpretation of Lease

The captions preceding the sections and subsections 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 in this Lease and has been drafted through a cooperative effort of both Parties, with both Parties having the opportunity to have the Lease reviewed and revised by legal counsel. Accordingly, neither Party shall be considered the drafter of this Lease, and this Lease 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. Unless otherwise provided in this Lease, whenever City’s consent is required to be obtained by Tenant pursuant to this Lease, City may give or withhold such consent at its sole and absolute discretion.

25.7 Successors and Assigns

Subject to the provisions of **Section 16** (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 in this Lease, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment, or transfer by City (or by any subsequent landlord) of its interest in the Premises as owner or lessor, 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.

25.8 Brokers

Except as identified in the Basic Lease Information, neither Party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection with the leasing of the Premises, through any licensed real estate broker or other person who could claim a right to a commission or finder’s fee in connection with this Lease. Accordingly, any such commission or finder’s fee, if due, shall be paid pursuant to a separate written agreement between such broker and the Party through which such broker contracted. If any other broker or finder perfects a claim for a commission or finder’s fee based upon any such contact, dealings, or communication, the Party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other Party from any and all Losses incurred by the indemnified Party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

25.9 Severability

If any provision of this Lease or the application of such provision to any person, entity, or circumstance shall be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law, except to the extent that enforcement of this Lease without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

25.10 Governing Law

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

25.11 Entire Agreement

This instrument (including all attached exhibits referenced in this instrument, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings, and agreements. 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 and any changes from such drafts) 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 or this Lease except as expressly set forth in this Lease, and no rights, easements, or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth in this Lease.

25.12 Attorneys' Fees

If either City or Tenant fails to perform any of its obligations under this Lease or if a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting Party or the non-prevailing Party in such dispute, as the case may be, shall pay the prevailing Party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing Party in connection with the prosecution or defense of such action and enforcing or establishing its rights under this Lease (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "**costs**" shall mean the costs and expenses of counsel to the Parties, which may include printing, duplicating, and other expenses, air freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

25.13 Holding Over

Any holding over after the expiration of the Term with City's express consent shall be construed to automatically extend the Term on a month-to-month basis with ongoing adjustments in Base Rent on each Adjustment Date as set forth in **Section 5.2** (Annual Adjustments to Base Rent) or at such other Base Rent as determined by City as part of its consent, and shall otherwise be on the terms and conditions specified in this Lease so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Tenant, shall be at a Base Rent equal to 150% of the Base Rent in effect at the start of the Holdover, and shall entitle City to exercise any or all of its remedies as provided in this Lease, notwithstanding that City may elect to accept one or more payments of Rent.

25.14 Time of Essence

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

25.15 Cumulative Remedies

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

25.16 Survival of Indemnities

Termination of this Lease shall not affect the right of either Party to enforce any and all indemnities and representations and warranties given or made to the other Party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination of this Lease. Tenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Tenant has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim that actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter.

25.17 Relationship of Parties

City is not a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant, and none of the provisions in this Lease shall be deemed to render City as such a partner, joint venturer, or member. Neither Party shall act as the agent of the other Party in any respect with regard to this Lease, and, except as specifically provided in this Lease, neither Party shall have any authority to commit or bind the other Party without such Party's consent as provided in this Lease. This Lease is not intended nor shall it be construed to create any third-party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute City's authorization or approval of any activity conducted by Tenant on, in, or relating to the Premises.

25.18 Transfer by City

If City sells or otherwise transfers the Premises, City shall be released from its obligations under this Lease arising on or after the date of such sale or transfer and Tenant shall look solely to City's successor-in-interest with respect to the Premises. Upon City's sale of the Premises, Tenant shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Tenant, with regard to any future sale or other disposition of all or any part of the Premises.

25.19 Recording

Tenant shall not record this Lease nor any memorandum or short form of this Lease in the Official Records.

25.20 Non-Liability of City Officials, Employees, and Agents

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

25.21 Wages and Working Conditions

Tenant acknowledges that any person performing labor in connection with any Alterations at the Premises that constitute a "public work or improvement" or "public work" as defined under San Francisco Administrative Code Section 6.22(E) or California Labor Code Section 1720 et seq. (which includes certain construction, alteration, demolition, installation, and repair work if paid for by public funds or the equivalent of public funds) shall be paid not less

than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. Tenant shall include in any contract for construction of such Alterations a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.

