

File No. 210001

Committee Item No. 1

Board Item No. 1

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date April 7, 2021

Board of Supervisors Meeting

Date April 20, 2021

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Legislative Digest
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Budget and Legislative Analyst Report
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OTHER (Use back side if additional space is needed)

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Real Estate Department Presentation - April 7, 2021</u>
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Completed by: Linda Wong Date April 2, 2021

Completed by: Linda Wong Date April 9, 2021

[Amendments to Real Property Leases - Forgive Tenant Rent During COVID-19 Pandemic]

Ordinance authorizing the City Administrator to amend certain leases and forgive rent due between April 2020 and December 2020 with nonresidential tenants, and waiving Administrative Code and Environmental Code requirements enacted after the most recent modification of each lease, in order to allow for expeditious rent forgiveness necessitated by the financial hardship caused by the public health emergency related to the COVID-19 pandemic; authorizing the City Administrator to further amend leases and forgive rent due between January 2021 and June 2021, and waiving Administrative Code and Environmental Code requirements enacted after the most recent modification of each lease, without further Board of Supervisors approval under Charter, Section 9.118 and Administrative Code Chapter 23.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Findings and Purpose.

(a) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in response to the spread of the novel coronavirus 2019 or COVID19. On March 3, 2020, the Board of Supervisors concurred in the February 25th Proclamation and in the actions taken by the Mayor to meet the emergency.

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1 (b) To mitigate the spread of COVID19, on March 16, 2020, the Local Health Officer
2 issued Order No. C19-07 generally requiring individuals to stay in their homes ("Shelter in
3 Place"), and requiring businesses to cease many non-essential operations at physical
4 locations in the City and County of San Francisco. The Health Officer's Order continues to be
5 updated and revised to address public health issues presented by the pandemic. The Health
6 Order, as amended, still does not allow for certain businesses to resume normal operations at
7 this time or for the foreseeable future.

8 (c) The COVID-19 pandemic has caused, and will likely continue to cause, abrupt
9 and serious impacts on the local economy, on the operations of local businesses and
10 nonprofit organizations, and on the job security of employees. Many of the affected
11 businesses and other entities, including City Administrator Office's Real Estate Division
12 tenants, are experiencing significant operating deficits and hardships in paying rent for a
13 variety of reasons, including reductions in income due to lower customer demand, required
14 closures, or limits on full-scale operations. Many of these entities face unprecedented
15 challenges to remain financially solvent during the public health emergency. These difficulties
16 cascade beyond the operators to their employees, whose jobs may be eliminated or hours cut
17 due to the reduced customer demand or required closures or limitations on full-scale
18 operations.

19 (d) The City Administrator's Office, Real Estate Division, leases space in City
20 owned buildings to dozens of tenants for a variety of business and recreational uses. In
21 response to the severe economic impacts on these tenants, on March 27, 2020, the City
22 Administrator issued a Memorandum, "City Policy Regarding Enforcement of Certain Tenant
23 Lease Obligations by City Departments from March 17, 2020 through April 30, 2020
24 ("Policy")", which was updated on June 1, 2020 to extend the Policy through December 31,
25 2020, allowing City departments to (i) waive all late charges, default interest and associated

1 penalties and fees for any delinquent rent payments that were or are due for use of City
2 property within San Francisco City limits due to the impact of COVID-19, (ii) provide
3 resumption of normal timely rent payments on January 1, 2021, and (iii) payment of any rent
4 arrearages (including March 2020 – December 2020) in full no later than June 30, 2021.

5 (e) The City Administrator has determined that rent forgiveness, not just rent
6 deferral, is necessary to maintain rent revenues in the long-term, facilitate at-risk businesses
7 and nonprofit corporations to reopen when the Health Orders allow, and to continue to provide
8 the City with much needed entertainment, art, culture and small business services and
9 materials. Unlike rent deferral, which changes the timing of rent payments that are due under
10 a lease but does not change the lease terms, rent forgiveness reduces or eliminates rent
11 payments that are due.

12 (f) Administrative Code Section 23, and Charter Section 9.118, requires the Board
13 of Supervisors to review and approve certain leases and amendments to those leases. A
14 change in the rent amount, including rent forgiveness, would require Board of Supervisors
15 approval under subsection (c) of Charter Section 9.118 and section 23.30 of Chapter 23.

16 (g) The City has over the years adopted a number of Administrative Code and
17 Environment Code ordinances the requirements of which must be included in new leases or
18 amendments of existing leases entered by City agencies. To require tenants to comply with
19 certain ordinances enacted after execution of the tenant's lease or, if applicable, the most
20 recent amendment of the lease, as a condition of entering into a new lease or a lease
21 amendment to qualify for rent forgiveness, would likely impose costs that further impede a
22 tenant's survival and frustrate the purpose of providing relief to ensure a tenant's ability to
23 sustain operations through this challenging period.

24 ~~(h) By waiving the requirement of Board of Supervisors approval of future lease~~
25 ~~amendments regarding rent forgiveness between January 1, 2021 through June 30, 2021 and~~

1 ~~also waiving Administrative Code and Environment Code requirements, if any, imposed on~~
2 ~~leases and lease amendments when said requirements were enacted after execution of the~~
3 ~~tenant's lease, or if applicable, most recent lease amendment, this ordinance will increase the~~
4 ~~chances that a tenant will be able to effectively sustain operations or reopen, thereby avoid~~
5 ~~the cascade of negative impacts to the City, the tenant and the tenant's employees, if rent~~
6 ~~forgiveness is denied or delayed.~~

7 Section 2. Definitions.

8 For the purposes of this ordinance:

9 "Administrative Code and Environment Code Requirements" shall mean the
10 requirements of those Codes that are required to be included in Leases. These requirements
11 include the following provisions of the Administrative Code: Section 4.1-3 (All-Gender Toilet
12 Facilities); Section 4.9-1© (Vending Machines; Nutritional Standards and Calorie Labeling
13 Requirements; Offerings); Section 4.20 (Tobacco Product And Alcoholic Beverage Advertising
14 Prohibition); Chapters 12B and 12C (Nondiscrimination in Contracts and Property Contracts);
15 Section 12F (MacBride Principles—Northern Ireland); Chapter 12K (Salary History); Chapter
16 12Q (Health Care Accountability); Chapter 12T (Criminal History in Hiring and Employment
17 Decisions); Chapter 21C (Miscellaneous Prevailing Wage Requirements); Sections 23.50-
18 23.56 (Labor Representation Procedures In Hotel And Restaurant Developments); Section
19 23.61 (Prevailing Wage and Apprenticeship Requirements and Local Hire Requirements); and
20 Sections 83.1 et seq. (First Source Hiring Program).

21 Further, these requirements include the following provisions of the Environment Code:
22 Chapter 3 (Restrictions on Use of Pesticides); Sections 802(b) and 803(b) (Tropical Hardwood
23 and Virgin Redwood Ban); Chapter 13 (Preservative-Treated Wood Containing Arsenic); and
24 Chapter 16 (Food Service and Packaging Waste Reduction Ordinance). The listing in the two
25 preceding sentences of specific requirements in the Administrative Code and Environment

Code is not necessarily an exhaustive list; this definition of “Administrative Code and Environment Code Requirements” is intended to include all requirements of those Codes that are required to be included in Leases.

“CARES Act” means the federal Coronavirus Aid, Relief, and Economic Security Act enacted on March 27, 2020.

“Lease” means a lease or other means of granting a right to occupy or use real property, and shall also include a license, permit to enter, use permit, or other similar instrument.

“Payroll Costs” shall have the same meaning as “payroll costs” under the CARES Act.

Section 3. Leases.

(a) New Asia Restaurant.

(1) On or about June 28, 2017, the City and County of San Francisco, Mayor’s Office of Housing and Community Development, purchased 772 Pacific Avenue for development of affordable housing.

(2) At that time, the City was assigned the existing lease for the New Asia Restaurant located on the ground floor. The New Asia Restaurant is one of the few banquet locations in the District and has been a staple in the area for almost two decades. It leases the space for \$22,500 per month and its lease expires December 31, 2021.

(3) The New Asia Restaurant has been closed since the middle of March 2020 and has accepted a rent deferral plan and will owe the City \$202,500 as of December 2020. However, with the continued Health Orders requiring closure and/or limited seating/outdoor seating (which is physically impossible at this location), the New Asia Restaurant has basically been closed since the pandemic commenced and with

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difficulties in continuing to employ its 200 employees, believes it will remain closed for the foreseeable future.

(b) New Conservatory Theatre Center.

(1) The Real Estate Division currently leases the Lower Level of 25 Van Ness Avenue (Assessor's Parcel No. 0834, Lot No. 004), in the City and County of San Francisco, to The New Conservatory Theatre Center, a California non-profit corporation ("NCTC" or "Tenant"), who has been leasing the lower level of 25 Van Ness and providing quality live entertainment since 1984.

(2) On October 20, 2018, the Mayor and Board of Supervisors approved Resolution No. 327-18, on file with the Clerk of the Board of Supervisors in File No. 180769, extending the Lease through September 30, 2023.

(3) Having received funds from the federal CARES Act, NCTC has been able to pay rent since March 2020 through August 2020 during the pandemic and was in compliance with its Lease and all lease provisions until September 1, 2020, when the Director of Property granted a rent deferral per the City Administrator's March 27, 2020 memorandum.

(4) NCTC has been closed since March 2020 due to the Health Orders and remains closed at this time and for the foreseeable future. It will owe the City \$32,723.92 as of December 2020.

(5) A term of NCTC's Rent Deferral Agreement is that should it receive further federal aid for rent from the CARES Act or similar legislation, it will commence rent payments immediately to the extent and amount received even if it remains closed due to the City's Health Orders.

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1 (c) Pop-Up Restaurant - Stephen M. Paoli.

2 (1) On May 4, 2018, the City purchased a building at 11th Street and Natoma
3 ultimately for recreation and park purposes.

4 (2) The City was assigned several existing leases including a ground floor
5 lease with Stephen M. Paoli that operates a "pop-up" restaurant. The lease terminates
6 in June 2021.

7 (3) Mr. Paoli's business has been closed since March 2020. He has one
8 employee in addition to himself. This business is his only source of income. He
9 applied for federal funds, grants and loans to help pay his rent and employee but he did
10 not receive anything.

11 (4) He pays \$2,500 per month in rent and will owe \$22,500 as of December
12 2020.

13 Section 4. Amendment of Existing Leases to Forgive Rent; Waiver of Requirements for
14 Board of Supervisors Approval Under Chapter 23 and Charter Section 9.118; Waiver of
15 Administrative Code and Environment Code Requirements.

