

SERVICE STATION SITE LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,  
as Landlord

and

TWIN PEAKS PETROLEUM, INC., a California corporation  
dba Twin Peaks Auto Care,

as Tenant

For the lease of  
598 Portola Drive  
San Francisco, California

August 10, 2020

## TABLE OF CONTENTS

	<u>Page</u>
1. BASIC LEASE INFORMATION .....	1
2. PROPERTY; AS IS CONDITION .....	3
2.1. Leased Property .....	3
2.2. Accessibility Disclosures .....	3
2.3. As Is Condition .....	4
2.4. Energy Consumption Disclosure .....	4
3. TERM .....	4
3.1. Lease Term.....	4
3.2. Confirmation of Commencement Date and Expiration Date.....	4
3.3. Termination of 2015 Lease; Survival of Indemnities .....	5
4. RENT .....	5
4.1. Base Rent .....	5
4.2. Adjustments in Base Rent .....	5
4.3. Additional Charges .....	5
4.4. Late Charges .....	5
4.5. Default Interest.....	6
4.6. Costs of Collection.....	6
5. USE.....	6
5.1. Permitted Use.....	6
5.2. No Unlawful Uses, Nuisances or Waste .....	6
6. TENANT IMPROVEMENTS .....	6
6.1. Tenant Improvement Work.....	6
6.2. Local Hiring Requirements.....	7
6.3. Prevailing Wages and Working Conditions.....	7
7. ALTERATIONS .....	8
7.1. Tenant's Alterations.....	8
7.2. Title to Improvements.....	9
7.3. Tenant's Personal Property .....	10
8. REPAIRS AND MAINTENANCE .....	10
9. LIENS AND ENCUMBRANCES.....	10
9.1. Liens.....	10

9.2.	Encumbrances .....	11
10.	UTILITIES AND SERVICES .....	11
10.1.	Utilities and Services .....	11
10.2.	Water and Energy Conservation; Mandatory or Voluntary Restrictions.....	11
10.3.	Floor Load.....	11
10.4.	Interruption of Services.....	11
11.	COMPLIANCE WITH LEGAL REQUIREMENTS AND RISK MANAGEMENT REQUIREMENTS.....	12
11.1.	Compliance with Legal Requirements.....	12
11.2.	Regulatory Approvals .....	12
11.3.	Compliance with City's Risk Management Requirements.....	13
12.	SUBORDINATION.....	13
13.	INABILITY TO PERFORM .....	13
14.	DAMAGE AND DESTRUCTION.....	13
14.1.	Tenant's Election to Restore or Terminate .....	13
14.2.	Waiver.....	15
15.	EMINENT DOMAIN .....	15
15.1.	Definitions.....	15
15.2.	General .....	15
15.3.	Total Taking; Automatic Termination .....	15
15.4.	Partial Taking; Election to Terminate.....	15
15.5.	Termination of Lease; Rent and Award.....	16
15.6.	Partial Taking; Continuation of Lease .....	16
15.7.	Temporary Takings .....	16
16.	ASSIGNMENT AND SUBLETTING .....	16
16.1.	Restriction on Assignment and Subletting.....	16
16.2.	Notice of Proposed Transfer .....	17
16.3.	City's Response .....	17
16.4.	Intentionally Omitted .....	18
16.5.	Effect of Sublease or Assignment.....	18
16.6.	Assumption by Transferee .....	18
16.7.	Indemnity for Relocation Benefits.....	18
17.	DEFAULT; REMEDIES .....	18

17.1.	Events of Default .....	18
17.2.	Remedies.....	19
17.3.	Waiver of Redemption.....	21
17.4.	City's Right to Cure Tenant's Defaults .....	21
18.	WAIVER OF CLAIMS; INDEMNIFICATION .....	21
18.1.	Limitation on City's Liability; Waiver of Claims.....	21
18.2.	Tenant's Indemnity .....	22
19.	INSURANCE.....	22
19.1.	Tenant's Insurance .....	22
19.2.	Tenant's Personal Property .....	24
19.3.	City's Self Insurance.....	25
19.4.	Waiver of Subrogation.....	25
20.	ACCESS BY CITY.....	25
21.	CERTIFICATES.....	25
21.1.	Tenant's Estoppel Certificates .....	25
21.2.	City's Certificates .....	26
22.	SECURITY DEPOSIT.....	26
23.	SURRENDER OF PROPERTY; REMOVAL OF IMPROVEMENTS.....	26
24.	HAZARDOUS MATERIALS .....	27
24.1.	Definitions.....	27
24.2.	No Hazardous Materials .....	28
24.3.	Tenant's Environmental Indemnity .....	28
24.4.	Underground Storage Tanks .....	29
24.5.	Survival of Obligation.....	29
24.6.	Hazardous Substance Disclosure .....	29
25.	SPECIAL PROVISIONS.....	30
25.1.	Extension Option .....	30
25.2.	Tenant Pays All Expenses.....	30
26.	GENERALLY APPLICABLE PROVISIONS.....	31
26.1.	Notices .....	31
26.2.	No Implied Waiver .....	31
26.3.	Amendments .....	31
26.4.	Authority .....	32

26.5.	Parties and Their Agents; Approvals .....	32
26.6.	Interpretation of Lease .....	32
26.7.	Successors and Assigns.....	32
26.8.	Brokers .....	32
26.9.	Severability .....	33
26.10.	Governing Law .....	33
26.11.	Entire Agreement.....	33
26.12.	Attorneys' Fees .....	33
26.13.	Holding Over .....	34
26.14.	Time of Essence.....	34
26.15.	Cumulative Remedies .....	34
26.16.	Survival of Indemnities.....	34
26.17.	Signs.....	34
26.18.	Relationship of the Parties .....	35
26.19.	Payments to Tenant.....	35
26.20.	Light and Air.....	35
26.21.	No Recording.....	35
26.22.	Options Personal .....	35
26.23.	Non-Liability of City Officials, Employees and Agents .....	35
26.24.	Cooperative Drafting .....	35
26.25.	Counterparts.....	36
26.26.	Effective Date .....	36
27.	CITY REQUIREMENTS .....	36
27.1.	Public Transit Information.....	36
27.2.	Taxes, Assessments, Licenses, Permit Fees and Liens.....	36
27.3.	Non-Discrimination in City Contracts and Benefits Ordinance .....	36
27.4.	No Relocation Assistance; Waiver of Claims.....	37
27.5.	MacBride Principles—Northern Ireland.....	38
27.6.	Tropical Hardwood and Virgin Redwood Ban; Preservative-Treated Wood Containing Arsenic .....	38
27.7.	Restrictions on the Use of Pesticides .....	38
27.8.	First Source Hiring Agreement.....	39
27.9.	Sunshine Ordinance .....	39

27.10. Conflicts of Interest.....	39
27.11. Charter Provisions.....	39
27.12. Drug-Free Workplace .....	39
27.13. Prohibition of Tobacco, Electronic Cigarettes, and E-Cigarettes Sales and Advertising.....	39
27.14. Prohibition of Alcoholic Beverage Advertising .....	40
27.15. Requiring Health Benefits for Covered Employees.....	40
27.16. Notification of Limitations on Contributions .....	41
27.17. Resource-Efficient City Buildings.....	42
27.18. Food Service and Packaging Waste Reduction Ordinance.....	42
27.19. San Francisco Packaged Water Ordinance .....	42
27.20. Criminal History in Hiring and Employment Decisions.....	42
27.21. Vending Machines; Nutritional Standards.....	43
27.22. All-Gender Toilet Facilities .....	43
27.23. Tenant’s Compliance with City Business and Tax Regulations Code .....	44

#### LIST OF EXHIBITS

EXHIBIT A – Depiction of Property

EXHIBIT B – Notice of Commencement Date

## SERVICE STATION SITE LEASE

THIS SERVICE STATION SITE LEASE (this “**Lease**”), dated for reference purposes only as of August 10, 2020, is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), and TWIN PEAKS PETROLEUM, INC., a California corporation, dba Twin Peaks Auto Care (“**Tenant**”).

City and Tenant hereby covenant and agree as follows:

### 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the “**Basic Lease Information**”). Each item below incorporates all of the terms in this Lease related to that item. If there is any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision will control.

Lease Reference Date:	August 10, 2020
Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation
Tenant:	TWIN PEAKS PETROLEUM, INC., a California corporation, dba Twin Peaks Auto Care
Real Property ( <u>Section 2.1</u> ):	Portion of Lot 7, Block 2842, San Francisco, California, commonly known as 598 Portola Drive
Rentable Area ( <u>Section 2.1</u> ):	Approximately 14,499 square feet as depicted on attached as <b><u>Exhibit A</u></b>
Term ( <u>Section 3.13.1</u> ):	Twenty-five (25) years, commencing on the Commencement Date, as defined in <u>Section 3.1</u> , and ending on the date immediately preceding the twenty-fifth (25th) anniversary of the Commencement Date (the “ <b>Expiration Date</b> ”).
Extension Option ( <u>Section 25.1</u> ):	Tenant has the option to request to extend the term of this Lease for one five (5) year extension period, commencing on the date immediately following the Expiration Date, on the terms and conditions set forth in <u>Section 25.1</u> .
Base Rent ( <u>Section 4.1</u> ):	Annual Base Rent: \$200,200.00 (\$13.81 per sq. ft./year)  Monthly payments: \$16,683.33
Rent Adjustment Dates ( <u>Section 4.2</u> ):	Beginning on the first anniversary of the Commencement Date and continuing on each subsequent anniversary date (each, an “ <b>Adjustment Date</b> ”), the annual and monthly Base

	Rent payable under this Lease will increase by 3% according to the provisions of <u>Section 4.2</u> .
Permitted Use ( <u>Section 5.1</u> ):	Operation of a retail gasoline and/or alternative clean fuel station, automobile service station, ancillary sales and services related to the operation of a fuel or service stations, including a car wash, and the retail sale of sodas, juices, candies, gums, snacks and such other sundry articles as are commonly sold in gasoline stations in San Francisco, California, provided that Tenant may not sell tobacco or marijuana products or alcoholic beverages.
Tenant Improvements ( <u>Section 6</u> ):	None other than removal and replacement of existing underground tanks, to be performed by Tenant at Tenant's expense.
Utilities and Services ( <u>Section 9.2</u> ):	Tenant is responsible for all services and utilities.
Security Deposit ( <u>Section 22</u> ):	\$50,000.00
City's Notice Address ( <u>Section 26.1</u> ):	Real Estate Division 25 Van Ness Avenue, Suite 400 San Francisco, California 94102 Attn: Director of Property Re: 598 Portola Drive
and to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attn: Real Estate & Finance Group Re: 598 Portola Drive Fax No.: (415) 554-4757
Key Contact for City:	Claudia J. Gorham Deputy Managing Director, RED 415.554.9850 Claudia.gorham@sfgov.org
Alternate Contact for City:	Josh Keene <u>Josh.keene@sfgov.org</u> 415.554.9850



Tenant's Notice Address (Section 26.1): Michael Gharib  
 598 Portola Drive  
 San Francisco, California 94131  
 Tel No.: 415-648-4709  
 M.Gharib: [c4gharib@yahoo.com](mailto:c4gharib@yahoo.com)

Key Contact for Tenant: Michael Gharib

Telephone No.: 415-648-4709

Alternate Contact for Tenant: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Brokers (Section 26.8): None

Other Noteworthy Provisions: Tenant must remove the Tanks (as defined in  
 Underground Storage Tanks (Section 24.4) Section 24.4) from the Property at the expiration or  
 termination of the Lease.