25.22 Non-Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

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

(b) Subleases and Other Subcontracts

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

(c) Non-Discrimination in Benefits

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

(d) CMD Form

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

(e) Incorporation of Administrative Code Provisions by Reference

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

25.23 Requiring Health Benefits for Covered Employees

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (“HCAO”), as set forth in San Francisco Administrative Code Chapter 12Q (“Chapter 12Q”), including the implementing regulations, as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Lease as though fully set forth in this Lease. The text of the HCAO is currently 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 applicable 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 Tenant meets the requirements of a “small business” as described 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 requirements of the HCAO shall constitute a material breach by Tenant of this Lease. 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 thirty (30)-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, City shall have 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 Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, 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 the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO by each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor, or Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Tenant based on the Subtenant’s, Contractor’s, or Subcontractor’s failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against any employee for notifying City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any 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 requirements of the HCAO.

(g) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon City's request, Tenant shall provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(i) Within five (5) business days after any City request, Tenant shall provide City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, City and its Agents may conduct random audits of Tenant at any time during the Term. Tenant shall cooperate with City in connection with any such audit.

25.24 Notification of Limitations on Contributions

By 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 the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that City elective officer serves, from making any campaign contribution to (a) City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each entity constituting Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Tenant; any subcontractor listed in the contract with City; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant shall provide City with the names of each person, entity, or committee described above.

25.25 No Relocation Assistance; Waiver of Claims

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including consequential and incidental damages) 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 any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

25.26 MacBride Principles - Northern Ireland

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

25.27 Conflicts of Interest

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

25.28 Intentionally Omitted

25.29 Tropical Hardwood and Virgin Redwood Ban

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

25.30 Prohibition of Tobacco Sales and Advertising

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

25.31 Prohibition of Alcoholic Beverage Advertising

Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling, or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit, or other entity designed to (a) communicate the health hazards of

alcoholic beverages, (b) encourage people not to drink alcohol or to stop drinking alcohol, or (c) provide or publicize drug or alcohol treatment or rehabilitation services.

25.32 Consents, Approvals, Elections, and Options

Whenever this Lease requires or permits the giving, making or exercising by City or SFPUC of any consent, approval, election or option, the General Manager of SFPUC, or his or her designee, shall be authorized to give, make or exercise such consent, approval, election or option, except as otherwise provided by applicable law, including City's Charter, or by SFPUC's Real Estate Guidelines.

25.33 Disclosure

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

25.34 Food Service Waste Reduction

Tenant agrees to comply fully with and be bound by all of the applicable provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided in that statute, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated in this Lease by reference and made a part of this Lease as though fully set forth in this Lease. Accordingly, Tenant acknowledges that City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease, and shall instead use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this Lease.

25.35 Bottled Drinking Water

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

25.36 Preservative-Treated Wood Containing Arsenic

As of July 1, 2003, Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a

pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

25.37 Criminal History in Hiring and Employment Decisions

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

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

(c) Tenant and any Subtenants shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (i) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system; (v) a Conviction that is more than seven years old, from the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

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

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

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

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

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

25.38 Counterparts

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

25.39 Intent of this Lease

The Parties hereby expressly agree that it is the intent of the Parties that the agreement set forth herein shall always be construed as a lease between City and Tenant and there is no intent, implied or express, to create an easement under the terms of this Lease or by operation of law. Tenant expressly waives the benefit of any existing or future law or judicial or administrative decision that would otherwise create an implied or express easement due to the length of the Term of this Lease or otherwise.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL A RESOLUTION OF THE SFPUC AND OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY PASSED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY AND THE MAYOR APPROVES THE SAME. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER AND PURSUANT TO THIS LEASE ARE CONTINGENT UPON PASSAGE OF SUCH RESOLUTIONS, AND THIS LEASE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL THE SFPUC AND THE BOARD OF SUPERVISORS APPROVE THIS LEASE, EACH AT THEIR SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.