16 The above-mentioned leases are hereby amended and rent forgiven in the amounts set
17 forth below for the period of April 2020 through December 2020:

18	New Asia Restaurant	\$202,500.00
19	New Conservatory Theatre Center	\$ 32,723.92
20	Paoli	\$ 22,500.00
21	TOTAL	\$257,723.92

22 The City Administrator through the Director of Property may further amend these
23 leases, and other leases under the control or jurisdiction of the City Administrator, without
24 approval of the amendment by the Board of Supervisors under Charter Section 9.118 (c) or
25 Chapter 23, section 23.30, and without modifying the Lease to include Administrative Code

1 and Environment Code Requirements that were enacted since the most recent modification to
2 their Lease, provided that all of the following conditions are satisfied:

3 (a) ~~The Lease has already been approved by the Board of Supervisors under~~
4 ~~Chapter 23 if required;~~

5 (b) ~~—The Lease amendment, which must be in the appropriate standardized form~~
6 ~~without exception and without negotiation, and modifies the Lease only to forgive some or all~~
7 ~~of the rent owed during the time period between January 1, 2021 and June 30, 2021;~~

8 (c) ~~—The Tenant must be in compliance with all other existing lease provisions;~~

9 (d) ~~—Rent may be forgiven during the time period of January 2021 up to June 30,~~
10 ~~2021, at the discretion of the City Administrator and this ordinance does not mandate that the~~
11 ~~City amend the Lease, grant any further rent forgiveness, or require the City Administrator or~~
12 ~~Director of Property to take any other action;~~

13 (e) ~~—Each tenant must disclose information regarding all monies received from any~~
14 ~~government-funded financial aid, grant or loan program intended for rent, including CARES~~
15 ~~Act and similar federal, state, or local aid; such funds are not eligible for forgiveness and will~~
16 ~~be deducted from any forgiveness amount;~~

17 (f) The parties will release each other from claims for rent forgiven under any
18 amendment;

19 (g) Tenant's failure to comply with the Lease or the amendment will result in
20 termination of rent forgiveness as of the date of default;

21 (h) The amendment does not waive, suspend, or modify any other revision or
22 obligation of either party under the existing Lease; and

23 ///

24 ///

1 (ei) Tenant must comply with all applicable laws including all “back to work”
2 requirements and other workforce-related ordinances, orders, and laws relating to the COVID-
3 19 pandemic, including those addressing workplace safety and employment rights.

4 Section 5. Effective Date.

5 This ordinance shall become effective 30 days after enactment. Enactment occurs
6 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
7 sign the ordinance within 10 days of receiving it, or the Board of Supervisors overrides the
8 Mayor’s veto of the ordinance.

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By: /s/ CHARLES SULLIVAN
13 CHARLES SULLIVAN
 Deputy City Attorney

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LEGISLATIVE DIGEST

(Updated April 7, 2021)

[Amendments to Real Property Leases - Forgive Tenant Rent During COVID-19 Pandemic]

Ordinance authorizing the City Administrator to amend certain leases and forgive rent due between April 2020 and December 2020 with nonresidential tenants, and waiving Administrative Code and Environmental Code requirements enacted after the most recent modification of each lease, in order to allow for expeditious rent forgiveness necessitated by the financial hardship caused by the public health emergency related to the COVID-19 pandemic.

Existing Law

Charter Section 9.118 and Administrative Code Chapter 23 require the Board of Supervisors to review and approve certain types of leases and lease amendments.

In light of the significant adverse impacts of the COVID-19 pandemic on nonresidential tenants, the City Administrator waived fees, penalties and interest for delinquent rent payments that were due for use of City property, but required payment of any rent arrearages by June 30, 2021. The City Administrator has now determined that rent forgiveness, not just rent deferral, is necessary to maintain rent revenues in the long-term, facilitate at-risk businesses and nonprofit corporations to reopen when the Health Orders allow, and to continue to provide the City with much needed entertainment, art, culture and small business services and materials.

The City's Administrative and Environment Codes requires departments to include specific terms in lease agreements. When departments amend leases, departments generally are required to incorporate Code changes that were enacted after the initial lease execution.

Amendments to Current Law

This ordinance allows the Director of Property to amend the following four leases to forgive rent for the period of April 2020 through December 2020: (1) New Asia Restaurant (\$202,500); (2) New Conservatory Theatre Center (\$32,723); and (3) Paoli (\$22,500); without modifying the leases to update Administrative or Environment Codes requirements.

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Item 1 File 21-0001	Department: City Administrator (ADM)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> The proposed ordinance would allow the Director of Property to (1) amend three leases to forgive rent due between April 2020 through December 2020, totaling \$258,215, without adding Administrative and Environmental Code provisions enacted since these leases were last executed, and (2) amend the leases specified as well as other Real Estate Division managed leases meeting certain conditions to allow Real Estate to provide rent forgiveness for rent due between January 2021 and June 2021, without Board of Supervisors approval. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> In response to the pandemic, the City Administrator has waived late charges, fees, and penalties related to unpaid rent for all commercial tenants between April 2020 and December 2020 but required resumption of rent in January 2021. The City Administrator now believes that rent forgiveness, not just rent deferral, is needed for three City tenant businesses and non-profits: (1) New Asia Restaurant, (2) New Conservatory Theater Center, and (3) Stephen M. Paoli. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> The proposed legislation would result in a known reduction in revenues of \$258,215, of which \$33,215 are non-dedicated General Fund reductions and \$225,000 are dedicated General Fund reductions. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> The proposed ordinance is not intended to apply to the 33 leases under Real Estate's jurisdiction but that are managed by other General Fund departments, including rent collection. Unlike similar legislation for rent forgiveness for Port and Recreation and Park tenants, the proposed legislation does not require a determination that the tenant was unable to pay rent due to COVID-19 related impacts. Real Estate continues to negotiate repayment of outstanding rent for seven other tenants (estimated at approximately \$161,295) or amendments to leases to collect same. According to Real Estate, the remaining tenants who have unpaid rent declined rent forgiveness. <p style="text-align: center;">Recommendations</p> <ol style="list-style-type: none"> Amend the proposed ordinance to add the following language (a) to Section 4, page 7, line 23, after "City Administrator," "for which the Real Estate Division collects rent," and (b) at page 8, line 10, after "at the discretion of the City Administrator" " , on the condition that a tenant's inability to pay rent is due to negative financial impacts from the COVID-19 pandemic." Approval of the proposed ordinance as amended is a policy matter for the Board of Supervisors. 	

MANDATE STATEMENT

City Charter Section 9.118(c) states that (1) any lease of real property for ten or more years, including options to renew, or anticipated to have revenues to the City of \$1,000,000 or more, or (2) the modification, amendment, or termination of any such leases, is subject to Board of Supervisors approval.

City Administrative Code Section 23.30 states that the Board of Supervisors can authorize the Director of Property to lease any City-owned property that is not required for the purposes of the Department. The Director of Property is also required to lease City Property for no less than market rent unless authorized by the Board of Supervisors for a “proper public purpose.” This authority excludes month-to-month and year-to-year leases with a fair market rental value of \$15,000 or less per month which the Director of Property can enter into without Board approval, per Section 23.31.

BACKGROUND

On March 27, 2020,¹ the City Administrator issued a memo to all City Departments regarding the enforcement of tenant lease obligations for private and non-profit tenants of City-owned property in response to the COVID-19 pandemic and related public health orders. This memo set out a City policy which provided the following relief for commercial City tenants: (1) waived all late charges, interest and other penalties related to late payment of rent from March 17 to December 31, 2020 due to the impact of COVID-19, (2) required the resumption of timely rent payment on January 1, 2021, and (3) specified that any delinquent rent not repaid by June 30, 2021 would be subject to applicable interest and penalties thereafter. The policy authorized City Departments to provide further relief to tenants if warranted. This policy only applied to General Fund Departments and not enterprise Departments.

The policy was intended to provide COVID-19-affected City tenants the ability to retain their leasehold while using financial reserves for other operational needs, including payroll, to remain in business.

The City Administrator now believes that rent forgiveness, not just rent deferral, is needed to facilitate the reopening and preservation of three City tenant businesses and non-profits. Specifically, the City’s Real Estate Division (“Real Estate”) has identified that rent forgiveness is needed for three City tenants with past due rent between April 2020 and December 2020, totaling \$258,214.78² and may be needed in the future for rent due by these same three and other tenants between January 2021 and June 2021.

¹ The memo was subsequently updated on June 1, 2020 to extend protections to December 31, 2020.

² The total rent forgiveness amount differs from the total in the legislation (\$257,723.92) by \$490.86 as the amount used in the legislation does not include an annual rent increase for the National Conservatory Theater Center that went into effect in October 2020.

According to data provided by Real Estate, there are nine other City tenants who have missed rent payments due between April 2020 and December 2020, totaling approximately \$189,942.³ Real Estate has already reached a rent repayment agreement for five of these,⁴ discussions are ongoing with two tenants, and two tenants left. The tenants include private retail or food service firms, a small professional services business, and a non-profit business.

Status of Other City Properties Leased to Private or Non-Profit Tenants

According to Chapter 23 of Administrative Code, the Director of Property (head of the City Administrator's Real Estate Division) is generally responsible for determining the market rent, entering into leases, and collecting rents for City-owned property. This does not apply to the Recreation and Parks Commission, Public Utilities Commission, Airport Commission, Port Commission, and Airport Commission, who are authorized to manage and lease property under their jurisdiction directly. The Municipal Transportation Agency is also authorized to enter into and manage leases for its property directly.

According to the Real Estate Division, there are approximately 98 properties where the City is the landlord. Of these, around 90 are agreements with non-profit or commercial tenants, with the remaining eight being agreements between City departments or between a City department and Real Estate.⁵ The Real Estate Division collects rent for around 57 of these properties and City Departments collect rent for the remaining 33 properties.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance authorizes the Director of Property to (1) amend three specified leases to forgive rent due between April 2020 through December 2020, totaling \$258,214.78, without adding Administrative and Environmental Code provisions enacted since these leases were last executed, and (2) amend the leases specified as well as other Real Estate Division managed leases meeting certain conditions to allow Real Estate to provide rent forgiveness for rent due between January 2021 and June 2021, without Board of Supervisors approval.

³ In addition to the tenants noted above, according to Real Estate, the current tenant for the Bill Graham Civic Auditorium has not paid rent since April 2020 (approximately \$236,391 in base rent), however, Real Estate has facilitated agreements with other City Departments to use this space in lieu of paying rent. The Bill Graham Civic Auditorium tenant did not charge the City use fees for the COVID-19 response use and the Elections use during 2020, which Real Estate states was of equal value to the unpaid rent. In particular, the Auditorium was used by the Department of Public Health for COVID-19 response functions and by the Elections Department for the November 2020 General Elections. In addition, the current tenant of the Old U.S. Mint, NPU, Inc., has \$198,000 in unpaid rent for the period from April 2020 to December 2020. Real Estate is still negotiating possible rent deferral or a rent waiver with NPU, Inc.