## 2. PROPERTY; AS IS CONDITION

### 2.1. Leased Property

City owns real property commonly known as Assessor's Parcel Number 2842-007 in San Francisco, California (the "**City Parcel**"). Subject to the provisions of this Lease, City leases to Tenant and Tenant leases from City a portion of the City Parcel commonly known as 598 Portola Drive and depicted on the attached **Exhibit A** (the "**Land**"), together with and all improvements that are not Trade Fixtures (defined below) (including without limitation all Buildings, driveways, parking areas, curbs, walks, walls, stairs, now located or later constructed on, in or under the Land and all appurtenances to the Land) (collectively with the Land, the "**Property**"). The rentable area of the Property specified in the Basic Lease Information will be conclusive for all purposes.

"**Buildings**" means the convenience store, service bay building, any other buildings now located or later installed on the Land.

"**Trade Fixtures**" means all fixtures, apparatus, equipment, systems and appliances on the Land or used in the operation of the Property, including, but not limited to, all above and below ground tanks, the Tanks (as defined in Section 24.4), other fuel storage and distribution systems, fuel delivery systems (including pumps), canopies, lifts, signs, fences, and poles. City and Tenant acknowledge that the Trade Fixtures are and will remain the property of Tenant.

### 2.2. 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 advised that the Property has not been inspected by a CASp. A CASp can inspect the Property and determine if they comply with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Property, City may

not prohibit Tenant from obtaining a CASp inspection of the Property for the occupancy or potential occupancy of Tenant if requested by Tenant. City and Tenant will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Property.

### **2.3. As Is Condition**

TENANT ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS BEING LEASED AND ACCEPTED IN ITS “AS IS” CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LEGAL REQUIREMENTS (AS DEFINED IN SECTION 11 (COMPLIANCE WITH LEGAL REQUIREMENTS) BELOW) GOVERNING ITS USE, OCCUPANCY, AND POSSESSION. TENANT ACKNOWLEDGES THAT TENANT HAS OCCUPIED AND OPERATED THE PROPERTY FOR OVER TWENTY-FIVE YEARS UNDER A LEASE DATED JUNE 8, 1994 AND THE 2015 LEASE (DEFINED IN SECTION 3.3 BELOW) AND ITS OCCUPANCY HAS BEEN UNINTERRUPTED AND IS CONTINUING. TENANT REPRESENTS AND WARRANTS TO CITY THAT TENANT HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF TENANT’S OWN CHOOSING, THE CONDITION OF THE PROPERTY AND THE SUITABILITY OF THE PROPERTY FOR TENANT’S INTENDED USE. BASED SOLELY ON ITS OWN INVESTIGATION, TENANT HAS DETERMINED THAT THE PROPERTY IS SUITABLE FOR TENANT’S BUSINESS AND INTENDED USE, WITH NO OBLIGATION OF CITY TO MAKE ANY IMPROVEMENTS, REPAIRS, OR ALTERATIONS. TENANT ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS (AS DEFINED IN SECTION 26.5 (PARTIES AND THEIR AGENTS, APPROVALS) BELOW) HAVE MADE, AND CITY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PROPERTY, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF THE PROPERTY FOR TENANT’S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PROPERTY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### **2.4. Energy Consumption Disclosure**

Tenant consents to Tenant’s utility service providers disclosing energy use data for the Property to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as each may be amended from time to time (“**Energy Consumption Reporting Laws**”), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

## **3. TERM**

### **3.1. Lease Term**

The Property is leased for a term (the “**Term**”) commencing on the Effective Date (defined in Section 26.26 below) (the “**Commencement Date**”). The Term will end on the expiration date specified in the Basic Lease Information, unless sooner terminated or extended as provided in this Lease.

### **3.2. Confirmation of Commencement Date and Expiration Date**

The dates that the Term commences and terminates under this Lease are, respectively, the “**Commencement Date**” and the “**Expiration Date**.” Following the Commencement Date, Tenant will deliver to City a notice substantially in the form attached as **Exhibit B**, confirming the

actual Commencement Date, but Tenant's failure to do so will not affect the commencement of the Term.

### **3.3. Termination of 2015 Lease; Survival of Indemnities**

Landlord and Tenant acknowledge that Tenant is presently in possession of the Property under the Service Station Site Lease between City and Tenant dated for reference purposes as of July 23, 2015 (the "**2015 Lease**"). Notwithstanding any provisions of the 2015 Lease to the contrary, the 2015 Lease will terminate as of the Effective Date of this Lease; provided, however, that Tenant will not be relieved on any of its obligations under the 2015 Lease accruing before that termination of the 2015 Lease, and Tenant's indemnification obligations under the 2015 Lease will survive the termination of the 2015 Lease with regard to events occurring before the termination, and the provisions of the Section 3.3 of the 2015 Lease will survive the termination of the 2015 Lease.

## **4. RENT**

### **4.1. Base Rent**

Throughout the Term beginning on the Commencement Date, Tenant will pay to City the annual Base Rent specified in the Basic Lease Information, which will increase three percent (3%) annually under Section 4.2 (Adjustments in Base Rent) (the "**Base Rent**"). The Base Rent will be paid to City in advance, without prior demand and without any deduction, setoff, or counterclaim whatsoever, in equal consecutive monthly payments on or before the first day of the Term and on or before the first day of each month thereafter. All sums payable by Tenant to City must be paid in cash or by good funds to the City and County of San Francisco in care of the Director of Property at the primary address for City specified in the Basic Lease Information, or such other place as City may designate in writing. If Tenant pays by personal or business check and the check is not honored, then City may require Tenant to make all future payments in cash or by cashier's check.

### **4.2. Adjustments in Base Rent**

On each date specified in the Basic Lease Information for adjustment of the Base Rent (an "**Adjustment Date**"), the Base Rent payable under this Lease will increase by an amount equal to three percent (3%) of the Base Rent payable during the immediately preceding twelve-month period.

### **4.3. Additional Charges; Rent**

Tenant will pay to City all charges and other amounts required under this Lease as additional rent, whether or not those amounts are specifically characterized as rent (collectively, "**Additional Charges**"). All Additional Charges will be payable to City at the same place and the same manner as the Base Rent. City will have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. The term "**Rent**" means Base Rent and Additional Charges.

### **4.4. Late Charges**

Each time Tenant fails to pay any Rent or any portion of Rent within five (5) days following the due date, the unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount. City and Tenant have agreed on the late payment charge, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur resulting from Tenant's failure to timely pay Rent, the actual costs being extremely difficult if not impossible to determine. Tenant will pay the late charge to City together with the unpaid amount.

#### 4.5. Default Interest

Any Rent, if not paid within five (5) days after the due date, will bear interest from the due date until paid the Prime Rate most recently announced by Bank of America, for the immediately preceding month, plus four percent (4%), which rate will automatically be reduced if it is higher than the rate an individual is permitted to legally charge (the “**Interest Rate**”). Interest will not be payable on late charges or on any amounts on which Tenant paid late charges to the extent this interest would cause the total interest to be more than lawfully permitted. Payment of interest will not excuse or cure any default by Tenant.

#### 4.6. Costs of Collection

In addition to any interest or late charges under Section 4.4 and Section 4.5 above, if Tenant fails to pay Rent in immediately available funds or by good check (if Tenant is permitted to pay by personal or business check), to the extent that the costs incurred by City because of Tenant’s failure exceed the late charges applicable to that failure, then Tenant will pay to City immediately upon demand as Additional Charges the amount of any fees, charges, or other costs incurred by City, including dishonored check fees, increased staff time, and any costs of collection.

### 5. USE

#### 5.1. Permitted Use

Tenant will use and continuously occupy the Property during the Term solely for the operation of a retail gasoline or alternative clean fuel station, automobile service station, and associated car wash, if any, and convenience store, including the sale of propane and merchandise generally sold at service stations, excluding tobacco and other products as provided in Section 27.13 below (the “**Permitted Use**”), and for no other purposes other than those approved by City in writing and that are associated and related to the above stated uses. Tenant acknowledges that the prohibition on the change in use under this Section is expressly authorized by California Civil Code Section 1997.230 and is fully enforceable.

#### 5.2. No Unlawful Uses, Nuisances or Waste

Without limiting the foregoing, Tenant may not use, occupy, or permit the use or occupancy of any of the Property in a manner that would violate any Legal Requirements or for any illegal purpose, or permit any offensive, noisy, or hazardous use or any waste on or about the Property, but the foregoing does not prohibit the Permitted Use of the Property. Tenant will take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Property.

### 6. TENANT IMPROVEMENTS

#### 6.1. Tenant Improvement Work

(a) Tenant has informed City of its intention to replace the underground storage tanks before January 1, 2025 (“**Tenant Improvement Work**” or “**Tenant Improvements**”). Before beginning construction on the Tenant Improvements, Tenant will provide the Director of Property the plans and specifications prepared by Tenant’s consultants, engineers, and architect for removal of the existing tanks, removal and appropriate disposal of any contaminated concrete, asphalt, soil, or other materials, and the construction and installation of the Tenant Improvements (the plans and specifications are referred to as the “**Plans**”) for City’s approval which consent may not be unreasonably withheld or delayed. Tenant is responsible, at no cost to City, for (a) performing the Tenant Improvement Work in accordance with the approved Plans and the

standards contained in Section 7.1 (Tenant's Alterations) below and **(b)** obtaining all permits and licenses required in connection with the Tenant Improvements. No Tenant Improvement Work may commence on the Property unless after the Effective Date of this Lease. Tenant may not make any material change to the approved Plans or consent to any change order during the course of construction without first obtaining City's written approval which consent may not be unreasonably withheld or delayed. On completion of the Tenant Improvements, Tenant will provide City a copy of the final as-built plans and specifications. No approval by City or any of its Agents of the Plans, any changes, or of any Alterations under this Lease will be deemed to constitute approval of any federal, state, or local regulatory authority with jurisdiction over the Property or Tenant's use of the Property, and nothing in this Lease limits Tenant's obligation to obtain all needed regulatory approvals at no cost to City.

(b) Upon receipt of written notice of the date of the full closure of business at the Property (including the convenience store, gas station (all dispensers) and any and all other revenue sources on the Property) to perform the Tenant Improvement Work (underground storage tank replacement), City will waive Tenant's Base Rent (not Additional Charges) while the business is fully closed for the performance of the Tenant Improvement Work, not to exceed three (3) months ("**Tenant Improvement Abatement Period**"). Under no circumstances, will the Tenant Improvement Abatement Period exceed three (3) months.

## **6.2. Local Hiring Requirements**

(a) Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Tenant Improvements and Alterations (as defined in Section 7.1 (Tenant's Alterations)) are subject to the Local Hiring Requirements unless the cost for the work is **(i)** estimated to be less than \$750,000 per building permit or **(ii)** meets any of the other exemptions in the Local Hiring Requirements. Tenant will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant will contact City's Office of Economic Workforce and Development ("**OEWD**") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "**Covered Project**").

(b) In any contract for a Covered Project, Tenant will include a requirement to comply with the Local Hiring Requirements with specific reference to San Francisco Administrative Code Section 23.62. Each contract will name the City and County of San Francisco as a third-party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant will cooperate, and require its subtenants to cooperate, with City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section will constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

## **6.3. Prevailing Wages and Working Conditions**

(a) Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code Section 23.61. Tenant will require its Contractors and Subcontractors performing **(i)** labor in connection with a "public work" as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction,

alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Property to (A) pay workers performing that work not less than the Prevailing Rate of Wages, (B) provide the same hours, working conditions, and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “**Prevailing Wage Requirements**”). Tenant will cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

(b) Tenant will include, and will require its Contractors and Subcontractors (regardless of tier), to include in any Construction Contract the Prevailing Wage Requirements, with specific reference to San Francisco Administrative Code Section 23.61, and the agreement to cooperate in City enforcement actions. Each Construction Contract will name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third-party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant’s failure to comply with its obligations under this Section will constitute a material breach of this Lease. A Contractor’s or Subcontractor’s failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see [www.sfgov.org/olse](http://www.sfgov.org/olse) or call City’s Office of Labor Standards Enforcement at 415-554-6235.