[SIGNATURES ON FOLLOWING PAGES]

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

CITY:

TENANT:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

TENANT:

MP SHORELINE ASSOCIATES LIMITED PARTNERSHIP,
a California limited partnership

By:

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

By: _____

Its: _____

By: _____

Its: _____

MP SHOREBREEZE ASSOCIATES, L.P.,
a California limited partnership

By: _____

Its: _____

By: _____

Its: _____

AUTHORIZED BY

SAN FRANCISCO PUBLIC UTILITIES
COMMISSION

Resolution No. _____
Adopted: _____

Attested: _____
Secretary

SAN FRANCISCO BOARD OF
SUPERVISORS

Resolution No. _____
Adopted _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

EXHIBIT A

DESCRIPTION OF PREMISES

All that certain real property located in County of Santa Clara, California, described as follows:

A portion of the Bay Division Pipelines Nos. 3 and 4 right of way, known as SFPUC Parcel 201-A, consisting of approximately 1.96 acres more or less, according to SFPUC records, and as shown on the drawing attached as Exhibit B.

EXHIBIT B
SFPUC DRAWING OF PREMISES
(See Attached)

EXHIBIT C

FORMS OF ESTOPPEL CERTIFICATE

LANDLORD ESTOPPEL CERTIFICATE

[ADDRESS]

Re: Lease, dated _____, 20__ (the “**Lease**”), by and between City and County of San Francisco, a municipal corporation, acting by and through its Public Utilities Commission (“**City**”), as landlord, and _____, a _____ (“**Tenant**”), as tenant, relating to certain property located in the County of _____, California (the “**Premises**”)

Ladies and Gentlemen:

The undersigned hereby confirms, represents and warrants to Tenant that:

1. Attached is a true and correct copy of the Lease;
2. The Expiration Date of the Lease is _____;
3. The Lease is in full force and effect and, except as shown in the attachments to this Certificate, has not been assigned, modified, supplemented, or amended in any way;
4. The Lease represents the entire agreement between Tenant and City with respect to the Premises;
5. To City’s knowledge, on this date, there are no known defaults under this Lease and no event has occurred, which with the giving of notice, the passage of time, or both, would constitute a default by City or Tenant under the Lease [except as set forth in Schedule A attached to this Certificate];
6. All rent amounts due and owing to date have been paid, and no rental, other than for the current month, has been paid in advance [except as set forth in Schedule A to this Certificate];
7. The undersigned executing this estoppel certificate represents and warrants that he or she is duly authorized to execute this certificate on behalf of City.

The truth and accuracy of the certifications contained in this Certificate may be relied upon by Tenant and the addressee set forth above, and their successors and assigns.

Very truly yours

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting through its Public
Utilities Commission

By: _____

Name:

Title:

Date: _____

TENANT ESTOPPEL CERTIFICATE

[ADDRESS]

Re: Lease, dated _____, 20__ (the “**Lease**”), by and between City and County of San Francisco, a municipal corporation, acting by and through its Public Utilities Commission (“**City**”), as landlord, and _____, a _____ (“**Tenant**”), as tenant, relating to certain property located in _____ County, California (the “**Premises**”)

Ladies and Gentlemen:

The undersigned hereby confirms, represents and warrants to City that:

1. Attached is a true and correct copy of the Lease;
2. Tenant has accepted possession of the Premises under the Lease;
3. [Pursuant to Section 4.2 of the Lease, the Commencement Date of the Lease is _____ and] [T]he current Expiration Date of the Lease is _____;
4. The Lease is in full force and effect and, except as shown in the attachments to this Certificate, has not been assigned, modified, supplemented, or amended in any way;
5. The Lease represents the entire agreement between Tenant and City with respect to the Premises;
6. To Tenant’s knowledge, on this date, there are no known defaults under this Lease and no event has occurred, which with the giving of notice, the passage of time, or both, would constitute a default by City or Tenant under the Lease [except as set forth in Schedule A attached to this Certificate];
- 7 All rent amounts due and owing to date have been paid, and no rental, other than for the current month, has been paid in advance [except as set forth in Schedule A to this Certificate];
8. The undersigned executing this estoppel certificate represents and warrants that he or she is duly authorized to execute this certificate on behalf of Tenant.

The truth and accuracy of the certifications contained in this Certificate may be relied upon by City and the addressee set forth above, and their successors and assigns.

Very truly yours

[SIGNATURE BLOCK FOR TENANT]