⁴ Of the three tenants with agreements, one had a rent deferral/ repayment agreement, one tenant was transferred to the Municipal Transportation Agency's jurisdiction, and the third lease was terminated with agreement from the tenant.

⁵ Approximately 70 of these agreements are standard real estate leases while 20 are permits for use or other miscellaneous agreements rather than full property leases (i.e. access to property for temporary uses, cell towers, etc.).

Waiver of Administrative and Environmental Code Provisions

Administrative and Environmental Code provisions enacted after City leases were executed or amended must be included in any subsequent amendments. According to the proposed legislation, these requirements are being waived because requiring existing tenants to comply with these new requirements could impose additional costs on tenants and impede the intended purpose of providing financial relief.

The Administrative Code requirements being waived may include:

- Section 4.1-3 (All-Gender Toilet Facilities);
- Section 4.9-1(c) (Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings);
- Section 4.20 (Tobacco Product And Alcoholic Beverage Advertising Prohibition);
- Chapters 12B and 12C (Nondiscrimination in Contracts and Property Contracts);
- Section 12F (MacBride Principles—Northern Ireland);
- Chapter 12K (Salary History);
- Chapter 12Q (Health Care Accountability);
- Chapter 12T (Criminal History in Hiring and Employment Decisions);
- Chapter 21C (Miscellaneous Prevailing Wage Requirements);
- Sections 23.50-23.56 (Labor Representation Procedures In Hotel And Restaurant Developments);
- Section 23.61 (Prevailing Wage and Apprenticeship Requirements and Local Hire Requirements); and
- Sections 83.1 et seq. (First Source Hiring Program).

The Environment Code provisions being waived may include:

- Chapter 3 (Restrictions on Use of Pesticides);
- Sections 802(b) and 803(b) (Tropical Hardwood and Virgin Redwood Ban);
- Chapter 13 (Preservative-Treated Wood Containing Arsenic); and
- Chapter 16 (Food Service and Packaging Waste Reduction Ordinance).

Impact on City Tenants (Real Estate Division Managed Leases)

According to City Administrative Code Section 23.30, any lease of City-owned property for a term greater than a year, must be at market rent, unless approved by the Board of Supervisors for a public purpose. As rent forgiveness would lower the rent required by the lease below market rent, the proposed legislation approves forgiveness of all rent due between April and December 2020 for three specified leases, and waives Board approval for future forgiveness of rent due

between January and June 2021 for leases that meet certain conditions detailed in the ordinance and discussed below.

City Tenants to Receive Rent Forgiveness Immediately

The proposed legislation would approve lease amendments to forgive rent for three City tenants, totaling \$258,214.78 as set out in Exhibit 1.

Exhibit 1: City Tenants to Receive Rent Forgiveness Immediately and Outstanding Rent Amounts, April to December 2020

Tenant (Property Address)	Outstanding Rent (Apr - Dec 2020)	Monthly Rent (as of Jan 2021)	Months of Rent Outstanding
New Asia Restaurant (772 Pacific Ave.)	\$202,500.00	\$22,500.00	9
New Conservatory Theater Center (25 Van Ness Ave.)	\$33,214.78	\$8,344.60	4
Stephen M. Paoli (11th St. & Natoma St.)	\$22,500.00	\$2,500.00	9
Total**	\$257,723.92	\$33,344.60	-

Source: Real Estate Division

** Total Outstanding Rent for New Conservatory Theater Center is slightly less than 4 months of rent at \$8,344.60 x4 because the rent for that tenant increased from \$8,181 to \$8,345 in October 2020.*

*** The total rent forgiveness amount differs from the total in the legislation (\$455,723.92) by \$490.86 as the amount used in the legislation does not include an annual rent increase for the National Conservatory Theater Center that went into effect in October 2020.*

Two of the three properties are interim uses pending final development into affordable housing (772 Pacific Avenue), and a public park (11th Street and Natoma Street).

A short summary of the status of each of these properties is provided below.

New Asia Restaurant (772 Pacific Avenue)

The Mayor's Office of Housing and Community Development acquired 772 Pacific Avenue on June 28, 2017 for the development of new affordable housing. A Request for Proposals (RFP) for development of the site is currently open for proposals and predevelopment is expected to continue through FY 2021-22 with expected opening in FY 2024-25. The site is expected to provide around 70 affordable housing units for seniors.

As part of the acquisition, the City was assigned a lease with the existing restaurant tenant, New Asia Restaurant. The Restaurant has been closed to indoor dining since March 2020 under local health orders and is unable to provide outdoor seating. Real Estate was unable to confirm whether the restaurant had applied for or received any government funding to cover negative financial impacts from COVID-19. The current lease is due to expire on December 31, 2021.

New Conservatory Theater Center (25 Van Ness)

The City leases the lower level of 25 Van Ness Avenue to the New Conservancy Theater Center, an arrangement in place since 1984. The current lease expires on September 30, 2023. The Theater has been closed since March 2020 due to local health orders but secured federal CARES

Act funding to pay rent through August 2020. The Theater entered into a rent deferral agreement with the City in September 2020 for rent due through December 2020, per the City Administrator's initial policy. The Theater currently owes \$33,214.78 in outstanding rent for September to December 2020 and is not expected to open for the foreseeable future.

Stephen M Paoli (11th Street & Natoma Street)

The Recreation and Parks Department acquired a building at 11th Street and Natoma Street on May 4, 2018 for development of a public park. According to the Recreation and Parks Department, planning for the project is expected to start this spring/ summer with an anticipated construction start in FY 2023-24 and completion in FY 2024-25.

As part of the acquisition, the City was assigned several leases on the site, including one with Stephen M Paoli for a "pop-up" restaurant space. According to the Real Estate Division, the restaurant has been closed since March 2020 and Mr. Paoli applied for, but did not receive, federal government assistance to pay for operating costs. There is currently \$22,500 in outstanding rent due for April 2020 to December 2020. The current lease is due to expire on September 30, 2021.

Criteria for Additional City Tenants to be Eligible for Rent Forgiveness

The proposed legislation allows the City Administrator, at her discretion, to provide rent forgiveness to the three tenants that are the subject of the proposed legislation as well as other Real Estate-managed City tenants for rent due between January 1, 2021 and June 30, 2021 if they meet the following conditions:

- 1) Tenant has a lease previously approved by the Board of Supervisors under Chapter 23 of the Administrative Code, if required,
- 2) Tenant is in compliance with all other lease provisions,
- 3) Tenant must disclose information regarding any funds received from any government-funded financial aid, grant, or loan program intended for rent and these funds will be deducted from rent forgiveness provided,
- 4) Tenant must comply with all other lease provisions, comply with "back to work" requirements and other work-force related ordinances and applicable COVID-19 laws relating to workplace safety and employment rights.

The proposed ordinance is not intended to apply to the 33 leases under Real Estate's jurisdiction that are managed by other General Fund departments, including rent collection. We therefore recommend amending the legislation to clarify that the authority to amend leases only applies to leases for which Real Estate collects rent.

FISCAL IMPACT

In total, the proposed legislation is estimated to result in a known reduction in revenues of \$258,214.78, of which \$33,214.78 are non-dedicated General Fund reductions and \$225,000 are dedicated General Fund reductions, as shown in Exhibit 2.

However, the legislation also provides authority for the City Administrator, at her discretion, subject to the conditions outlined in the ordinance, to provide rent forgiveness for rent due between January 2021 and June 2021 for the three specified tenants and other Real Estate-managed lease tenants. Based on data from Real Estate, this could cost an additional \$72,209 per month, or up to \$433,254 over the six-month period for the three specified tenants and an additional five tenants currently behind on rent.⁶ While it is unlikely this full amount will be necessary given new federal funding now available and the reopening of some outdoor dining, additional rent forgiveness may still be needed as several of the tenants specified were not approved for Paycheck Protection Program loans in the first round of the program and cannot provide outdoor dining.

Exhibit 2: Estimated Rent Forgiveness Costs and Funds Impacted, April to December 2020

Tenant (Property Address)	Outstanding Rent (Apr 2020 - Dec 2020)	Fund Impacted
New Asia Restaurant (772 Pacific Ave.)	\$202,500.00	Project Fund (AH Project Costs)
New Conservatory Theater Center (25 Van Ness Ave.)	\$33,214.78	General Fund
Stephen M. Paoli (11th St. & Natoma St.)	\$22,500.00	Project Fund (Park Development Costs)
Total	\$258,214.78	
Total General Fund Impact	\$33,214.78	
Total Project Fund Impact	\$225,000.00	

Source: Real Estate Division

According to the Mayor's Office of Housing and Community Development, any rental income from the New Asia Restaurant lease at 772 Pacific Avenue is dedicated to covering costs associated with the site, including current operating costs and future predevelopment and development costs. For example, funds were recently used to cover past-due water bills and to resolve a water leak on the property.

According to the Recreation and Parks Department, the rental income from Stephen M. Paoli is deposited in a General Fund Continuing Authority account dedicated to future development of the 11th and Natoma Street site as a public park.

⁶ Estimated based on data from the Real Estate Division which shows \$55,344.60 per month due in rent among the four specified tenants as of January 2021 and an additional \$16,864.77 per month due in rent among five additional Real Estate-managed tenants behind on rent for the period April to December 2020. The latter also includes rent for a non-profit City tenant that has been behind on rent since before the pandemic.

POLICY CONSIDERATION**Program Design Considerations***Selective and Limited Access to Rent Forgiveness for City Tenants in Need*

The proposed legislation provides rent forgiveness for the April 2020 to December 2020 period for the three tenants mentioned above. Rent forgiveness for other tenants would only be available for rent due between January 2021 and June 2021. While several other City tenants missed rent between April 2020 and December 2020, Real Estate continues to negotiate repayment of this outstanding rent (estimated at approximately \$161,295) or amendments to leases to collect same. According to Real Estate, the remaining tenants who have unpaid rent declined rent forgiveness.

Authorization to amend leases to provide for pandemic-related rent forgiveness approved by the Board of Supervisors for Port and Airport commercial tenants made rent forgiveness available for rent due since the start of the pandemic and was generally available to all tenants of those two departments.⁷ While these departments have much larger property portfolios, similar principles apply. As noted above, Real Estate intends to provide rent forgiveness to tenants that it has determined are unable to repay unpaid rent.

Rent Forgiveness Not Explicitly Tied to Negative Impacts related to the COVID-19 Pandemic

Unlike the legislation authorizing amendments to Port leases related to its rent forgiveness program, the proposed legislation does not require a determination or evidence that the tenant was unable to pay rent due to COVID-19 related impacts.⁸ Pending legislation to authorize amendments to Recreation & Parks Department leases (File 21-0029) also requires demonstrated negative impact related to the COVID-19 pandemic to be eligible. We therefore recommend amending the proposed ordinance to add a requirement in Section 4 that future rent forgiveness be conditioned on a tenant's inability to pay rent due to negative financial impacts from the COVID-19 pandemic.