(c) Tenant will also pay, and will require its Contractors and Subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Property as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

## 7. ALTERATIONS

### 7.1. Tenant’s Alterations

(a) **General.** Tenant will not make or permit any alterations, installations, additions, or improvements, structural or otherwise (collectively, “**Alterations**”) (i) in, to or about the Property (ii) to the Buildings or (iii) to the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security, and other mechanical, electrical, or communications systems of the Buildings or at the Property (“**Systems**”), without City’s prior written consent in each instance. All Alterations will be done at Tenant’s expense in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics approved by City, and subject to any conditions that City may reasonably impose. With respect to any Alterations that would be visible from the exterior of any Buildings, Tenant will obtain the prior written approval of City’s Arts Commission to the extent the Arts Commission has jurisdiction over the design of the proposed alterations under City’s Charter Section 5.103. If the cost of any Alterations is in excess of Five Thousand Dollars (\$5,000), then Tenant will pay to City an administrative fee equal to ten percent (10%) of the total “hard” costs of the work to compensate City for its review costs. Notwithstanding anything to the contrary in this Lease, City

will not require an administrative fee for the Tenant Improvements of the underground storage tanks under Section 6.1.

(b) **Asbestos.** Without limiting Section 24.2 (No Hazardous Materials) below, if it is determined that asbestos-containing materials (“ACM”) exist in or about the Property, Tenant will ensure that all Alterations and any asbestos-related work, as defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all Legal Requirements relating to asbestos, including California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant will distribute notifications to all employees and contractors as required under California Health & Safety Code Section 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations affecting ACM-containing areas or any asbestos related work may be performed without City’s prior written consent in each instance.

(c) **Prevailing Wage and Local Hiring Requirements.** Tenant will comply with the applicable requirements of Section 6.2 (Local Hiring Requirements) and Section 6.3 (Prevailing Wages and Working Conditions) above in the performance of any Alterations.

(d) **Tenant’s Improvements or Alterations that Disturb or Remove Lead-Based Paint.** Tenant, on behalf of itself and its Agents or Invitees, will comply with all requirements of the San Francisco Building Code, Section 3407, and all other Legal Requirements, including the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior lead-based or “presumed” lead-based paint (as defined below). Tenant and its Agents or Invitees (defined in Section 26.5 (Parties and Their Agents; Approvals) below) will give to City three (3) business days’ prior written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, may not use or cause to be used any of the following methods: (i) acetylene or propane burning and torching; (ii) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter (“HEPA”) local vacuum exhaust tool; (iii) hydro-blasting or high-pressure wash without containment barriers; (iv) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (v) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the exterior surfaces of the buildings. Under this Section, lead-based paint is “disturbed or removed” if the work of improvement or alteration involves any action that creates friction, pressure, heat, or a chemical reaction on any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through, or eliminate paint from that surface. Notice to City under this Lease will not constitute notice to City’s Department of Building Inspection required under San Francisco Building Code Section 3407.

## **7.2. Title to Improvements**

During the Term of this Lease, Tenant will own all of the Trade Fixtures and other property necessary to the Permitted Use, and that are attached or affixed to or installed in the Property at the Commencement Date or during the Term, including, without limitation, the Tenant Improvements and any Alterations.

Tenant will have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease to remove the Trade Fixtures and Personal Property from the Property in the ordinary course of business; provided, however, that if the removal of Trade Fixtures or Personal Property causes damage to the Property, Tenant will promptly repair the damage at no cost to City except as provided Section 23 (Surrender of Property) below.

### **7.3. Tenant's Personal Property**

All furniture, trade fixtures, office equipment, and articles of movable personal property installed in the Property by or for the account of Tenant, without expense to City, and that can be removed without structural or other damage to the Property (collectively, "**Tenant's Personal Property**") will be and remain, Tenant's property. Tenant may remove its Personal Property at any time during the Term, subject to the provisions of Section 23 (Surrender of Property) below. Tenant will pay any taxes or other impositions levied or assessed on Tenant's Personal Property, at least ten (10) days before delinquency, and, on request, deliver satisfactory evidence of that payment to City.

## **8. TENANT'S REPAIRS AND MAINTENANCE**

At no expense to City, Tenant will maintain (including replacements as necessary) the Property and all improvements, Buildings, interior and exterior plumbing, electrical wiring, fixtures, equipment, and Trade Fixtures in good repair and working order and in a clean, secure, safe, and sanitary condition. Tenant will promptly make all repairs and replacements: **(a)** at no cost to City, **(b)** by licensed contractors or qualified mechanics approved by City, **(c)** so that the repairs and replacements will be at least equal in quality, value, and utility to the original work or installation at the time of the repair or replacement, and **(d)** in accordance with all applicable Legal Requirements. Tenant hereby waives all rights to make repairs at City's expense under Sections 1941 and 1942 of the California Civil Code or under any similar Legal Requirements. Tenant will give to City at least fifteen (15) days' prior written notice of commencement of any repair, replacement, or construction on the Property. Replacements costing over \$5,000 will be considered an Alteration and Article 7 above will apply. For the avoidance of doubt, Landlord has no repair, maintenance, replacement, or rebuilding obligations for the Property; all repairs, maintenance, replacements, or rebuilding of any kind are the obligations of Tenant as provided under the terms and conditions of this Lease.

## **9. LIENS AND ENCUMBRANCES**

### **9.1. Liens**

Tenant will keep the Property free from any liens arising out of any work performed, material furnished, or obligations incurred by or for Tenant. If, within fifteen (15) days after the imposition of any lien, Tenant does not cause the lien to be released of record by payment or posting a bond, then, in addition to all other remedies, City may, but is not obligated to, cause the lien to be released in any way it deems proper, including payment of the claim giving rise to the lien. All sums paid by City and all expenses incurred by it in connection with releasing the lien (including reasonable attorneys' fees) will be payable by Tenant to City on demand. City may post on the Property any notices that City may deem proper for the protection of City, the Property, and the Building from mechanics' and material supplier's liens. Tenant will indemnify, defend, and hold City and its Agents harmless from and against any claims for mechanic's, material supplier's, or other liens in connection with any Alterations, repairs, or construction on the Property, or materials furnished or obligations incurred by or for Tenant.



## **9.2. Encumbrances**

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

## **10. UTILITIES AND SERVICES**

### **10.1. Utilities and Services**

At no cost to City, Tenant will be responsible for making all arrangements for and pay, as the same become due, all charges, costs, bills and expenses for water, gas, electricity, sewer, telephone, cable, internet, and all other services and utilities of whatever kind, furnished to or used by the Tenant or by any other party in connection with the use, occupancy, maintenance or operation of the Property or any part thereof.

### **10.2. Water and Energy Conservation; Mandatory or Voluntary Restrictions**

If any Legal Requirements impose mandatory or voluntary controls on City or any part of the Property relating to the use or conservation of energy, water, gas, light, or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or if City is required or elects to make alterations to any part of the Property to comply with mandatory or voluntary controls or guidelines, then that compliance and making of any related alterations will not entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Rent or to perform each of its other covenants under the Lease, or constitute or be construed as a constructive or other eviction of Tenant. At any time, City may install a water meter on the Property or to otherwise measure the amount of water consumed on the Property, and Tenant will pay for the cost of the meter or other means of measurement and its installation and maintenance.

### **10.3. Floor Load**

Tenant will not place or install on the Property on in any Building any equipment that weighs more than the normal load-bearing capacity of the floors of the Building without City's prior written consent, which City may give, condition, or refuse in its sole discretion. If City consents to the placement or installation of any overweight equipment on the Property or in a Building, Tenant will reinforce the foundation or floor, at no cost to City, under plans and specifications approved by City and otherwise in compliance with Section 7.1 (Tenant's Alterations), to the extent necessary to assure that no damage to the Property or the Building or weakening of any structural supports will occur because of Tenant's overweight equipment.

### **10.4. Interruption of Services**

In the event of an interruption in or failure of any service or utility for the Property for any reason, then the interruption or failure will not constitute an eviction of Tenant, constructive or otherwise, or impose on City any liability whatsoever, including liability for consequential damages or loss of business by Tenant; but if the interruption, failure, or inability materially impairs Tenant's ability to carry on its business on the Property for three (3) or more consecutive business days, then Tenant will have the right, as Tenant's sole remedy, to abate the Rent in an amount calculated by City based on the extent the interruption or failure impairs Tenant's ability to carry on its business in the Property. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable Legal Requirements permitting the termination of this Lease due to the interruption, failure, or inability.

## 11. COMPLIANCE WITH LEGAL REQUIREMENTS AND RISK MANAGEMENT REQUIREMENTS

### 11.1. Compliance with Legal Requirements

At no cost to City, Tenant will promptly comply with all present or future federal, state, local, and administrative laws, ordinance, resolution, regulation, requirement, proclamation, order, or decree of any municipal, county, state, or federal government or other governmental or regulatory authority, board of fire underwriters, or any directive or occupancy certificate issued under any law by any public officer or officers acting in their regulatory capacity (now or later in effect, collectively "**Legal Requirements**") relating to the Property or the use or occupancy of the Property and with any and all recorded covenants, conditions, and restrictions affecting all or any portion of the Property, whether in effect at the time of the execution of this Lease or adopted or recorded at any time later and whether or not they were considered by the parties in negotiating this Lease. It is Tenant's obligation, at no cost to City, to cause the Property and Tenant's uses thereof to be conducted in compliance with the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq. and any other applicable disability access Legal Requirements. Any Alteration made by or on behalf of Tenant under the provisions of this Section will comply with the provisions of Section 8 (Tenant's Repairs) above. Tenant's obligation to comply with all Legal Requirements is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section includes its responsibility to make substantial or structural repairs and Alterations to the Property (including, but not limited to, Buildings, Systems, and any of the Tenant Improvements or any of Tenant's Alterations), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term, 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 Property, the likelihood that the parties contemplated the particular Legal Requirements involved, and whether the Legal Requirements involved are related to Tenant's particular use of the Property.

### 11.2. Regulatory Approvals

(a) **Responsible Party.** Tenant's use of the Property and construction of the Tenant Improvements permitted hereunder may require authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Property and/or use. Tenant is solely responsible for obtaining all regulatory approvals. Tenant may not seek any regulatory approval without first obtaining City's written consent which may not be unreasonably withheld. Tenant will bear all costs associated with applying for and obtaining any regulatory approval and is solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any condition that could affect use or occupancy of the Property or City's interest in the Property will first be approved by City in its sole discretion. Tenant will immediately pay and discharge 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 will have no liability, monetary or otherwise, for any fines or penalties. Tenant will Indemnify City and the other Indemnified Parties (defined in Section 18.2 (Tenant's Indemnity) below) against all Claims arising in connection with Tenant's failure to obtain or failure by Tenant, its Agents, or its Invitees to comply with the terms and conditions of any regulatory approval.

(b) **City Acting as Owner of Real Property.** City is entering into this Lease in its capacity as a property owner with a proprietary interest in the Property and not as a regulatory agency with police powers. Nothing in this Lease will limit in any way Tenant's obligation to obtain any required approvals from City officials, departments, boards, agencies, commissions, or

other body having jurisdiction over the Property or use. By entering into this Lease, City is not modifying or limiting Tenant's obligation to cause the Property to be used and occupied in accordance with all applicable Legal Requirements.

### **11.3. Compliance with City's Risk Management Requirements**

Tenant will not do anything, or permit anything to be done, in or about the Property that would be prohibited by or increase rates under a standard form fire insurance policy for the Permitted Use or subject City to premises liability. At no cost to City, Tenant will faithfully observe any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Property.

## **12. SUBORDINATION**

This Lease is and will be subordinate to any reciprocal easement agreement, ground lease, facilities lease, or other underlying lease and the lien of any mortgage or deed of trust and all renewals, modifications, consolidations, replacements, and extensions of any of the foregoing, that may now exist or later be executed by City affecting the Property or City's interest in the Property, without the necessity of executing any instrument to effectuate the subordination. Notwithstanding the foregoing, City or the holder will, in its respective discretion, may elect not to subordinate those interests to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant will attorn to City's successor-in-interest, if desired by the successor-in-interest. The provisions of this Section are self-operative and no further instrument will be required. On City's demand, however, Tenant will execute and deliver any additional commercially reasonable documents in the form requested by City evidencing the priority or subordination of this Lease.