Waiver of Board Lease Amendment Review and Municipal Code Requirements

The proposed ordinance will approve the amendment of three leases and waive the Board of Supervisors' approval of lease amendments for an unspecified number of leases managed by Real Estate. It will also waive compliance requirements under the Administrative Code and Environmental Code enacted after the most recent modification of each lease for leases that are amended pursuant to the proposed legislation. Because the proposed ordinance waives Administrative and Environmental Code provisions and Board of Supervisors' approval of lease

⁷ See File 20-1278 (Authorizing Amendments to Airport Leases for COVID-19 Rent Relief) and File 20-1163 (Authorizing Amendments to Port Leases for COVID-19 Rent Relief).

⁸ The Board also approved legislation authorizing amendments to leases with Airport tenants to allow for rent forgiveness which did not require a demonstration of COVID-19 impact to be eligible. However, given the direct link between the COVID-19 pandemic and air passenger traffic, the risk of funds not targeting affected businesses was relatively small.

amendments under Administrative Code Section 23.30 and Charter Section 9.118(c), we consider approval of the proposed ordinance to be a policy matter for the Board of Supervisors.

RECOMMENDATIONS

3. Amend the proposed ordinance to add the following language (a) to Section 4, page 7, line 23, after "City Administrator," "for which the Real Estate Division collects rent," and (b) at page 8, line 10, after "at the discretion of the City Administrator" ", on the condition that a tenant's inability to pay rent is due to negative financial impacts from the COVID-19 pandemic."
4. Approval of the proposed ordinance as amended is a policy matter for the Board of Supervisors.

EXHIBIT E

TENANT'S ESTOPPEL CERTIFICATE

DATE: 05/02/2017

TENANT: Hon So, Inc., and Hon Keung So, an individual
and Candy Mei-Yiu So, an individual

PREMISES: 772 Pacific Avenue, San Francisco, CA

LEASE DATE: January 1, 2002

COMMENCEMENT DATE: January 1, 2002

EXPIRATION DATE: December 31, 2021

TERM IN MONTHS: 228 Months including all options

DATE RENT AND OPERATING EXPENSE
PARKING: All rent and expenses are paid thru April 30,
2017

PAYMENTS ARE DUE: By the 10th of every month

OPTIONS: Check if you have any of these
options or rights, and provide details in
Sections 5 or 9 below.

☐ Extension Option

☐ Termination Option

☐ Expansion Option

☐ Purchase Option

CURRENT MONTHLY PAYMENTS: \$26,612.25

BASE RENTAL: \$22,500.00 per month

TAXES: \$2,958.40 per month

OP. EXP. CAP: Insurance- \$1,153.85 per Month

Check here if you have rental escalations and provide details in Section 6 below: Rent gets renegotiated annually thru option period December 31, 2021

SECURITY DEPOSIT: \$40,000.00

THE UNDERSIGNED, AS TENANT OF THE ABOVE REFERENCED PREMISES ("PREMISES") UNDER THE LEASE DATED AS OF THE ABOVE-REFERENCED LEASE DATE, BETWEEN Shew Yick, Trustee of Shew Yick Trust One and Shew Yick and Richard Tong, Trustees of Robert Yick Exempt Assets Trust ("LANDLORD") AND TENANT, HEREBY CERTIFIES, REPRESENTS AND WARRANTS TO THE CITY AND COUNTY OF SAN FRANCISCO ("CITY"), AND ITS ASSIGNEES, AS FOLLOWS:



1. Accuracy. All of the information specified above and elsewhere in this Certificate is accurate as of the date hereof.

2. Lease. The copy of the Lease attached hereto as Exhibit A is a true and correct copy of the Lease. The Lease is valid and in full force and effect. The Lease contains all of the understandings and agreements between Landlord and Tenant and has not been amended, supplemented or changed by letter agreement or otherwise, except as follows (if none, indicate so by writing "NONE" below): None

3. Premises. The Premises consist of The entire Building, and Tenant does not have any options to expand the Premises except as follows (if none, indicate so by writing "NONE" below): None

4. Acceptance of Premises. Tenant has accepted possession of the Premises and is currently occupying the Premises. There are no unreimbursed expenses due Tenant including, but not limited to, capital expense reimbursements.

5. Lease Term. The term of the Lease commenced and will expire on the dates specified above, subject to the following options to renew or rights to terminate the Lease (if none, indicate so by writing "NONE" below): None

6. Rental Escalations. The current monthly base rental specified above is subject to the following escalation adjustments (if none, indicate so by writing "NONE" below): Rent gets renegotiated annually 60 days prior to December 31 of the current year

7. No Defaults/Claims. Neither Tenant nor Landlord under the Lease is in default under any terms of the Lease nor has any event occurred which with the passage of time (after notice, if any, required under the Lease) would become an event of default under the Lease. Tenant has no claims, counterclaims, defenses or setoffs against Landlord arising from the Lease, nor is Tenant entitled to any concession, rebate, allowance or free rent for any period after this certification. Tenant has no complaints or disputes with Landlord regarding the overall operation and maintenance of the property within which the Premises are located (the "Property"), or otherwise.

8. No Advance Payments. No rent has been paid in advance by Tenant except for the current month's rent.

9. No Purchase Rights. Tenant has no option to purchase, or right of first refusal to purchase, the Premises, the Property or any interest therein (if none, indicate so by writing "NONE" below): None

10. Notification by Tenant. From the date of this Certificate and continuing until close of escrow. Tenant agrees to notify City immediately of the occurrence of any event or the discovery of any fact that would make any representation contained in this Certificate inaccurate as of the date hereof or as of any future date.

11. No Sublease/Assignment. Tenant has not entered into any sublease, assignment or any other agreement transferring any of its interest in the Lease or the Premises.

12. No Notice. Tenant has not received notice of any assignment, hypothecation, mortgage, or pledge of Landlord's interest in the Lease or the rents or other payments payable thereunder, except those listed below (if none, indicate so by writing "NONE" below): None

CSO 

13. Hazardous Materials. Tenant has not used, treated, stored, disposed of or released any Hazardous Materials on or about the Premises or the Property. Tenant does not have any permits, registrations or identification numbers issued by the United States Environmental Protection Agency or by any state, county, municipal or administrative agencies with respect to its operation on the Premises, except for any stated below, and except as stated below no such governmental permits, registrations or identification numbers are required with respect to Tenant's operations on the Premises. For the purposes hereof, the term "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids, and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

14. Reliance. Tenant recognizes and acknowledges it is making these representations to City with the intent that City, and any of its assigns, will fully rely on Tenant's representations.

15. Binding. The provisions hereof shall be binding upon and inure to the benefit of the successors, assigns, personal representatives and heirs of Tenant and City.

16. Due Execution and Authorization. The undersigned, and the person(s) executing this Certificate on behalf of the undersigned, represent and warrant that they are duly authorized to execute this Certificate on behalf of Tenant and to bind Tenant hereto.

EXECUTED BY TENANT ON THE DATE FIRST WRITTEN ABOVE.

By:



Hon Keung So

President

[TITLE]

HON SO, INC.

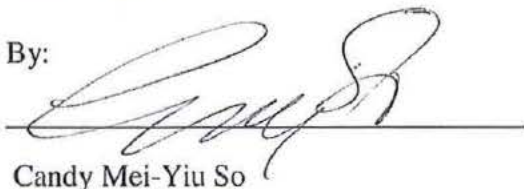
By:



Hon So Inc President.

[NAME AND TITLE]

By:



Candy Mei-Yiu So

Owner

[TITLE]

September 28, 2011

Mr. Hon So & Mrs. Candy Mei-Yiu So

New Asia Restaurant

772 Pacific Street

San Francisco, CA 94133

Dear Mr. & Mrs. So:

This letter will confirm discussions that took place on September 27, 2011 regarding changes to New Asia's basic rent for the next five years.

Beginning January 1, 2012 through December 2013 rent is \$21,000

Beginning January 1, 2014 through December 2016 rent is \$22,000

Approximately 60 days before the end of year 2016, I will be meeting with you again to discuss New Asia's rent for the period beginning January 2017. At that juncture, there will be five years remaining on your lease. If this is not your understanding of what was agreed upon, please let me know at your earliest convenience.

Sincerely,



Donna Yick

Cc: Kitman Chan

Richard Tong

September 27, 2011

The Yick Family is countering New Asia's proposal to freeze rents for years 2012-2016 at \$21,000 and years 2017-2021 at \$22,000.

We are proposing the following alternatives:

--- Freezing New Asia's rent from January 2012 through December 2016 at \$21,500 on the condition that the terms of the lease agreement will be changed to allow for a five-year lease option only, not a ten year option. OR,

--- Beginning January 2012, New Asia's rent of \$21,000 will be good through December 31, 2013. Future rents will be determined prior to January 2014.

**NEW ASIA
Restaurant Lease**

This LEASE is made and entered into at San Francisco, California effective the ____ day of January, 2002, between SHEW YICK, TRUSTEE OF SHEW YICK TRUST ONE AND SHEW YICK AND RICHARD TONG, TRUSTEES OF ROBERT YICK EXEMPT ASSETS TRUST hereinafter called Lessor and, Hon So, Inc., and Hon Keung So, an individual and Candy Mei-Yiu So, an individual hereinafter called Lessees, without distinction as to number or gender. Each party signing as Lessee shall be jointly and severally liable for all of the terms and conditions of this Lease.

In consideration of the rents and Lessee's covenants and agreements contained in this Lease, and upon the condition that each and all of the said covenants, obligations and agreements be fully kept and performed by Lessee, Lessor leases demises and lets to Lessee of the building located at 772 Pacific Avenue, San Francisco, California (the "Building").

It is further mutually agreed between Lessor and Lessee as follows:

1. *Premises.* The premises leased (the "Premises") shall consist of the entire Building.
2. *Term.* The term of this Lease shall commence the closing of Lessee's purchase of certain business assets of New Asia Restaurant, a business owned and operated by Lessor. This lease shall terminate on December 31, 2011.
3. *Rent.* On the first day of the month following the time of commencement of this lease, until the first day of December, 2004, Lessee agrees to pay Lessor the sum of Eighteen Thousand Dollars (\$18,000) as rent, ("Basic Monthly Rental") payable in advance without deduction or offset, at such place or places as may be designated in writing from time to time by Lessor, on the first day of each calendar month of the lease term. If this lease commences on a day other than the first day of the month, the first month's rent shall be prorated and paid to Landlord from the sales escrow. On the first day of January each year thereafter, the Basic Monthly Rent shall be adjusted upward in the same percentage proportion that the Retail Consumer Price Index for San Francisco-Oakland, all items, published by the United States Department of Labor Statistics (the "Index"), shall have increased over the Index reported nearest to the date of signing of this Lease, which shall be referred to as the "Original Consumer Price Index Base Date." There shall be no reduction in the Basic Monthly Rent below the monthly rent in the immediately preceding period. In no event, however, shall the Basic Monthly Rent during the term be adjusted upward by more than five percent (5%) per year cumulatively.

Commencing January 1, 2005, Lessee agrees to pay Lessor the sum of Twenty Thousand Dollars (\$20,000) payable in advance without deduction or offset on the first day of each calendar month of the remaining lease term.

On the first day of January each year thereafter (including each year of any option period), the Basic Monthly Rent shall be adjusted upward in the same percentage proportion that the Retail Consumer Price Index for San Francisco-Oakland, all items, published by the United States

Department of Labor Statistics (the "Index"), shall have increased over the Index reported nearest to December 31, 2004 which shall be referred to as the New Consumer Price Index Base Date. There shall be no reduction in the Basic Monthly Rent below the monthly rent in the immediately preceding period. In no event, however, shall the Basic Monthly Rent during the remaining term be adjusted upward by more than five percent (5%) per year cumulatively.

If the Basic Monthly Rent or any other payment is received after the 10th of the month in which it is due, Lessee agrees to pay an additional 5% of the payment then due as a Late Payment Charge.

4. *Security Deposit.* Lessee has deposited with Lessor the sum of Forty Thousand Dollars (\$40,000) which is applied as security for, and to be returned to Lessee only after the full, prompt and faithful performance by Lessee of all of the terms, covenants, and conditions to be kept and observed by Lessee under this Lease, including the payment of all rental installments. The first month's rent and security deposit shall be paid to Lessor on the execution of this Lease, receipt of which is acknowledged by Lessor. If, at any time during the term of this Lease, any Basic Monthly Rent or any other sum payable by Lessee to Lessor under the terms of this Lease shall be overdue and unpaid, then Lessor may, but shall not be required to, appropriate any portion of the security deposit to the payment of any such overdue Basic Monthly Rent or other sum. In the event of the failure of Lessee to keep and perform all of the terms, covenants and conditions of this Lease to be kept and performed by Lessee, then at the option of Lessor, Lessor may, after terminating the Lease, appropriate and apply the entire security deposit or so much of it as may be necessary to compensate Lessor for all loss or damage sustained or suffered by Lessor due to any breach on the part of Lessee. If the entire security deposit or any portion of it is appropriated and applied by Lessor for the payment of overdue Basic Monthly Rent or other sums due and payable by Lessee under this Lease, then Lessee shall upon the written demand of Lessor, remit to Lessor a sufficient amount in cash to restore the security deposit to its original sum. Lessee's failure to do so within five (5) days after receipt of such demand shall constitute a breach of this Lease. If Lessee complies with all of the terms, covenants and conditions of this Lease and promptly pays all of the Basic Monthly Rent and other sums provided for under this Lease as they become due, the security deposit shall be returned in full to Lessee at the end of the term of this Lease or upon earlier termination of this Lease.

5. *Condition of Premises.* Landlord is leasing the Premises in an "as is" condition. Landlord and Tenant have agreed that Tenant may, at Tenant's sole expense, renovate and alter the Premises in accordance with the Plans attached as Exhibit A hereto. Tenant will be solely responsible for this renovation work and hold Landlord harmless from all costs and expenses of the renovation work. All such renovation to the Premises shall be approved in writing by Landlord. Tenant acknowledges the Premises are in satisfactory order and condition to commence Tenant's renovation. Landlord shall be under no obligation to make any repairs to the Premises, except as expressly provided in this Lease.

6. *Use of Premises.* Lessee shall not use, or permit the Premises, or any part thereof, to be used for any purpose or purposes other than for the specific purpose of conducting a restaurant business, and shall not be used for any purpose unrelated such business.

7. **Insurance Requirements.** Lessee shall, at all times during this Lease, at Lessee's sole cost and expense, maintain in effect in companies acceptable to Lessor, public liability and property damage insurance in the amounts of \$1,000,000/\$2,000,000 for personal injury and \$500,000 for property damage naming Lessor as an insured and covering the Premises. The policy of insurance shall contain a provision that it shall not be canceled without thirty (30) days prior written notice to Lessor and such policy or a copy thereof shall be delivered to Lessor. Lessee agrees that if any of its activity causes an increase in fire or public liability insurance premiums covering the Premises, Lessee will pay to Lessor, as additional rent, the increase in premiums caused by his activity. In the event any such activity shall cause cancellation of any insurance policy covering the Building, or any part thereof, and similar insurance cannot be obtained elsewhere, Lessee shall immediately cease to conduct such activity.

8. **Indemnification and Waiver of Subrogation.** Lessee, as part of the consideration to rendered to Lessor, hereby waives all claims against Lessor for damages to property or injuries to persons, in, upon or about the Premises, arising directly or indirectly from any cause at any time. Lessee shall indemnify and save Lessor free and harmless from and against any cost, loss, liability or expense for or on account of any damage to property or injury to any person, arising directly or indirectly from the use of the Premises caused or made by Lessee, or from the failure of Lessee to keep the Premises in good order, condition and repair.

Lessor hereby releases Lessee, and Lessee hereby releases Lessor, from any and all claims or demands for damages, loss, expense or injury to the leased Premises, or to the improvements, fixtures and equipment, or personal property or other property of either Lessor or Lessee in, about or upon the leased Premises or adjoining property, as the case may be, which is caused by or results from perils, events or happenings which are the subject of insurance carried by the respective parties and in force at the time of any such loss; provided however, that such waiver shall be effective only to the extent permitted by the insurance covering such loss and to the extent of the insurance recovery.

9. **Waste and Alterations.** Lessee shall not commit or cause to be committed, any waste upon the Premises or any nuisance, or other act or things which may disturb the quiet enjoyment of any other tenant in the Building. Lessee shall not make or cause to be made, any alterations of the Premises, or any part thereof, without the express written consent of Lessor first had and obtained, and any additions to, or alterations of Premises, except moveable furniture and trade fixtures, shall at once become a part of the realty and belong to Lessor. Lessee shall keep the Premises and the property in which the Premises is located free from any liens arising out of any work performed, materials furnished or obligations incurred by Lessee. Lessor shall also have the right to post and maintain on the Premises such notice of nonresponsibility as may be required by law to protect Lessor's rights herein. Lessee shall notify Lessor sufficiently in advance of the commencement of any such work in order to give Lessor the opportunity to post notice of nonresponsibility.

Lessee is prohibited from using any chemicals which would affect plumbing in the Building. Lessee shall pay the cost of any special improvements which may be required by any fire insurance or governmental agency because of Lessee's use of the Premises.

10. *Abandonment.* Lessee shall not vacate or abandon the Premises at any time during the term and if Lessee shall abandon, vacate or surrender the Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the Premises, at the option of Lessor, shall be deemed to be abandoned.

11. *Maintenance and Repair.* Except for the roof and foundations, which shall be maintained and repaired by Landlord, Lessee shall keep and maintain the Premises and every part thereof, in good and sanitary order, condition and repair. In the event the sewer lines leading to the premises need repair, Landlord and Tenant shall ^{share} the expense equally. Lessee shall repair any damage caused to the Building or common areas or grounds by the negligent acts of the Lessee or Lessee's agents. On termination of this Lease, Lessee agrees to surrender the Premises in the same conditions as when received, reasonable wear and tear excepted.

12. *Cooperation on Releasing Premises.* Lessee shall permit Lessor, at any time within six (6) months prior to the expiration of this Lease, to bring any prospective tenants onto the Premises for inspection.

13. *Taxes and Insurance.*

(a) Lessee shall pay all taxes and assessments levied upon Lessee's fixtures, furniture, appliances, and personal property installed or located in the Premises. In addition, Lessee shall pay to Lessor any tax attributable to an increase in assessment of the Premises arising from Lessee's improvements.

(b) In addition to the Basic Monthly Rent and building operating expenses, commencing in the year 2007, Lessee agrees to pay to Lessor each year during the term of the Lease, all real estate taxes and insurance premiums on the Premises, including land, building, and improvements thereon. Real estate taxes include all real estate taxes and assessments that are levied upon and/or assessed against the Premises, including any taxes which may be levied on rents. Insurance includes all insurance premiums for fire, extended coverage, liability and any other insurance that Lessor deems necessary on the Premises. Any such tax and insurance premium payments by Lessee shall be upon the basis of taxes and assessments or installments thereof coming due during any leasehold year rather than upon the fiscal year to which such tax is applicable. Any amounts of taxes and assessments required to be paid hereunder shall be paid by Lessee within ten (10) days after written demand therefore and Lessor's tax bill shall be conclusive evidence for the amount to be paid by Lessee. If any amounts due hereunder, or under paragraph 15 above, are received after the tenth day following date of billing, Lessee agrees to pay an additional five percent (5%) of the monthly payment then due as a Late Payment Charge.

14. *Compliance with Governmental Regulations.* Lessee will comply with all laws and regulations of all state, federal, county and municipal authority pertaining to business conducted on the Premises. Lessee shall not permit the Premises to be used for any unlawful purposes. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceeding against Lessee, whether Lessor be a party thereto or not, that the Lessee has violated

any such ordinance or statutes in the use of the Premises, shall be conclusive of that fact as between Lessor and Lessee.

15. Destruction of Premises.

(a) Lessee shall notify Lessor in writing of a partial destruction of the Premises, and Lessor shall repair the same, provided the repairs can reasonably be made under the laws and regulations of state, county and municipal authority, within sixty (60) calendar days, during regular weekday hours. A partial destruction of the Premises shall in no way annul or void this Lease, except that Lessee shall be entitled to a proportionate reduction of Basic Monthly Rent until such repairs have been completed. Such proportionate reduction shall be based upon the extent to which the making of such repairs interferes with the use and occupancy of the Premises. If such repairs cannot be so made within sixty (60) calendar days, Lessor may, at Lessor's option, make the repairs within a reasonable time and this Lease will continue in full force and effect and the rent proportionately reduced as stated above, or, in the alternative, Lessor may terminate this Lease by written notice to Lessee.

(b) In the event that the Building is destroyed to the extent of at least thirty-three and one-third (33 1/3%) percent of the replacement cost thereof, Lessor may elect to terminate this Lease, without further liability to Lessee, whether the Premises be injured or not. A total destruction of the Building shall terminate this Lease, without further liability to Lessee.

16. Condemnation. It is mutually agreed that if the whole or any part of the Premises shall be required by, taken or condemned for any public or quasi public use or purpose, then in such event, this Lease shall terminate as of the date when possession is taken by the condemning authority or when title is vested, without apportionment to Lessee of the award or other compensation. Nothing in this Lease shall deprive Lessee of the right, if any, to demand and if entitled, receive from the requisitioning, taking or condemning authority, award or compensation for loss of or damage to any of the Lessee's personal property or business provided that same is not in diminution of the award or compensation payable to Lessor; and Lessee shall make payment of all rent and other charges accrued and prorated to the date of such requisition, taking or condemnation.