## **13. INABILITY TO PERFORM**

If City is unable to perform or is delayed in performing any of City's obligations under this Lease by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials, or by any other reason beyond City's reasonable control, then that inability or delay will not constitute an eviction under this Lease, or impose any liability on City or its Agents because of the inconvenience, annoyance, interruption, injury, or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Property or any other loss or damage due to City's inability or delay. Tenant waives and releases any right to terminate this Lease under Section 1932, subdivision 1 of the California Civil Code or any similar Legal Requirements.

## **14. DAMAGE AND DESTRUCTION**

### **14.1. Tenant's Election to Restore or Terminate**

(a) If damage to or destruction of all or any portion of the Property, including, but not limited to, improvements and Buildings, or any of the Trade Fixtures occurs, then Tenant will provide the Director of Property with a written notice (the "**Casualty Notice**") either (i) electing to commence and complete restoration of the Property substantially to the condition immediately before the damage or destruction to the extent possible in accordance with then applicable Legal Requirements (including any required code upgrades) and repair and replacement of the Trade Fixtures and any Personal Property required to operate Tenant's business in the Property; or (ii) electing to terminate this Lease.

(b) Tenant will provide the Director of Property with the Casualty Notice no later than the date that is ninety (90) days following the occurrence of the damage or destruction.

(c) As a condition to making its election, Tenant must pay or cause to be paid to City, immediately upon receipt, the proceeds if any of the rental interruption or business interruption insurance required under this Lease arising out of or in connection with the casualty causing the damage or destruction to the extent attributable to the Rent payable to City under this Lease for the duration of the damage or destruction.

(d) If Tenant elects to restore the improvements, all of the provisions of Sections 6 and 7 apply.

(e) Notwithstanding anything to the contrary in this Lease, City will have no obligation to repair the Property, or any portion of it, including, but not limited to any Buildings or improvements at any time. City will never be required to repair any damage to Tenant's Personal Property, Trade Fixtures, or any Tenant Improvements or Alterations installed or made on the Property.

#### **14.2. Obligations Upon Election to Terminate**

If Tenant elects to terminate this Lease pursuant to Section 14.1 above, Tenant will raze the remainder of the improvements on the Property, remove all Buildings and all Trade Fixtures, including, but not limited to, underground and above ground tanks, Tanks, dispensers, canopies, underground gas lines, and fixtures, and surrender the Property to the City vacant of all improvements, fixtures, and Personal Property and otherwise in the condition required by this Lease.

#### **14.3. Use of Insurance Proceeds**

(a) Restoration of Demolition and Removal. All Property related insurance proceeds paid to Tenant by reason of damage to or destruction of any improvements on the Property, if any, must be used by Tenant for the repair or rebuilding of such improvements or for demolition and removal of such improvements, except otherwise approved and agreed to in writing by the City.

(b) Payment to Trustee. At City's election, any insurer paying compensation under any Property related insurance carried in connection with the Property will pay the proceeds to a trustee (which will be a bank or trust company having an office in San Francisco, designated by City within thirty (30) days after receipt of the Casualty Notice by City). However, the trustee will pay to Tenant, from time to time as the work of restoration or demolition and removal progresses, in amounts designated by certification by architects licensed to do business in the State, showing the application for those amounts as payment for the restoration or, in the case of demolition and removal, by certification of a licensed, bonded general contractor approved or certified by the applicable regulating agencies.

(c) Excess to Be Paid to Tenant. Provided that no Event of Default then exists, any proceeds in excess of the amount needed to complete the restoration or demolition received from insurance remaining with the trustee after the completion of such restoration or completion of the demolition and removal as required by this Article will be paid to Tenant.

#### **14.4. No Release of Tenant's Obligations**

No damage to or destruction of the Property or improvements or any part thereof by fire or any other cause shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including but not limited to, the obligation to pay Rent, except as otherwise expressly provided in this Lease.

#### **14.5. Waiver**

City and Tenant intend that this Section fully governs if there is any damage or destruction and accordingly, City and Tenant each waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4 and Sections 1941 and 1942 of the Civil Code of California or under any similar Legal Requirements.

### **15. EMINENT DOMAIN**

#### **15.1. Definitions**

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

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

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

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

#### **15.2. General**

If during the Term, there is any Taking of all or any part of the Property or any interest in this Lease, the rights and obligations of the parties under this Lease will be determined under this Section. City and Tenant intend that the provisions of this Section 15 govern fully in the event of a Taking and accordingly, the parties each waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar Legal Requirements.

#### **15.3. Total Taking; Automatic Termination**

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

#### **15.4. Partial Taking; Election to Terminate**

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

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

#### **15.5. Termination of Lease; Rent and Award**

On termination of this Lease in its entirety under Section 15.3 (Total Taking; Automatic Termination), or under an election under Section 15.4 (Partial Taking; Election to Terminate) above, then: (a) Tenant's obligation to pay Rent will continue only up to date of termination, and (b) City will be entitled to the entire Award (including any portion of the Award made for the value of the leasehold estate created by this Lease) except for that portion of the Award specifically allocated to any Improvements Pertaining to the Realty. Tenant will have no claim against City for the value of any unexpired Term, but Tenant may make a separate claim with the condemnor for Tenant's relocation expenses, the interruption of or damage to Tenant's business, and damage to movable Tenant's Personal Property, and Tenant will be entitled to that separate Award.

#### **15.6. Partial Taking; Continuation of Lease**

If there is a partial Taking of the Property and this Lease is not terminated in its entirety under Section 15.4 (Partial Taking; Election to Terminate), then this Lease will terminate as to the portion of the Property taken, but will remain in full force and effect as to the portion not taken, and the rights and obligations of the parties will be as follows: (a) Base Rent will be reduced by an amount that is in the same ratio to the Base Rent as the area of the Property taken bears to the area of the Property before the Date of Taking; provided, that in no event will the monthly Base Rent be reduced to less than seventy-five percent (75%) of the monthly Base Rent immediately before the Date of Taking, and (b) City will be entitled to the entire Award (including any portion of the Award made for the value of the leasehold estate created by this Lease) except for that portion of the Award specifically allocated to any Improvements Pertaining to the Realty or Tenant's Trade Fixtures. Tenant will have no claim against City for the value of any unexpired Term, but Tenant may make a separate claim with the condemnor for Tenant's relocation expenses, the interruption of or damage to Tenant's business, and damage to movable Tenant's Personal Property damaged or taken within that portion of the Property taken, and Tenant will be entitled to that separate Award.

#### **15.7. Temporary Takings**

Notwithstanding anything to contrary in this Section, if there is a Taking of all or any part of the Property for less than sixty (60) consecutive days, then (a) this Lease will not be affected by the temporary Taking; (b) Tenant will continue to pay Rent and perform all of the terms, conditions, and covenants of this Lease; (c) Tenant will be entitled to receive that portion of any Award for the use or occupancy of the Property up to the total Rent owing by Tenant for the period of the Taking; and (d) City will be entitled to receive the balance, if any, of the Award.

### **16. ASSIGNMENT AND SUBLETTING**

#### **16.1. Restriction on Assignment and Subletting**

(a) Except as provided in subsection (b) below, Tenant may not directly or indirectly (including by merger, acquisition, or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, sell, assign, encumber, pledge, or otherwise transfer any part of its interest in or rights with respect to the Property or its leasehold estate hereunder (collectively, an "Assignment"), or permit or license any portion of the Property to be used or occupied by

anyone other than itself, or sublet any portion of the Property (collectively, "**Sublease**"), without the Director of Property's prior written consent in each instance, as provided below. City may withhold consent if (i) there is an Event of Default or a condition that, with notice and the passage of time, would constitute an Event of default at the time of the request; or (ii) if the proposed transfer is to an oil company, formula retail (as defined in the San Francisco Planning Code), or an entity other than an independently owned small business or Local Business Enterprise.

(b) Notwithstanding the foregoing, (i) Tenant may Assign this Lease or Sublet any or all portions of the Property to any Tenant's Affiliate (as defined below) without obtaining City's consent by giving City written notice of its intent thereof at least fifteen (15) business days before the proposed effective date of the transfer. As used in this Section, the term "**Tenant's Affiliate**" means any of the following: (A) any person or entity owning, directly or indirectly, fifty percent (50%) or more of the ownership interests of Tenant (an "**Owning Person**"), (B) any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by any Owning Person, and (C) any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by Tenant.

### **16.2. Notice of Proposed Transfer**

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

### **16.3. City's Response**

(a) Within twenty (20) business days after City's receipt of the Notice of Proposed Transfer (the "**Response Period**"), City shall provide its decision to grant or deny consent, and in the event, consent is denied, shall provide a detailed response to Tenant.

(b) Tenant will have ninety (90) days following (i) the expiration of the Response Period without a decision or (ii) City's notice that it has issued consent, to enter into the Assignment or Sublease, subject to City's prior written approval of the proposed assignee or subtenant or licensee (in either case, a "**Transferee**") and the terms and conditions of the proposed Sublease or Assignment. Fifty percent (50%) of any rent or other consideration realized by Tenant under any Assignment or Sublease in excess of the Base Rent and Additional Charges (or the amount proportionate to the portion of the Property subject to a Sublease) will be paid to City, after Tenant has recovered any reasonable brokers' commissions, the reasonable cost of any leasehold improvements that Tenant has incurred in connection with the Sublease or Assignment, and additional expenses borne by Tenant arising directly from the Sublease or Assignment (including but not limited to, additional permits or governmental, utility, or other transfer fees), if any. Tenant will provide City with any information regarding the proposed Transferee and the Assignment or Sublease as City may reasonably request. City will not unreasonably withhold its approval of any proposed Transferee. If Tenant does not enter into the Assignment or Sublease within ninety (90) days, then Tenant will submit a new Notice of Proposed Transfer for any Assignment or Sublease.

(c) Notwithstanding the foregoing, if any Event of Default by Tenant has occurred and is continuing at the time of Tenant's Notice of Proposed Transfer (or if any event

occurs that, with the giving of notice or the passage of time or both, would constitute an Event of Default), then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its right or remedies or at law or in equity.

#### **16.4. Intentionally Omitted.**

#### **16.5. Effect of Sublease or Assignment**

No Sublease or Assignment by Tenant or any consent by City will relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment not in compliance with this Section will be void and, at City's option, will constitute a material default by Tenant under this Lease. City's acceptance of any Base Rent or other payments from a proposed Transferee will not constitute City's consent to any Sublease or Assignment or a recognition of any Transferee, or City's waiver of any failure of Tenant or other transferor to comply with this Section. If there is an Assignment or Sublease, whether in violation of or in compliance with this Section, and a Transferee or any successor of Tenant defaults in the performance or observance of any of the terms of this Lease or any Sublease or Assignment agreement, City may proceed directly against Tenant without the necessity of exhausting remedies against the Transferee or successor.

#### **16.6. Assumption by Transferee**

Each Transferee (other than City) will assume all obligations of Tenant under this Lease and will be liable jointly and severally with Tenant for the payment of the Rent, and for the performance of all of Tenant's obligations under this Lease. No Assignment will be binding on City unless Tenant or Transferee has delivered to City a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by the Transferee satisfactory in form and substance to City. Transferee's failure or refusal under an Assignment to execute the instrument of assumption, however, will not release the Transferee from its liability under this Lease, as set forth above. Tenant will reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Sublease or Assignment, 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, which amount shall be up to \$3,000.00 and supported by documentation.

#### **16.7. Indemnity for Relocation Benefits**

Without limiting Section 16.6 (Assumption by Transferee) above, Tenant will cause any Transferee to expressly release City from any obligation to pay any and all relocation assistance and benefits in connection with this Lease. Tenant will Indemnify City for any and all Claims (as defined in Section Error! Reference source not found. (Tenant's Indemnity)) arising out of any relocation assistance or benefits payable to any Transferee. Tenant's obligation to Indemnify City will survive the expiration or termination of this Lease and any Assignment or Sublease.

### **17. DEFAULT; REMEDIES**

#### **17.1. Events of Default**

Any of the following will constitute an event of default (the "**Event of Default**") by Tenant under this Lease:

(a) a failure to pay Base Rent or Additional Charges when due that continues for three (3) days after the date of City's written notice, but City will not be required to provide notice more than twice during any twelve (12)-month period, and any failure by Tenant after



Tenant has received two (2) notices in a twelve (12)-month period will constitute an Event of Default by Tenant under this Lease without any further notice from City or opportunity for Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

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

(c) a vacation or abandonment of the Property for a continuous period in excess of ten (10) business days without the prior written consent of the City; or

(d) an appointment of a receiver to take possession of all or substantially all of Tenant's assets, 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 the receiver, assignment, or action is not released, discharged, dismissed, or vacated within sixty (60) days.

## **17.2. Remedies**

On the occurrence of an Event of Default City will have the following remedies, which are not exclusive but are cumulative and in addition to any other remedies now or later allowed by law or in equity:

(a) City may terminate Tenant's right to possession of the Property at any time by written notice to Tenant. Tenant expressly acknowledges that in the absence of a written notice from City, no other act of City, including its re-entry into the Property, its efforts to relet the Property, its reletting of the Property for Tenant's account, its storage of Tenant's Personal Property and trade fixtures, its acceptance of keys to the Property from Tenant, its appointment of a receiver, or its exercise of any other rights and remedies under this Section Error! Reference source not found. or otherwise under Legal Requirements, will constitute an acceptance of Tenant's surrender of the Property or constitute a termination of this Lease or of Tenant's right to possession of the Property.

(b) On a written termination of Tenant's right to possession of the Property, this Lease will terminate and City will be entitled to recover damages from Tenant as provided in California Civil Code Section 1951.2 or any other applicable existing or future Legal Requirement providing for recovery of damages for a breach, including the following:

- (i) The reasonable cost of recovering the Property; plus
- (ii) The reasonable cost of removing Tenant's Alterations, trade fixtures, and improvements; plus
- (iii) All unpaid Rent due or earned under this Lease before the date of termination, less the proceeds of any reletting or any rental received from subtenants before the

date of termination, together with interest at the Interest Rate, on those amounts from the date the Rent is due and payable until the date of the award of damages; plus

(iv) The amount by which the Rent which would be payable by Tenant under this Lease, as reasonably estimated by City, from the date of termination until the date of the award of damages, exceeds the amount of the rental loss that Tenant proves could have been reasonably avoided, together with interest at the Interest Rate on those amounts from the date the Rent is due and payable until the date of the award of damages; plus

(v) The amount by which the Rent which would be payable by Tenant under this Lease, as reasonably estimated by City, for the remainder of the Term, after the date of the award of damages exceeds the amount the rental loss that Tenant proves could have been reasonably avoided, discounted at the discount rate published by the Federal Reserve bank of San Francisco for member banks at the time of the award plus one percent (1%); plus

(vi) Other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable Legal Requirements, including any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease that, in the ordinary course of things, would be likely to result therefrom.

(c) City has the remedy described in California Civil Code Section 1951.4 (a landlord may continue the lease in effect after the tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations), and may continue this Lease in full force and effect and may enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due. After the occurrence of an Event of Default, City may enter the Property without terminating this Lease and sublet all or any part of the Property for Tenant's account to any person, for a term (which may be a period beyond the remaining Term), at rents, and on other terms and conditions that City deems advisable. If City sublets, rents received by City from the subletting will be applied (i) first, to the payment of the costs of maintaining, preserving, altering, and preparing the Property for subletting, the other costs of subletting, including brokers' commissions, attorneys' fees, and expenses of removal of Tenant's Personal Property, trade fixtures, and Alterations; (ii) second, to the payment of Rent then due and payable under this Lease; (iii) third, to the payment of future Rent as it becomes due and payable under this Lease; and (iv) fourth, the balance, if any, will be paid to Tenant on (but not before) expiration of the Term. If the rents received by City from any subletting, after application as provided above, are insufficient in any month to pay the Rent due under this Lease for the month, Tenant will pay the deficiency to City on demand. Notwithstanding any subletting for Tenant's account without termination, at any time thereafter, by written notice to Tenant, City may elect to terminate this Lease by virtue of a previous Event of Default.

(d) During the continuance of an Event of Default, for so long as City does not terminate Tenant's right to possession of the Property and subject to Section Error! Reference source not found. (Assignment and Subletting) and the rights granted to City under that Section, City will not unreasonably withhold its consent to an Assignment or Sublease of Tenant's interest in the Property or in this Lease.

(e) During the continuance of an Event of Default, City may enter the Property without terminating this Lease and remove all Tenant's Personal Property, Alterations, and trade fixtures from the Property and store them at Tenant's risk and expense. If City removes Tenant's Personal Property, Alterations, and trade fixtures from the Property and stores it at Tenant's risk

and expense, and if Tenant fails to pay the cost of the removal and storage after written demand and/or to pay any Rent then due, then, after the property has been stored for a period of thirty (30) days or more, City may sell it at public or private sale, in the manner and at the times and places as City deems commercially reasonable following reasonable notice to Tenant of the time and place of the sale. The sale proceeds will be applied first to the payment of the expenses for removal and storage of the property, the preparation for and conducting of the sale, and for attorneys' fees and other legal expenses incurred by City, and the balance will be applied as provided in Section Error! Reference source not found.(b) above. Tenant waives all claims for damages that may be caused by City's reentering and taking possession of the Property or removing and storing Tenant's Personal Property under this Section 17.2, and Tenant will Indemnify City for all Claims resulting from City's reentering and taking possession of the Property or removing and storing Tenant's Personal Property. No reentry by City will constitute or be construed as a forcible entry by City.

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

(g) City may cure the Event of Default at Tenant's expense, it being understood that City's cure will not waive or cure the Event of Default. If City pays any sum or incurs any expense in curing the Event of Default, Tenant will reimburse City on demand for the amount of the payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until City is reimbursed by Tenant.

### **17.3. Waiver of Redemption**

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

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

If Tenant defaults in the performance of any of its obligations under this Lease, then, at City's sole option, City may remedy the default for Tenant's account and at Tenant's expense by providing Tenant with three (3) business days' prior written or oral notice of City's intention to cure the default (except that no prior notice will be required in the event of an emergency as determined by City). No City action to cure Tenant's default will be construed as a waiver of Tenant's default or any of City's rights or remedies, and nothing in this Section implies any duty on City to do any act that Tenant is obligated to perform. Tenant will pay to City on thirty (30) days' written demand, as Additional Charges, all costs, damages, expenses, or liabilities incurred by City, including reasonable attorneys' fees, in remedying or attempting to remedy the default so long as the City provides documents reasonably supporting such Additional Charges. Tenant's obligations under this Section will survive the expiration or termination of this Lease.

## **18. WAIVER OF CLAIMS; INDEMNIFICATION**

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

City will not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases City and its Agents from all Claims for any injury, loss, or damage to any person or property in or on the Property by or from any cause whatsoever including: (a) any act or omission of persons occupying adjoining premises or any part of the Building adjacent to or connected with the Property; (b) theft; (c) explosion, fire, steam, oil, electricity, water, gas, rain,

pollution, or contamination; (d) stopped, leaking, or defective Systems; (e) Building defects; and (f) any other acts, omissions, or causes. Nothing in this Section will relieve City from liability caused solely and directly by the active gross negligence or willful misconduct of City or its Agents, but City will not be liable under any circumstances for any consequential, incidental, or punitive damages.

## **18.2. Tenant's Indemnity**

Tenant, on behalf of itself and its successors and assigns, will indemnify, defend, and hold harmless ("**Indemnify**") City, including all of its boards, commissions, departments, agencies, and other subdivisions, and all of its and their Agents, and their respective heirs, legal representatives, successors, and assigns (individually and collectively, the "**Indemnified Parties**"), and each of them, from and against all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, including direct and vicarious liability of every kind (collectively, "**Claims**"), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person (including Tenant's employees), or loss of or damage to property, howsoever or by whomsoever caused, occurring in or on the Property; (b) any default by Tenant in the observation or performance of any of the terms, covenants, or conditions of this Lease to be observed or performed on Tenant's part; (c) the use or occupancy or manner of use or occupancy of the Property by Tenant, its Agents, its Invitees, or any person or entity claiming through or under any of them; (d) the condition of the Property; (e) any construction or other work undertaken by Tenant on the Property whether before or during the Term; or (f) any acts, omissions, or negligence of Tenant, its Agents, or its Invitees, in, on, or on the Property, all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that the Indemnity is void or otherwise unenforceable under applicable Legal Requirements and further except only those Claims as are caused exclusively by the willful misconduct or active gross negligence of the Indemnified Parties. The foregoing Indemnity includes reasonable fees of attorneys, consultants, and experts and related costs and City's costs of investigating any Claim. Tenant expressly acknowledges that Tenant has an immediate and independent obligation to defend City from any Claim that actually or potentially falls within this indemnity provision even if the allegation is or may be groundless, fraudulent, or false, which obligation arises at the time the Claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section will survive the expiration or termination of this Lease.

## **19. INSURANCE**

### **19.1. Tenant's Insurance**

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

(i) Commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products and completed operations.

(ii) Explosion, collapse and underground (XCU) coverage not less than One Million Dollars (\$1,000,000) each accident so long as Tenant is in compliance with all applicable Federal and State financial responsibility requirements and UST laws and regulations, including remaining current on payment and documentation of payments of all UST storage and

permit fees, as required by and to remain eligible for the State of California, State Water Control Resources Board, Underground Storage Tank Cleanup Fund (the "UST Cleanup Fund"), and otherwise with coverage not less than Two Million Dollars (\$2,000,000) each accident.

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

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

(v) Tenant will, at all times, be in compliance with all applicable Federal and State financial responsibility requirements and underground storage tank ("UST") Legal Requirements, including remaining current on payment and documentation of payments of all UST storage and permit fees, as required by, and to remain eligible for, the State of California, State Water Control Resources Board, Underground Storage Tank Cleanup Fund ("UST Cleanup Fund"). If at any time Tenant is ineligible for the UST Cleanup Fund, Tenant must obtain and keep in effect Pollution Liability/Environmental Damage Insurance with a limit no less than Two Million Dollars (\$2,000,000) per claim or occurrence per policy period of one year, covering releases from storage tanks, bodily injury, property damage, and clean-up costs

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

(vii) Business interruption insurance insuring that the Rent will be paid to City for a period of at least one (1) year if Tenant is unable to operate its business at the Property. Business Interruption Insurance will also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion. To calculate Rent during any interruption of business, the Rent for the twelve (12)-month period immediately preceding the incident causing the business interruption will be used.

(viii) Other insurance as is generally required by commercial owners of similar businesses and Property similar in size and location and uses, as may change from time to time.

(b) If any of the required insurance is provided under a claims-made form, Tenant will maintain the 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, if occurrences during the Term give rise to claims made after expiration or termination of this Lease, those claims will be covered by the claims-made policies. Tenant's obligations under this Section will survive the expiration or termination of this Lease.

(c) If any of the required insurance is 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 the general annual aggregate limit, the general aggregate limit will be double the occurrence or claims limits specified above.

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

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

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

(e) Each insurance policy required under Section Error! Reference source not found.(a) above will be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

(f) All insurance policies required to be maintained by Tenant will be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to both Tenant and City. If Tenant's insurer refuses to offer this endorsement, Tenant will promptly provide the thirty (30) day's prior written notice of cancellation, intended non-renewal, or reduction in coverage to City. Notice to City will be mailed to the addresses for City set forth in the Basic Lease Information.