17. Remedies of Lessor. Lessee shall be in default under this Lease if Lessee shall fail to pay any rentals or other moneys due as provided in this Lease, when the same becomes due and payable, or if Lessee shall fail to keep, or neglect to perform, any one or more of the terms, covenants and agreements required to be kept and performed by Lessee and such failure or neglect shall continue for a period of ten (10) days after notice in writing thereof to Lessee to remedy such default. Whenever Lessee is in default, Lessor may, without notice, avail itself of any of the following remedies:

(a) Enter upon and take possession of the Premises, exclude all persons therefrom and remove any and all property whatsoever found there and place such property in storage for the account and at the expense of Lessee. In the event that Lessee shall not pay the cost for storing any such property after the property has been stored for a period of ninety (90) days or more,

Lessor may sell any or all of such property at public or private sale, in such manner and at such times and places as Lessor, in its sole discretion, may deem proper, without notice to Lessee and without demand upon Lessee for the payment of any part of such charges or for the removal of any such property, and shall apply the proceeds of such sale; first, to the cost and expenses of sale and removal, including reasonable attorneys' fees actually incurred; second, to the payment of the costs of or charges for storing any such property; third, to the payment of any other sums of money which may then or thereafter be due to Lessor from Lessee under any of the terms of this Lease; and fourth, the balance, if any, to Lessee. Lessee hereby waives all claims for damages that may be caused by Lessor's re-entering and taking possession of the Premises or removing and storing furniture and property as herein provided and will save Lessor harmless from loss, costs or damages, occasioned Lessor thereby, and no such re-entry shall be considered or construed to be a forcible entry as the same may be defined under California Law, nor shall any such re-entry constitute an election by Lessor to terminate this Lease unless Lessor gives Lessee notice in writing of Lessor's election to terminate.

(b) With or without re-entry, terminate this Lease: in which event Lessee shall immediately surrender possession. Lessee agrees to pay to Lessor as the amount which shall be presumed to be the amount of damage sustained by Lessor by reason of Lessee's breach of this Lease (Lessee agreeing that it would be impracticable or extremely difficult to fix the actual damage) as sum of money equal to the amount, if any, by which the then-cash value of the rent (including Basic Monthly Rent and reimbursable operating costs and expenses and taxes and insurance) reserved under this Lease exceeds the then-cash reasonable rental value of the Premises for the balance of the term at the time of such termination. The claim for the sum due shall be immediately enforceable by Lessor against Lessee by suit, and shall be provable in any proceedings for the bankruptcy or other liquidation or reorganization of Lessee.

(c) With or without re-entry, relet the Premises as the agent and for the account of Lessee at such rental and upon such other terms and conditions as Lessor, in its sole discretion, may deem advisable (including reletting for a term extending beyond the term of this Lease): in which event, the rent received on any such reletting shall be apportioned first to the expense of reletting and collection (including but not limited to any necessary repairs or renovations, a reasonable attorney's fee, and any real estate commissions actually paid) and thereafter to the payment of the sums due and to become due to Lessor hereunder. If a sufficient sum shall not thus be realized to pay rent and other moneys due Lessor hereunder, Lessee shall pay to Lessor monthly any deficiency, and Lessor, at its option, may bring an action for each monthly deficiency.

All rights and remedies of Lessor hereunder shall not be exclusive but shall be cumulative. Waiver by Lessor of any single breach of any term of covenant hereof by Lessee shall not constitute a waiver of any other such breach by Lessee, and acceptance of any payment of rent hereunder shall not be a waiver of any term or covenant hereof except with respect solely to the payment so made.

18. *Attorneys' Fees.* In the event suit shall be brought for an unlawful detainer of the Premises, for the recovery of any sum due under the provisions of this Lease or because of the breach of any covenant herein contained on the part of Lessee to be kept or performed, the prevailing party shall

be entitled to all costs in connection therewith, including a reasonable attorney's fee which shall be fixed by the court, and shall have judgment thereof.

19. *Surrender of Lease.* The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subleases or subtenancies, or may, at the option of Lessor, operate as an assignment to Lessor of any or all such subleases or subtenancies.

20. *Sale.* In the event of any sale or conveyance of the Building by Lessor, the same shall be made subject to this Lease but shall operate to release Lessor from any further or future liability under any of the terms, covenants and conditions contained in this Lease in favor of Lessee, whether expressed or implied, and in such event Lessee agrees to look solely to the responsibility of the successor in interest of the Lessor in and to this Lease.

21. *Damage to Building.* Notwithstanding anything to the contrary in this Lease, Lessee shall be liable for all damage to the Building or fixtures caused by moving the property of Lessee into, inside or out of the Building and for all breakage or other damage done by Lessee, or the agents, servants, employees, or invitees of Lessee, as well as any damage caused by the overflow or escape of water, steam, gas, electricity or other substance due to the negligence of Lessee, or the agents, servants, employees or invitees of Lessee. Lessor shall arrange for repair of all such damage or breakage and the cost thereof shall be paid to Lessor upon presentation of a statement by Lessor or a copy of the repair bill rendered to Lessor.

22. *Compliance with Rules and Regulations.* Lessee acknowledges receipt of a copy of the Building Rules in the form attached hereto as Exhibit B and agrees that these rules, regulations and stipulations and such other further reasonable rules, regulations and stipulations as Lessor may make, being, in Lessor's judgment, necessary or advisable for the safety, care and/or cleanliness of the Building and Premises, or the comfort of other tenants, shall be faithfully kept, observed and performed by Lessee, and by the agents, servants and employees of Lessee, unless waived in writing by Lessor.

23. *Notices.* Whenever it be required that any notice be given under this Lease, such notice shall be in writing and may be served upon Lessee personally or by depositing the same in the United States mail, postage prepaid, addressed to the Lessee at the Premises, and may be served upon Lessor by depositing the same in the United States mail, postage prepaid, addressed to Lessor, c/o Shew Yick and Richard Tong, Trustees of Shew Yick Trust One, 1225 Washington Street, #401, San Francisco, CA or such other addresses that the parties hereto may hereafter specify in writing.

24. *Assignment and Subletting.*

(a) Lessee shall not sell, assign, encumber or otherwise transfer by operation of law or otherwise, this Lease or any interest in it, sublet the Premises or any part thereof, or cause or allow any other person to occupy or use the Premises or any portion thereof, without the prior written consent of Lessor as provided herein, nor shall Lessee permit any lien to be placed on the Lessor's interest by operation of law. Lessee shall, by written notice, advise Lessor of its desire

from and after a stated date (which shall not be less than thirty (30) days nor more than one hundred twenty (120) days after the date of Lessee's notice), to assign or sublet the Premises or any portion thereof for any part of the term hereof; In such event Lessor shall have the right to be exercised by giving written notice to Lessee thirty (30) days after receipt of Lessee's notice, to terminate this Lease as to the portion of the Premises described in Lessee's notice and such notice shall, if given by Lessor, terminate this Lease with respect to the portion of the Premises therein described as of the date stated in Lessee's notice. Notice by Lessee shall state the name and address of the proposed assignee or subtenant, and Lessee shall deliver to Lessor a true and complete copy of the proposed sublease or assignment with said notice. If notice shall specify all of the Premises and Lessor shall give termination notice with respect to that notice, this Lease shall terminate on the date stated in Lessee's notice. If, however, this Lease shall terminate pursuant to the foregoing with respect to less than all the Premises, the rent, as defined and reserved hereinabove and the payments for real property taxes and insurance as provided for in paragraphs 13 shall be adjusted on a pro rata basis to the number of square feet retained by Lessee, and this Lease as so amended shall continue thereafter in full force and effect. If Lessor, upon receiving notice by Lessee with respect to any of the Premises, shall not exercise its right to terminate this Lease, Lessor will not unreasonably withhold its consent to Lessee's subletting the Premises in said notice.

(b) Any subletting or assigning of this Lease by Lessee shall not result in Lessee being released or discharged from a liability under this Lease. As a condition to Lessor's prior written consent as provided for in this paragraph, the subtenant or subtenants or assignees or subassignees shall agree in writing to comply with and be bound by all of the terms, covenants, conditions, provisions and agreement of this Lease, and Lessee shall deliver to Lessor promptly after execution, an executed copy of each sublease and an agreement of compliance by each sublessee and assignee.

(c) Lessor's consent to any sale, assignment, encumbrance, subletting, occupation, lien or other transfer shall not release Lessee from any of Lessee's obligations under this Lease or be deemed to be a consent to any subsequent occurrence. Any sale, assignment, encumbrance, subletting, occupation, lien or other transfer of this Lease which does not comply with the provisions of this paragraph 24 shall be void.

25. *Successors and Assigns.* The covenants and conditions contained in this Lease shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties herein and all of the parties to this Lease shall be jointly and severally liable hereunder, except that if there is more than one Lessee name as a tenant of this Lease, upon the death or total disability of any person named as Lessee, the term hereof or any extension thereof shall terminate as to such deceased or totally disabled Lessee, and the remaining Lessee or Lessees shall remain liable for all the terms thereof.

26. *Subordination.*

(a) This Lease, at Lessor's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation for security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Lessee's right to quiet possession of the Premises shall not be disturbed if Lessee is not in default and so long as Lessee shall pay the rent and other payments due under this Lease and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms.

(b) Lessee agrees to execute any documents required to effectuate such subordination of this Lease, any ground lease, mortgage or deed of trust, as the case may be, and failing to do so within ten (10) days after written demand, does hereby make, constitute and irrevocably appoint Lessor as Lessee's attorney-in-fact and in Lessee's name, place and stead, to do so.

27. *Estoppel Certificate.* Lessee shall, at any time upon not less than ten (10) days' prior written notice from Lessor, execute, acknowledge and deliver to Lessor a statement in writing

(a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (b) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder or specifying such defaults, if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

Lessee's failure to deliver such statement within such time shall be conclusive upon Lessee (a) that this Lease is in full force and effect, without modification except as may be represented by Lessor, (b) that there are no uncured defaults in Lessor's performance, and (c) that not more than one month's rent has been paid in advance.

If Lessor desires to finance or refinance the building, or any part thereof, Lessee hereby agrees to deliver to any lender designated by Lessor, such financial statements of Lessee as may be reasonably required by such lender. Such statements shall include the past three years' financial statements of Lessee. All such financial statement shall be received by the lender in confidence and shall be used only for the purposes herein set forth.

28. *Option to Renew.* Provided Lessee is not in default at the time during the original term of the Lease, Lessee shall have the option to extend the Lease for an additional ten (10) year period by providing Lessor with written notice of exercise of option not less than six (6) months prior to the end of the original term. If Lessee exercises Lessee's option to renew, Basic Rent for the first year of the option period shall be \$20,000 per month increased by the percentage increase in the Index as of December 31, 2011 over the index over the Index on January 1, 2004. Rent for the remainder of the Option Period will be increased by increases in the Index in the manner provided in Paragraph 3 of the Lease, and all other terms and conditions of the Lease shall remain in effect.