(g) Upon City's request which may be made from time to time, Tenant will deliver to City satisfactory evidence that Tenant is eligible for the UST Cleanup Fund.

(h) If not already provided, on or before the Commencement Date, Tenant will deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverage required under this Lease, and at any other time promptly after City's request. During the Term, Tenant will provide City with certificates or policies at least thirty (30) days before the expiration dates of expiring policies. If Tenant fails to procure the required insurance, or to deliver the policies or certificates, then at its option and without waiving any rights or remedies that City may have for Tenant's default, City may procure the insurance for Tenant's account, and Tenant will pay the cost to City within five (5) days after delivery to Tenant of invoices therefor.

(i) On City's request, Tenant and City will periodically review the limits and types of insurance carried under this Section. If the general commercial practice in San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant for risks comparable to those associated with the Property and uses, then, at City's request, Tenant will increase the amounts or coverage carried by Tenant to conform to the general commercial practice.

(j) Tenant's compliance with the provisions of this Section will in no way relieve or decrease Tenant's liability under Section Error! Reference source not found. (Tenant's Indemnity), or any of Tenant's other obligations under this Lease.

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

## **19.2. Property Insurance and Tenant's Personal Property**

At no cost to City, Tenant is responsible for separately insuring the improvements and fixtures on the Property, including without limitation, the Buildings and Trade Fixtures, against casualty and Tenant shall be entitled to all insurance and casualty proceeds in connection with any casualty to such improvements, subject to the provisions of Section 14 above. Tenant is responsible, at no cost to City, for separately insuring Tenant's Personal Property.

### **19.3. City's Self Insurance**

Tenant acknowledges that City self-insures against casualty, property damage, and public liability risks and agrees that, at City's sole election (but without obligation to do so), City may carry any third-party insurance coverage for the Property or otherwise.

### **19.4. Waiver of Subrogation**

Notwithstanding anything to the contrary in this Lease, City and Tenant (each a "**Waiving Party**") each waives any right of recovery against the other party for any loss or damage sustained by the other party with respect to the Property or any portion thereof, of the contents of the Property or any operation therein, whether or not the loss is caused by the fault or negligence of the other party, to the extent the 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 will obtain a waiver of subrogation rights endorsements from applicable insurance carriers issuing policies relating to the Building or the Property; provided, the failure to obtain the endorsement will not affect the above waiver.

## **20. ACCESS BY CITY**

City reserves for itself and any of its designated Agents the right to enter the Property as follows: **(a)** on a regular basis without advance notice to supply any necessary or agreed-upon service provided by City under this Lease; **(b)** on an occasional basis, at all reasonable times after giving Tenant reasonable 24 hours' advance written or oral notice, to show the Premises to prospective tenants or other interested parties; to post notices of non-responsibility; to conduct any environmental audit of Tenant's use of the Property; to repair, alter, or improve any of the Property; and for any other lawful purpose; and **(c)** on an emergency basis without notice whenever City believes that emergency access is required. City will have the right to use any means that it deems proper to open doors in an emergency to obtain access to any part of any improvement or Structure on the Property, and that entry will not be construed or deemed to be a forcible or unlawful entry into or a detainer of the Property, or an eviction, actual or constructive, of Tenant from the Property or any portion of the Property. Tenant will not alter any lock or install any new or additional locking devices without City's prior written consent. All locks installed in the Property will be keyed to the Building master key system, and City will at all times have a key with which to unlock all doors in the Property (excluding Tenant's vaults, safes, or special security areas, if any, designated by Tenant in writing to City).

## **21. CERTIFICATES**

### **21.1. Tenant's Estoppel Certificates**

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

## **21.2. City's Certificates**

At any time and from time to time on not less than ten (10) days' prior notice from Tenant, City will execute and deliver to Tenant or to any party designated by Tenant a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) whether or not there are any known defaults then existing under this Lease (and if so specifying the same), and (d) the dates, if any, to which the Base Rent and Additional Charges have been paid.

## **22. SECURITY DEPOSIT**

Under the 2015 Lease Tenant paid, and City holds of the sum specified as the security deposit in the Basic Lease Information (the "**Security Deposit**"), which City will continue to hold, to secure Tenant's faithful performance of all terms, covenants, and conditions of this Lease. City may apply (but will not be required to apply) the Security Deposit in whole or in part to remedy any damage to the Property caused by Tenant, its Agents, or its Invitees, or any failure of Tenant to perform any other terms, covenants, or conditions in this Lease (including the payment of Rent either before or after a default), without waiving any of City's other rights and remedies under this Lease or under applicable Legal Requirements. Tenant waives the provisions of Section 1950.7 of the California Civil Code or any similar Legal Requirements now or hereafter in effect and agrees that City may retain any portion of Security Deposit reasonably necessary to compensate it for any foreseeable or unforeseeable loss or damage caused by the acts or omissions of Tenant, its Agents, or its Invitees. Without limiting the foregoing, City may apply some or all of the Security Deposit to the payment of future Rent following a Tenant default.

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

## **23. SURRENDER OF PROPERTY; REMOVAL OF IMPROVEMENTS**

### **23.1. Surrender of Property**

Subject to the provisions of Section 14 and Section 24.4, upon the Expiration Date or other termination of the Term, Tenant will peaceably quit and surrender to City the Property in good order and condition, vacant, and Tenant will have removed or demolished, at Tenant's sole expense, all improvements, including without limitation, all Buildings, all Trade Fixtures, including, but not limited to, above and underground storage tanks, provided that the removal of the Tanks (as defined in Section 24.4) will be governed by Section 24.4 below, gas lines, dispensers, equipment, fixtures, Alterations, and signs), constructed or installed, and on, in or under the Property, except for any portion of the Property condemned. Tenant does not need to repave the Property. The Property must be surrendered free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of the 2015 Lease and any other encumbrances created by City. Immediately before the Expiration Date or other termination of this Lease, Tenant will remove all of Tenant's Personal Property as provided in



this Lease. If the removal required under this Section is not completed at the expiration or other termination of this Lease, City may remove the same at Tenant's expense.

### **23.2. Personal Property**

At City's option, any items of Tenant's Personal Property remaining in the Property after the Expiration Date or sooner termination of this Lease may be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Legal Requirements.

### **23.3. Survival of Tenant's Obligations**

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

### **23.4. Quitclaim Deed**

Concurrently with the surrender of the Property, Tenant will, if requested by City, execute, acknowledge and deliver to City a quitclaim deed to the Property and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate and to effect such transfer or vesting of title to any improvements or equipment that remain part of the Property. The terms of this Section shall survive the expiration or sooner termination of this Lease.

## **24. HAZARDOUS MATERIALS**

### **24.1. Definitions**

As used in this Lease:

(a) **"Environmental Laws"** means all present or future Legal Requirements relating to Hazardous Material (including its use, handling, transportation, production, disposal, discharge, or storage), or to health and safety, industrial hygiene, or the environment, including soil, air, and groundwater conditions.

(b) **"Hazardous Material"** means any material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time, now or later, deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health, welfare, or safety or to the environment. Hazardous Material includes any material or substance defined as a "hazardous substance," "pollutant," or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or under Section 25316 of the California Health & Safety Code; any "hazardous waste" listed under Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids.

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

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

#### **24.2. No Hazardous Materials**

Neither Tenant nor any of its Agents or Invitees will cause or permit any Hazardous Material to be brought on, kept, used, stored, generated or disposed of in, on, or about the Property, or transported to or from the Property, with the sole exception that Tenant may keep and use Hazardous Material on the Property for the Permitted Use and in reasonably limited amounts as are customarily used for general office purposes (such as copy toner and other normal office and cleaning supplies) and may generate Hazardous Material as a result of measures taken under Article Error! Reference source not found. or Article Error! Reference source not found. of this Lease that disturb or remove lead-based or presumed lead-based paint from the exterior or interior surfaces of the Property so long as the generation, storage, transportation, use, and disposal are in compliance with all applicable Environmental Laws at all times. Tenant will give City immediate written notice of: (a) any action, proceeding, or inquiry by any governmental authority (including the California State Department of Health Services, the State or any Regional Water Quality Control Board, the Bay Area Air Quality Management District, or any local governmental entity) against Tenant with respect to the presence or Release or suspected presence or Release of Hazardous Material on the Property, or the migration thereof from or to other property; (b) all demands or claims made or threatened by any third party against Tenant or the Property, relating to any loss or injury resulting from any Hazardous Materials; (c) any Release of Hazardous Material on or about the Property that has occurred and may require any Investigation or Remediation; and (d) all matters of which Tenant is required to give notice under Section 25359.7 of the California Health and Safety Code.

#### **24.3. Tenant’s Environmental Indemnity**

If Tenant breaches any of its obligations contained in this Section, or, if any act or omission of Tenant, its Agents, or its Invitees results in any Release of Hazardous Material in, on, under, or about the Property in violation of any applicable Environmental Laws, then, without limiting Tenant’s Indemnity contained in Section Error! Reference source not found. (Tenant’s Indemnity), on behalf of itself and its successors and assigns, Tenant will Indemnify the Indemnified Parties, and each of them, from and against all Claims (including damages for decrease in value of the Property, the loss or restriction of the use of rentable or usable space or of any amenity of the Property, and sums paid in settlement of claims, attorneys’ fees, consultants’ fees, and experts’ fees and costs) arising during or after the Term and relating to the Release. The foregoing Indemnity includes costs incurred in connection with activities undertaken to Investigate and Remediate Hazardous Material and to restore the Property to its prior condition, fines and penalties assessed for the violation of any applicable Environmental Laws, and any natural resource damages. Without limiting the foregoing, if Tenant or any of its Agents or Invitees causes or permits the Release of any Hazardous Materials in, on, under, or about the Property, Tenant will immediately and at no expense to City take all appropriate actions to return the Property affected by the Release to the condition existing before the Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant expressly acknowledges that Tenant has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if the allegation is or may be groundless, fraudulent, or false, and this obligation arises at the time the claim is

tendered to Tenant by City and continues at all times thereafter. Tenant will afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

#### **24.4. Underground Storage Tanks**

(a) Ownership of Tanks. Tenant acknowledges and agrees that, notwithstanding any other provision in this Lease to the contrary, all underground gasoline storage tanks, underground gas lines to the gasoline dispensers, and gasoline dispensers located within the Property (collectively the “**Tanks**”) are the property of Tenant, are considered trade fixtures under this Lease, and that City has no ownership or operational interest in them. Tenant acknowledges and agrees that Tenant is the “owner and operator” of the Tanks for the purpose of applicable Legal Requirements. Tenant must maintain and operate the Tanks in accordance with all applicable Environmental Laws. On request by City, Tenant will provide City with a copy of the evidence maintained by Tenant to obtain certification of financial responsibility as required by any local or state agency or governmental authority having jurisdiction over the Tanks, and upon request, Tenant will provide City with any required updates to such evidence and certification of financial responsibility upon any change in the mechanism used to obtain such certification.

(b) Removal of Tanks. Unless waived in writing by City, on the expiration or earlier termination of this Lease, or, if City has approved a written request for additional time for performance of Tenant’s obligations as set forth in Section 23.1, by the end of such approved additional period, or other date mutually agreed upon in writing by City and Tenant, Tenant will remove any and all underground storage tanks, the dispensers, and associated underground gas lines from the Property in accordance with all Environmental Laws, and Remediate any Releases of Hazardous Materials relating to the use of the Tanks, in accordance with all Environmental Laws. Upon the removal of the Tanks, Tenant will not be required to repave over the areas where the removal occurred provided that Tenant complies with all procedures required by the agencies monitoring the removal including any and all mitigation requirements, and repaving is not a required mitigation measure. If Tenant’s removal of the Tanks be delayed due to circumstances beyond Tenant’s control, or should Investigation or Remediation be mandated after or during removal of Tanks, then Tenant will not be obligated to pay Base Rent for the additional time required to comply.

#### **24.5. Survival of Obligation**

Tenant’s obligations under this Section 24 will survive the expiration or earlier termination of this Lease.

#### **24.6. Hazardous Substance Disclosure**

California Legal Requirements require landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that occupation of the Property may lead to exposure to Hazardous Materials, including gasoline, diesel, and other vehicle fluids, vehicle exhaust, office maintenance fluids, methane, and building materials containing chemicals, such as formaldehyde. By execution of this Lease, Tenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes and, to the extent permitted by Legal

Requirements, Tenant waives any and all rights Tenant may have to assert that City has not complied with the requirements of the statute.

## 25. SPECIAL PROVISIONS

### 25.1. Extension Option

(a) **Option to Extend Term.** City grants to Tenant a one-time option to extend the Term as to the entire Property only (the “**Extension Option**”) for an additional five (5) years (the “**Extension Term**”) commencing on the Expiration Date on the following terms and conditions. Tenant may exercise the Extension Option at any time during the Term but at least one hundred eighty (180) days before the Expiration Date by giving written notice to City. Once given, Tenant may not revoke its notice exercising the Extension Option. If any Event of Default by Tenant is outstanding either at the time Tenant exercises the Extension Option or at any time before the first day of the Extension Term (or if any event has occurred that, with the giving of notice or the passage of time or both, would constitute an Event of Default), then City may elect by notice to Tenant to reject Tenant’s exercise of the Extension Option, in which case, the Extension Option will be null and void. City may also void Tenant’s Extension Option if Tenant has assigned its interest under this Lease without City’s prior written approval or sublets more than fifty percent (50%) of the Property.

(b) **Base Rent and Other Terms.** If Tenant elects to exercise the Extension Option, then the lease for the Extension Term will cover the entire Property and be on all of the terms, covenants, and conditions of this Lease, except that Base Rent will be adjusted to the then Market Rent (as defined in Section 23.2 of the San Francisco Administrative Code (“**Code**”): “the most probable rent that a Real Property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement”) as determined by an independent Appraisal, as set forth in Section 23.30 of the Code, with a date of valuation that is not earlier than nine (9) months before the date legislation for the proposed Extension is submitted to the Board of Supervisors. On Tenant’s timely and proper exercise of the Extension Option, and City does not reject Tenant’s exercise, then all references in this Lease to the Term will mean and include the Extension Term and all references to Base Rent mean and refer to the Base Rent as determined under this Section.

### 25.2. Tenant Pays All Expenses

Except as expressly stated to the contrary in this Lease, the parties intend that and Tenant will pay all costs and expenses of every kind related to the Property during the Term, including, but not limited to those relating to Tenant’s operation, maintenance, repair, use, and occupancy of the Property, including all improvements, Buildings, equipment, fixtures, on, in, under and within the Property during the Term. For the sake of illustration only and without limitation, the costs and expenses include the total cost and expenses in connection with managing, operating, maintaining, and repairing the Property, including: (a) the cost of all utilities, (b) the cost of repairs and all related labor and material costs, and the cost of general maintenance, cleaning, and service contracts and the cost of all supplies, tools, and equipment in connection with those contracts, (c) insurance premiums and deductibles for all insurance policies carried on the Property or in connection with the use or occupancy of the Property, (d) wages, salaries, payroll taxes, and other labor costs and employee benefits, (e) management fees, if any, (f) cost of personal property, (g) fees, charges, and other costs of all independent contractors engaged by Tenant, (h) accounting, consulting, and legal expenses, (i) permits, certificates, and licenses required in connection with the Property, (j) any and all assessments levied against or charged to the Property under any

covenants, conditions, and restrictions, easements, or access and maintenance agreements, **(k)** all taxes and assessments of every kind an nature, and **(l)** any other expenses of any kind whatsoever incurred in connection with managing, operating, maintaining, or repairing the Property.

## **26. GENERALLY APPLICABLE PROVISIONS**

### **26.1. Notices**

Any notice given under this Lease will be effective only if in writing and delivered in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, with postage prepaid, to: **(a)** Tenant, **(i)** at Tenant's address set forth in the Basic Lease Information, at the Property, or **(ii)** at any place where Tenant or any Agent of Tenant may be found if sent after Tenant vacates, abandons, or surrenders the Property; or **(b)** City, at City's address set forth in the Basic Lease Information; or **(c)** to any other address that either City or Tenant designates as its new address by notice given to the other in accordance with the provisions of this Section at least ten (10) days before the effective date of the change. A properly addressed notice transmitted by one of the foregoing methods will be deemed to have been given two (2) days after the date it is mailed by first class or certified mail, one day after the date it is deposited with an overnight courier for overnight delivery, or on the date of personal delivery. For convenience of the parties, copies of notices may also be given by email to the email address set forth in the Basic Lease Information or as may be provided from time to time; however, no official or binding notice may be given by email; a notice will only be deemed given and effective when sent as provided in the first two (2) sentences of this Section. Tenant will promptly provide City with copies of all notices received regarding any alleged violation of Legal Requirements or insurance requirements or any alleged unsafe condition or practice.

### **26.2. No Implied Waiver**

No failure by City to insist on the strict performance of any obligation of Tenant under this Lease or to exercise any right, power, or remedy arising out of a breach, regardless of the length of time that the breach continues, no acceptance of full or partial Base Rent or Additional Charges during any breach, and no acceptance of the keys to or possession of the Property before the expiration of the Term by any Agent of City, will constitute a waiver of the breach or of City's right to demand strict compliance with any 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 will affect any other default or performance, or cover any other period of time, other than the default, performance, or period of time specified in the express waiver. One or more written waivers of a default or the performance of any provision of this Lease will not be deemed to be a waiver of a subsequent default or performance. Any City consent under this Lease will not relieve Tenant of any obligation to secure City's consent in any other or future instance as required by this Lease.

### **26.3. Amendments**

Neither this Lease nor any of its terms or provisions may be changed, waived, discharged, or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge, or termination is sought. Whenever this Lease requires or permits City's consent or approval, the Director of Property or his or her designee will be authorized to provide the consent or approval, except as otherwise provided by applicable Legal Requirements, including the Charter. Any amendments or modifications to this Lease, including amendments to or modifications to the exhibits to this Lease, are subject to the mutual written agreement of City and Tenant, and City's agreement may be made upon the sole approval of the Director of Property,

or his or her designee; provided, however, (a) changing the legal description of the Property, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Property from the use authorized under Section Error! Reference source not found. (Permitted Use) of this Lease, and (e) any other amendment or modification that materially increases City's liabilities or financial obligations under this Lease may also require the approval of City's Board of Supervisors.

#### **26.4. Authority**

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

#### **26.5. Parties and Their Agents; Approvals**

The words "City" and "Tenant" include the plural as well as the singular. If there is more than one entity that comprises Tenant, Tenant's obligations and liabilities under this Lease are joint and several. The term "Agents" when used with respect to either party includes the agents, employees, officers, contractors, and representatives of the party, and the term "Invitees" when used with respect to Tenant includes the clients, customers, invitees, guests, licensees, assignees, or subtenants of Tenant. All approvals, consents, or other determinations permitted or required by City will be made by or through City's Director of Property unless otherwise provided in this Lease, subject to applicable Legal Requirements.

#### **26.6. Interpretation of Lease**

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and in no way define or limit the scope or intent of any provision of this Lease. Provisions in this Lease relating to number of days are calendar days, unless otherwise specified, but 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 will be the next succeeding business day. Use of the word "including" or similar words will 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.

#### **26.7. Successors and Assigns**

Subject to the provisions of this Lease relating to Assignment and Subletting, the terms, covenants, and conditions contained in this Lease will bind and benefit City and Tenant and their successors and assigns; provided, however, that on any sale, assignment, or transfer by City (or by any subsequent landlord) of its interest in the Property as owner or lessee, including any transfer by operation of law, City (or any subsequent landlord) will be relieved from all obligations and liabilities arising under this Lease after the sale, assignment, or transfer.

#### **26.8. Brokers**

Neither party has had any contact or dealings regarding leasing the Property to Tenant, or any communication in connection that leasing, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated in this Lease except as identified in the Basic Lease Information, whose commission,

if any is due, will be paid under a separate written agreement between the broker and the party through which the broker contracted. If any broker or finder perfects a claim for a commission or finder's fee based on a contact, dealings, or communication, then the party through whom the broker or finder makes a claim will be responsible for the commission or fee and will Indemnify the other party from any and all Claims incurred by the indemnified party in defending against the broker's or finder's claim. The provisions of this Section will survive the expiration or any earlier termination of this Lease.

#### **26.9. Severability**

If any provision of this Lease or its application to any person, entity, or circumstance is invalid or unenforceable, then the remainder of this Lease, or the application of the provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this Lease will be valid and enforceable to the fullest extent permitted by Legal Requirements, 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.

#### **26.10. Governing Law**

This Lease will be construed and enforced in accordance with the Legal Requirements of the State of California and City's Charter.

#### **26.11. Entire Agreement**

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

#### **26.12. 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, then the defaulting party or the non-prevailing party in the dispute, as the case may be, will pay the prevailing party's 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 the action and enforcing or establishing its rights under this Lease (whether or not the action is prosecuted to a judgment). For purposes of this Lease, a party will be considered to be the prevailing party if it receives substantially the relief sought and the terms "court costs and reasonable attorneys' fees" means the fees and expenses of counsel to the party, which may include printing, duplicating, and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "court costs and attorneys' fees" also includes all fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which the fees and costs were incurred. For the purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney will 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.

### **26.13. Holding Over**

(a) Except as set forth in Section 23.1, if Tenant retains possession of any portion of the Property after the expiration or the earlier termination of this Lease, then unless City expressly agrees to the holdover in writing, Tenant will pay City, on a month-to-month basis, Base Rent equal to two hundred percent (200%) of the latest Base Rent payable by Tenant before the expiration or termination of the Lease, together with an amount estimated by City for the monthly Additional Charges, and will otherwise be on the terms and conditions specified in this Lease so far as applicable (except for those pertaining to the Term and the Extension Option). Any failure by Tenant to surrender, discontinue using, or, if required by City, any failure to remove any property or equipment following written demand by City, will constitute continuing possession for purposes of this Section. Tenant acknowledges that the foregoing provisions do not serve as permission for the Tenant to hold over, or serve to extend the Term. Any holding over without City's consent will constitute a default by Tenant and entitle City to exercise any or all of its remedies, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not the amounts are at the holdover rate specified above or the rate in effect at the end of the Term.

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

(c) Tenant's obligations under this Section will survive the expiration or termination of this Lease.

### **26.14. 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.

### **26.15. Cumulative Remedies**

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

### **26.16. Survival of Indemnities**

Termination of this Lease will not affect the either party's right to enforce any indemnities and representations and warranties given or made to the other party under this Lease, or affect any provision of this Lease that expressly states it will survive expiration or termination of the Lease.

### **26.17. Signs**

All signs currently on the Property may remain during the Term. Tenant may, with City's prior written consent, at its own expense, erect, or post signs on the Property that are appropriate and required under applicable regulations for Tenant's use of the Property. City's review may include the placement, design, and plan for any sign prior to its erection or posting and will not unreasonably withhold its consent. All advertising media erected or displaced by Tenant remains



the Personal Property of Tenant. Tenant must remove all advertising media at Tenant's own cost and expense upon expiration or termination of this Lease.

#### **26.18. Relationship of the Parties**

City is not, and none of the provisions in this Lease will be deemed to render City, a partner in Tenant's business, or a member in any joint enterprise or venture with Tenant. Neither party may act as the agent of the other party for any purpose under this Lease. This Lease is not intended and it will not be construed to create any third-party beneficiary rights in any party, unless otherwise expressly provided.