29. *Amendments.* This Lease contains the entire agreement between the parties. No provisions of this Lease may be amended or added to or modified except by an agreement in writing signed by the parties hereto or their respective successors.

30. *Captions.* The captions of the provisions herein contained are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

31. *Time.* Time is of the essence of this Lease.

LESSOR:

SHEW YICK TRUST ONE

By: Shew Yick

ROBERT YICK EXEMPT ASSETS TRUST

By: Robert Yick

LESSEE:

HON SO, INC.

By: [Signature]

Its _____

By: Candy Mei-Yiu So
Candy Mei-Yiu So, in her individual capacity

By: [Signature]
Hon Kueng So, in his individual capacity
Kueng

AMENDMENT TO PERFORMANCE SPACE LEASE

This Amendment to Performance Space Lease (this "**Amendment**"), dated for reference purposes only as of June [], 2018, amends that certain Performance Space Lease, dated for reference purposes only as of December 1, 2008 (the "**Lease**"), between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**") and the NEW CONSERVATORY THEATER CENTER, a California non-profit corporation ("**Tenant**"). All terms used herein but not defined herein shall have the meaning given to such terms in the Lease.

Recitals

- A. The Lease provides for City's lease to Tenant of a portion of the basement of the building located at 25 Van Ness Avenue, San Francisco, California 94102 (the "**Premises**") on the terms and conditions described therein.
- B. The Lease currently provides for an Expiration Date of September 30, 2013, subject to the Extension Options described in Section 26.1.
- C. Before exercising the Extension Options, due to prior water intrusion issues Tenant desired, and City agreed, to await to the results of the City's investigation of the Building's structural systems and evaluation of the hydrological conditions affecting the Building, during which time the Lease continued on a month-to-month basis.
- D. Tenant has made renovations to the theatre lobby of the Premises, which the Parties acknowledge are a benefit to the Building, including carpeting and paint, for which Tenant received rent credit, which rent credit period expired with the January 2018 rent payment.
- E. City and Tenant have received the results of the hydrological investigation, and now desire to amend the Expiration Date of the Lease and to memorialize Tenant's exercise its first Extension Option, all as provided in this Amendment.

Agreement

In consideration of the foregoing and the agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. Expiration Date. The Expiration Date specified in Section 1 of the Lease, currently September 30, 2013, is hereby amended to read "September 30, 2018."
2. First Extension Option. Notwithstanding anything to the contrary contained in the Lease, by this Amendment Tenant gives notice to City, of Tenant's exercise of its first Extension Option for an Extension Term commencing on the date immediately following the Expiration Date, as amended by this Amendment, and City acknowledges Tenant's exercise. For the avoidance of doubt, the Extension Term will commence on October 1, 2018 and end on September 30, 2023, unless further extended as provided in Section 26.1 of the Lease.

3. Base Rent as of First Extension Option. Commencing on October 1, 2018, the Base Rent during the first Extension Option will be calculated as set forth in Section 4.2 of the Lease and will be at least **\$7,983.00**.

4. Base Rent Adjustments. Notwithstanding anything to the contrary in Section 4.2, the Base Rent payable under this Lease starting on the first day of the second Extension Option shall be adjusted in accordance with Section 4.2, except that the Beginning Index shall be the Index published most immediately preceding the previous Adjustment Date and, if for any year the CPI is less than 2%, the CPI used will be 2%. If for any year the CPI is greater than 4%, the CPI used will be 4%.

5. Continuing Occupancy. Tenant acknowledges and agrees that its possession of the Premises commencing on the Extension Term commencement date is a continuation of Tenant's possession of the Premises under the Lease. Tenant is familiar with the condition of the Premises, and Tenant agrees to accept the Premises as of the Extension Term commencement date in their existing condition, "as is," without any obligation of Landlord to repair, remodel, improve or alter the Premises, to perform any other construction or other work of improvement upon the Premises or to provide Tenant with any construction or refurbishing allowance whatsoever. As of the date of this Amendment, Tenant represents and warrants to Landlord that Tenant is not aware of any dangerous conditions or other defects existing in or about the Premises or the Building, and that, unless Tenant provides Landlord with written notice to the contrary before the Extension Term commencement date, that representation and warranty will be true on and as of the Extension Term commencement date as if the it were made on and as of that date.

6. Valid Amendment; Effective Date. City and Tenant agree that this Amendment satisfies the provisions of Section 27.3 of the Lease and is a valid and effective amendment to the Lease on the date upon which: (i) City's Board of Supervisors and the Mayor, in their sole and absolute discretion, adopt a resolution approving this Amendment in accordance with all applicable laws and (ii) this Amendment is duly executed and delivered by the parties hereto.

7. Full Force and Effect. The Lease, as amended hereby, shall be deemed to have been amended as of the Effective Date, and shall remain in full force and effect in accordance with its terms.

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

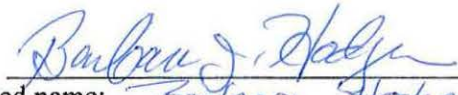
[Signatures Follow]

RED 6.6.18


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

TENANT: New Conservatory Theatre Center,
a California non-profit corporation

By: 
Printed name: JEFFREY P. MALLOY
Its: BOARD CHAIR

By: 
Printed name: Barbara Halpern
Its: Executive Director

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

By: 
Andrico Q. Penick 10/16/18.
Acting Director of Property

APPROVED AS TO FORM:

DENNIS HERRERA
City Attorney


By: 
Deputy City Attorney

RED 6.6.18


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By: 
Andrico Q. Penick 10/16/18
Acting Director of Property

APPROVED AS TO FORM:

DENNIS HERRERA
City Attorney

By: _____
Deputy City Attorney



AIR COMMERCIAL REAL ESTATE ASSOCIATION STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - GROSS

1. Basic Provisions ("Basic Provisions").

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only December 15, 2017

is made by and between Ares Commercial Properties, Inc.

("Lessor")

and Stephen M. Paoli

("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 167 Eleventh St., located in the City of San Francisco, County of San Francisco, State of California, with zip code 94103, as outlined on Exhibit _____ attached hereto ("Premises") and generally described as (describe briefly the nature of the Premises): The entire ground floor of said building.

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("Building") and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." (See also Paragraph 2)

1.2(b) **Parking:** 0 unreserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 **Term:** 3 years and 9 months ("Original Term") commencing December 15, 2017 ("Commencement Date") and ending September 30, 2021 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing n/a ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$ 2,500.00 per month ("Base Rent"), payable on the December 15, 2017 day of each month commencing December 15, 2017. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph _____

1.6 **Lessee's Share of Common Area Operating Expenses:** Fifty percent (50 %) ("Lessee's Share"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

(a) **Base Rent:** \$ 1,250.00 for the period December 15 through December 31, 2017.

(b) **Common Area Operating Expenses:** \$ 0.00 for the period _____.

(c) **Security Deposit:** \$ 2,500.00 ("Security Deposit"). (See also Paragraph 5)

(d) **Other:** \$ _____ for _____.

(e) **Total Due Upon Execution of this Lease:** \$ 3,750.00.

1.8 **Agreed Use:** Operation of a restaurant on a "pop up" basis.

(See also Paragraph 6)

1.9 **Insuring Party.** Lessor is the "Insuring Party". (See also Paragraph 8)

MP

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[Signature]

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1.10 **Real Estate Brokers:** (See also Paragraph 15 and 25)

(a) **Representation:** The following real estate brokers (the "**Brokers**") and brokerage relationships exist in this transaction (check applicable boxes):

- ☐ _____ represents Lessor exclusively ("**Lessor's Broker**");
☐ _____ represents Lessee exclusively ("**Lessee's Broker**"); or
☐ _____ represents both Lessor and Lessee ("**Dual Agency**").

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of _____ or _____ % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by _____ ("**Guarantor**"). (See also Paragraph 37)

1.12 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- ☒ an Addendum consisting of Paragraphs 48 _____ through 55 _____ ;
☐ a site plan depicting the Premises;
☐ a site plan depicting the Project;
☐ a current set of the Rules and Regulations for the Project;
☐ a current set of the Rules and Regulations adopted by the owners' association;
☐ a Work Letter;
☐ other (specify): _____

2. **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver that portion of the Premises contained within the Building ("**Unit**") to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("**Start Date**"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("**HVAC**"), loading doors, sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7). Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("**Capital**



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Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 Vehicle Parking. Lessee shall be entitled to use the number of Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "**Permitted Size Vehicles.**" Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 Common Areas - Definition. The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 Common Areas - Lessee's Rights. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers,



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contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 Common Areas - Rules and Regulations. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 Common Areas - Changes. Lessor shall have the right, in Lessor's sole discretion, from time to time:

- (a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;
- (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
- (c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;
- (d) To add additional buildings and improvements to the Common Areas;
- (e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and
- (f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

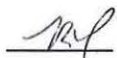
3.3 Delay In Possession. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 Lessee Compliance. Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent.

4.1. Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

4.2 Common Area Operating Expenses. Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this



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Lease, in accordance with the following provisions:

- (a) The following costs relating to the ownership and operation of the Project are defined as "Common Area Operating Expenses" :
- (i) Costs relating to the operation, repair and maintenance, in neat, clean, good order and condition, but not the replacement (see subparagraph (e)), of the following:
- (aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.
- (bb) Exterior signs and any tenant directories.
- (cc) Any fire sprinkler systems.
- (dd) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.
- (ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.
- (iii) The cost of trash disposal, pest control services, property management, security services, owner's association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.
- (iv) Reserves set aside for maintenance and repair of Common Areas and Common Area equipment.
- (v) Any increase above the Base Real Property Taxes (as defined in Paragraph 10).
- (vi) Any "Insurance Cost Increase" (as defined in Paragraph 8).
- (vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.
- (viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.
- (ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.
- (x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.


(e) Common Area Operating Expenses shall not include the cost of replacing equipment or capital components such as the roof, foundations, exterior walls or Common Area capital improvements, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(f) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any statement or invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.



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5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys'



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and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

7. **Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and



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whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

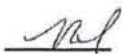
7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and



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Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Payment of Premium Increases.

(a) As used herein, the term "Insurance Cost Increase" is defined as any increase in the actual cost of the insurance applicable to the Building and/or the Project and required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), over and above the Base Premium, as hereinafter defined, calculated on an annual basis. Insurance Cost Increase shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. The term Insurance Cost Increase shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. The "Base Premium" shall be the annual premium applicable to the 12 month period immediately preceding the Start Date. If, however, the Project was not insured for the entirety of such 12 month period, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the Start Date, assuming the most nominal use possible of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

(b) Lessee shall pay any Insurance Cost Increase to Lessor pursuant to Paragraph 4.2. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

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(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value Insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

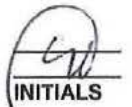
8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 Indemnity. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Lessor and its Agents from Liability. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or



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injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. **Damage or Destruction.**

9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of

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such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 Termination; Advance Payments. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. Real Property Taxes.