#### **26.19. Payments to Tenant**

Tenant acknowledges that City cannot make any payments to Tenant unless Tenant is qualified as an approved vendor in City's financial and payment system. Therefore, City will not be in default of any monetary obligation to Tenant if City is required to make a payment to Tenant but Tenant is not an approved vendor with City. More information about being an approved vendor is available at <https://sfcitypartner.sfgov.org/Vendor/BecomeSupplier>.

#### **26.20. Light and Air**

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

#### **26.21. No Recording**

Tenant may not record this Lease or any memorandum of this Lease in the public records.

#### **26.22. Options Personal**

No right or option to extend the Term or renew this Lease may be exercised or assigned, voluntarily or involuntarily, by or to any person or entity other than the original named Tenant or an approved Transferee under an Assignment approved by City under Section 16 above. No right or option to extend the Term or renew this Lease may be exercised by a Subtenant. The options, if any, granted to Tenant are not assignable separate and apart from this Lease, and no option may be separated from this Lease in any manner, either by reservation or otherwise.

#### **26.23. Non-Liability of City Officials, Employees, and Agents**

No elected or appointed board, commission, member, officer, employee, or other Agent of City will 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 City obligation under this Lease.

#### **26.24. Cooperative Drafting**

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

**26.25. Counterparts**

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

**26.26. Effective Date**

This Lease will be effective on the date on that date the **(a)** City's Board of Supervisors and the Mayor, in their sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable Legal Requirements and **(b)** this Lease is duly executed and delivered by the parties (the "**Effective Date**").

**27. CITY REQUIREMENTS****27.1. Public Transit Information**

At its sole expense, Tenant will establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Property, including the distribution of written materials to personnel explaining the convenience and availability of public transportation facilities adjacent or near the Property and encouraging use of them.

**27.2. Taxes, Assessments, Licenses, Permit Fees, and Liens**

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

(b) Tenant will pay taxes of any kind, including special assessments, if any, and possessory interest taxes, lawfully assessed on the leasehold interest created by this Lease and to pay all other taxes, excises, licenses, permit charges, and assessments based on Tenant's use of the Property and imposed on Tenant by Legal Requirements, all of which will be paid when they become due and payable and before delinquency.

(c) Tenant will not allow or suffer a lien for any taxes to be imposed on the Property or on any equipment or property located in the Property without promptly discharging the lien, provided that Tenant, if it desires, may have reasonable opportunity to contest the validity of the same.

(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be provided to the County Assessor within sixty (60) days after the transaction. Accordingly, Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease. Tenant will also timely provide any information that City may request to ensure compliance with this or any other reporting requirement.

**27.3. Non-Discrimination in City Contracts and Benefits Ordinance**

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant will not discriminate against any employee, any City employee working with Tenant, or applicant for employment with Tenant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion,

national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of protected classes, or in retaliation for opposition to discrimination against protected classes.

(b) **Subleases and Other Subcontracts.** Tenant will include in all Subleases and other subcontracts relating to the Property a non-discrimination clause applicable to the Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant will 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 require all subtenants and other subcontractors to comply with those provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

(c) **Non-Discrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for City elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of the employees, where the domestic partnership has been registered with a governmental entity under the Legal Requirements authorizing that 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 will 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 San Francisco Contract Monitoring Division. Tenant represents that before execution of this Lease, (i) Tenant executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved the 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 Lease as though fully set forth in this Lease. Tenant will comply fully with and be bound by all of the provisions that apply to this Lease under those Chapters of the Administrative Code, including the remedies provided in those Chapters. Without limiting the foregoing, Tenant understands that under Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which the 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.

#### **27.4. 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 AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, under any Legal Requirements, including any and all claims for relocation benefits or assistance from City under federal and state relocation assistance Legal Requirements (including California

Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

#### **27.5. MacBride Principles—Northern Ireland**

The provisions of San Francisco Administrative Code Section 12F are incorporated by this reference and made part of this Lease. By signing this Lease, Tenant confirms that Tenant has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

#### **27.6. Tropical Hardwood and Virgin Redwood Ban; Preservative-Treated Wood Containing Arsenic**

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 will not provide any items to the construction of Tenant Improvements or the 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 with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant will 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. 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.

#### **27.7. Restrictions on the Use of Pesticides**

(a) 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 may not use or apply or allow the use or application of any pesticides on the Property or contract with any party to provide pest abatement or control services to the Property 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 Property during the Term, (ii) describes the steps Tenant will take to meet 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 the Tenant's primary IPM contact person with City. Tenant will comply, and will require all of Tenant's contractors to comply, with the IPM plan approved by City and will 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, the provisions of the IPM Ordinance: (i) provide for the use of pesticides only as a last resort, (ii) prohibit the use or application of pesticides on City property, 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), (iii) impose certain notice requirements, and (iv) require Tenant to keep certain records and to report to City all pesticide use at the Property by Tenant's staff or contractors.

(b) If Tenant or Tenant's contractor would apply pesticides to outdoor areas at the Property, Tenant will 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 the pesticide application will 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>.

#### **27.8. First Source Hiring Agreement**

The City has adopted a First Source Hiring Ordinance, San Francisco Administrative Code, Chapter 83, which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions. Upon request, when applicable, Tenant shall enter into a First Source Hiring Agreement that meets the requirements of Section 83.9 of the First Source Hiring Ordinance.

#### **27.9. Sunshine Ordinance**

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

#### **27.10. Conflicts of Interest**

Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code, and California Government Code Section 87100 et seq. and Section 1090 et seq., and certifies that it does not know of any facts that would constitute a violation of those provisions, and agrees that if Tenant becomes aware of any violation during the Term, Tenant will immediately notify City.

#### **27.11. Charter Provisions**

This Lease is governed by and subject to the provisions of City’s Charter.

#### **27.12. Drug-Free Workplace**

Tenant acknowledges that under the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession, or use of a controlled substance under federal Legal Requirements is prohibited on City premises. Any violation of this prohibition by Tenant, its Agents, or assigns will be a material breach of this Lease.

#### **27.13. Prohibition of Tobacco, Electronic Cigarettes, and E-Cigarettes Sales and Advertising**

No advertising or sale of cigarettes or tobacco products is allowed on the Property. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as each capitalized term is defined in San Francisco Health Code Section 19K.1), Electronic Cigarettes (as defined in San Francisco Health Code Section 19N.2) or E-Cigarettes (as defined in San Francisco Health Code Section 19N.2) is allowed on the

Property and this prohibition must be included in all subleases or other agreements allowing any use of the Property. The prohibition against Sales, Manufacture, and Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sales, Manufacture, or Distribution of Tobacco Products is conducted as part of academic research.

#### **27.14. Prohibition of Alcoholic Beverage Advertising**

No advertising of alcoholic beverages is allowed on the Property. For purposes of this section, "alcoholic beverage" is defined as set forth in California Business and Professions Code Section 23004, and does not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

#### **27.15. Requiring Health Benefits for Covered Employees**

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

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

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

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

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

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

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

(h) Tenant will keep itself informed of the current requirements of the HCAO.

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

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

(k) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant will cooperate with City when it conducts the audits.

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

#### **27.16. Notification of Prohibition on Contributions**

By executing this Lease, Tenant acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who leases, or seeks to lease, to or from any department of the City any land or building from making any campaign contribution to (a) a City elected official if the lease must be approved by that official, (b) a candidate for that City elective office, or (c) a committee controlled by that elected official or a candidate for that office, at any time from the submission of a proposal for the lease until the later of either the termination of negotiations for the lease or twelve (12) months after the date the City approves the lease. Tenant acknowledges that the foregoing restriction applies only if the lease or a combination or series of leases or other contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Tenant further acknowledges that (i) the prohibition on contributions applies to each prospective party to the lease; any person with an ownership interest of more than 10 percent (10%) in Tenant; any subtenant listed in the lease; and any committee that is sponsored or controlled by Tenant; and (ii) within thirty (30) days of the submission of a proposal for the Lease, the City department with whom Tenant is leasing is obligated to submit to the Ethics Commission the parties to the lease and any subtenant. Additionally, Tenant certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the lease, and has provided the names of the persons required to be informed to the City department with whom it is leasing.

### **27.17. Resource-Efficient City Buildings**

Tenant acknowledges that City has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of buildings owned or leased by City. Tenant will comply with all applicable provisions of those code sections.

### **27.18. Food Service and Packaging Waste Reduction Ordinance**

Tenant will comply with and is bound by all of the applicable provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. 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 will instead use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this Lease.

### **27.19. San Francisco Packaged Water Ordinance**

Tenant will comply with San Francisco Environment Code Chapter 24 ("**Chapter 24**"). Tenant may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Lease or on City property unless Tenant obtains a waiver from City's Department of the Environment. If Tenant violates this requirement, City may exercise all remedies in this Lease and the Director of City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

### **27.20. Criminal History in Hiring and Employment Decisions**

(a) Unless exempt, Tenant will comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions), as amended from time to time ("**Chapter 12T**"), which are incorporated into this Lease as if fully set forth, with respect to applicants and employees of Tenant who would be or are performing work at the Property.

(b) Tenant will incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Property, and require all subtenants to comply with those provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

(c) Tenant and subtenants may not inquire about, require disclosure of, or if the 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 subtenants may 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 may not require that disclosure or make any inquiry until either after the first live interview with the person, or after a conditional offer of employment.

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

(g) Tenant and subtenants understand and agree that on any failure to comply with the requirements of Chapter 12T, City will have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including 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, or termination of this Lease in whole or in part.

(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.

#### **27.21. Vending Machines; Nutritional Standards**

Tenant may not install or permit any vending machine on the Property without the prior written consent of the Director of Property. Any permitted vending machine will comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9-1(c), as may be amended from time to time (the “**Nutritional Standards Requirements**”). Tenant will incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Property or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section 27.21 will be a material breach of this Lease. Without limiting Landlord’s other rights and remedies under this Lease, Landlord will have the right to require the immediate removal of any vending machine on the Property that is not permitted or that violates the Nutritional Standards Requirements.

#### **27.22. All-Gender Toilet Facilities**

If applicable, Tenant will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of a Building where extensive renovations are made. An “all-gender toilet facility” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and “extensive renovations” means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by Administrative Code Section 4.1-3. If Tenant has any question about applicability or compliance, Tenant should contact the Director of Property for guidance.

**27.23. Tenant's Compliance with City Business and Tax and Regulations Code**

Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Tenant under this Lease is withheld, then City will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO CITY OFFICER OR EMPLOYEE HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS HAS DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY CITY OBLIGATIONS OR LIABILITIES UNDER THIS LEASE ARE CONTINGENT ON ADOPTION OF A RESOLUTION, AND THIS LEASE WILL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY CITY DEPARTMENT, COMMISSION, OR AGENCY WILL NOT BE DEEMED TO IMPLY THAT A RESOLUTION WILL BE ENACTED, AND NO APPROVAL WILL CREATE ANY BINDING CITY OBLIGATIONS.

*SIGNATURES ON FOLLOWING PAGE*

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

**TENANT:**

TWIN PEAKS PETROLEUM, INC.,  
a California corporation, dba Twin Peaks Auto Care

By:   
Its: President and Chief Financial Officer

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
ANDRICO Q. PENICK  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:   
Deputy City Attorney

**EXHIBIT A**

**DEPICTION OF THE PROPERTY**





**EXHIBIT B**

**NOTICE OF COMMENCEMENT DATE**

[Date]

Mr. Andrico Q. Penick  
Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

RE: Acknowledgement of Commencement Date, Lease Between Twin Peaks Petroleum, Inc.,  
(Tenant), and the City and County of San Francisco (Landlord), for the Property located at  
598 Portola Drive, San Francisco

Dear Mr. Penick:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as  
defined in Section 3.2 of the Lease) is \_\_\_\_\_, 2020.

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

Very truly yours,

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and Agreed:

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

Dated: \_\_\_\_\_