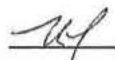
10.1 Definitions.

(a) **"Real Property Taxes."** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

(b) **"Base Real Property Taxes."** As used herein, the term "Base Real Property Taxes" shall be the amount of Real Property Taxes, which are assessed against the Premises, Building, Project or Common Areas in the calendar year during which the Lease is executed. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 Payment of Taxes. Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 Additional Improvements. Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other tenants or by Lessor for the



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exclusive enjoyment of such other Tenants. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 Joint Assessment. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 Personal Property Taxes. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities and Services. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

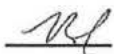
12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

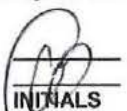
(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else



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responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

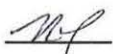
13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

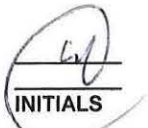
(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.



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(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to

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Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of the parking spaces is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

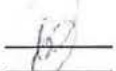
15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 Representations and Indemnities of Broker Relationships. Lessee and Lessor each represent and warrant to the other that it



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has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Days. Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.


20. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.



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23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

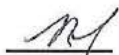
(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.



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27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project



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without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted any option, as defined below, then the following provisions shall apply.

39.1 **Definition.** "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

41. **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest"

and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. Offer. Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

48. Arbitration of Disputes. An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease

☐ is ☐ is not attached to this Lease.

49. Accessibility; Americans with Disabilities Act.

(a) The Premises: ☒ have not undergone an inspection by a Certified Access Specialist (CASp). ☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. ☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

(b) Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.



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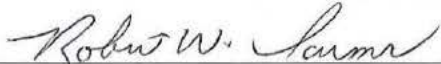
The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Novato, CA

On: 12.13.17

By LESSOR:

Ares Commercial Properties, Inc.

By: 

Name Printed: Robert W. Harms

Title: President

By: _____

Name Printed: _____

Title: _____

Address: 695 De Long Ave.

Suite 260

Novato, CA 94945

Telephone: (415) 899-1590

Facsimile: (415) 899-1594

Email: bhob@prodigy.net

Email: _____

Federal ID No. 94-1224708

Executed at: San Francisco, CA

On: 12/13/17

By LESSEE:

Stephen M. Paoli

By: 

Name Printed: Stephen M. Paoli

Title: _____

By: _____

Name Printed: _____

Title: _____

Address: 20 Barbaree Way

Tiburon CA 94920

Telephone: (415) 722-7163

Facsimile: ()

Email: _____

Email: _____

Federal ID No. 82-1991222

BROKER:

BROKER:

Att: _____

Title: _____

Address: _____

Telephone: ()

Facsimile: ()

Email: _____

Federal ID No. _____

Att: _____

Title: _____

Address: _____

Telephone: ()

Facsimile: ()

Email: _____

Federal ID No. _____



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Broker/Agent BRE License #: _____ Broker/Agent BRE License #: _____

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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ADDENDUM TO LEASE

By and between

Ares Commercial Properties, Inc. a California corporation, as Lessor and

Stephen M. Paoli, as Lessee

Property Address: 167 11th Street, San Francisco, CA 94103

This Addendum to Lease ("Addendum") is hereby incorporated into and made a part of that certain Standard Industrial/Commercial Single-Tenant Lease – Gross, dated December 5, 2017 (the "Lease"). Any capitalized terms employed but not defined in this Addendum shall have the meaning ascribed to them in the Lease. In the event of any conflict between the terms of the Lease and the terms of this Addendum, the terms of this Addendum shall control

48. **Mediation & Arbitration.** If any controversy or claim arises from or relates to this Lease, or the breach thereof, and if said controversy or claim cannot be settled through direct discussions between the parties to this Lease, such parties agree to first endeavor to settle the dispute in an amicable manner by mediation with a mutually acceptable mediator before either party may have recourse to arbitration. If the parties are unable to agree upon a mutually acceptable mediator, then either party may request that the San Francisco office of the Judicial Arbitration & Mediation Services ("JAMS") appoint a neutral mediator and the mediation shall be conducted under the Commercial Mediation Rules of JAMS then in effect.

If the mediation leaves any controversy or claim unresolved, then such continuing controversy or claim arising out of or related to this Lease, or the breach thereof, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of JAMS then in effect, coordinated through the San Francisco office of JAMS. The parties may otherwise agree at the time of the controversy or claim to (1) conduct such arbitration under different rules, and (2) before any mutually agreeable arbitrator(s), and (3) that such arbitration need not be coordinated or administered through JAMS. Any award of attorney's fees pursuant to Paragraph 31 or this Paragraph 66 herein is conditioned upon the "prevailing party" having attended the mediation called for above.

49. **Disability Access Improvement Obligations.** Pursuant to San Francisco Administrative Code Chapter 38, Lessor and Lessee agree to the provisions of this Paragraph to confirm their express agreement as to which party will make and pay for any improvements to the Premises or the Building that may be required by any applicable provisions of Title 28 Sections 36.304 and 36.305 of the Code of Federal Regulations and any similar state and local laws ("Required Disability Access Improvements"). Accordingly, Lessor and Lessee agree as follows: Lessee shall be obligated to make and pay for any Required Disability Access Improvements to the Premises to the extent triggered by Lessee's specific use of the Premises or any alterations performed by or on behalf of Lessee. Lessor shall be obligated to make and pay for any Required Disability Access Improvements to the Building to the extent the same are not the express obligation of Lessee as set forth in the immediately preceding sentence. Lessor may, in Lessor's sole and absolute discretion, elect to make any Required Disability Access Improvements that are the obligation of Lessee hereunder and in such case Lessee shall reimburse Lessor for all reasonable out-of-pocket related costs and expenses. Any Required Disability Access Improvements made and paid for by Lessor shall be included in "Basic Operating Costs" as defined in the Lease, except to the extent the same are subject to an exclusion set forth in the Lease. Lessor and Lessee further agree that each party will notify the other party if either makes alterations or other changes to the Premises or the Building that might impact accessibility under any applicable laws. The provisions of this Paragraph shall not limit the generality of other provisions of the Lease governing alterations and compliance with applicable laws.

49.1. Lessor and Lessee hereby acknowledge and agree that the Premises may be subject to, among other laws, the requirements of the Americans with Disabilities Act, which is a federal law that appears at 42 U.S.C. Sections 12101, et seq., including all requirements of the California Unruh Civil Rights Act (Civil Code Section 51 et seq.), the Disabled Persons Act (Civil Code Section 54 et seq.), and the building standards set forth in Title 24 of the California Code of Regulations, as the same may be in effect on the date of this Amendment and may be hereafter modified, amended or supplemented (collectively, the "ADA"). Lessor's and Lessee's obligations for compliance with the requirements of the ADA are as follows: If any disability access work or other work is required to the Premises under the ADA, then such work and the cost thereof shall be the responsibility of Lessee. Any alterations to be constructed under this Lease by Lessee shall be in full compliance with the requirements of the ADA, Lessee shall be solely responsible for conducting its own independent investigation of this matter and for ensuring that the design of all alterations strictly complies with all requirements of the ADA.

49.2. Except as otherwise expressly provided for in this Paragraph 49, Lessee shall be responsible at its sole cost and expense for fully and faithfully complying with all applicable requirements of the ADA including, without limitation, not discriminating against any disabled persons in the operation of Lessee's business in or about the Premises, and offering or otherwise providing auxiliary aids and services as, and when, required by the ADA. Lessee hereby agrees to use reasonable efforts to notify Lessor if Lessee makes any alterations or improvements to the Premises that might impact accessibility to the property of which the Premises is a part under any disability access laws.

49.3. Within ten (10) business days after receipt, Lessee shall advise Lessor in writing, and provide Lessor with copies of any notices alleging violation of the ADA relating to any portion of the Premises; any claims made or threatened orally or in writing regarding noncompliance with the ADA and relating to any portion of the Premises; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Premises.

49.4. Lessee hereby acknowledges and agrees that Lessor has delivered to Lessee, at least twenty-four (24) hours prior to execution of this Lease by Lessee, a copy of the "Disability Access Obligations Notice to Prospective Lessee" (the "**Notice**") attached hereto as **Exhibit A**, and that Lessee and Lessor have executed and delivered the same to each other at least twenty-four (24) hours prior to execution of this Lease. All references in the Notice to "lease" shall be deemed to mean this Lease. Lessee further hereby acknowledges and agrees that, at least twenty-four (24) hours prior to execution of this Lease by Lessee, Lessor delivered to Lessee a copy of the San Francisco Office of Small Business Access Information Brochure (the "**Access Information Brochure**") attached hereto as **Exhibit B**.

49.5. Lessee hereby agrees to defend, indemnify, and hold Lessor and the Premises free and harmless from and against any and all claims, costs (including reasonable attorneys' fees and costs), losses, damages, liabilities, judgments and awards, arising out of or relating in any manner to any alleged or actual violation(s) of ADA arising out of or in any manner related to Lessee's use, occupancy, business, and/or alteration(s) of the Premises, or any part thereof.

50. Tenant Improvements.

50.1. **Alterations.** In the event that Lessee intends make alterations to the Premises, Lessee shall comply with all San Francisco municipal ordinances for such use, including but

not limited to the San Francisco Building, Planning, Electrical, Plumbing, Fire, Mechanical and Health Codes. Lessee's initial tenant improvements ("Improvements") for the Premises, if any, shall meet or exceed the applicable code requirements of the City and County of San Francisco.

- 50.2. **Lessee's Contractor.** With respect to the Improvements, Lessee shall furnish Lessor with a true copy of Lessee's contract with a licensed general contractor, and evidence of liability insurance naming Lessor as additional insured, or certificate holder, as well as a true and correct copy of any/all contractors' worker's compensation insurance. All contractors must be licensed with the State of California. Lessee's contract with said general contractor shall provide that it is conditioned upon Lessor's reasonable approval and that Lessor shall have the right but not the obligation to assume Lessee's rights and obligations under such contract in the event Lessee should default. Prior to commencing construction of the Improvements, Lessee shall supply Lessor with a timetable showing Lessee's good faith estimate of the course of construction. Lessee shall notify Lessor of any and all material deviation from said timetable.
- 50.3. **Observation of Improvements.** Lessee shall provide sufficient on site observation of the construction of the Improvements at the Premises to ensure that the Improvements are completed in a workman-like manner.
- 50.4. **Insurance.** Lessee shall deliver to Lessor certificates of liability and construction risk insurance of its contractor, and evidence of adequate workers compensation insurance covering all persons employed in connection with the work of improvement. Lessee shall maintain and pay all premiums required to maintain such insurance at all times during which work is in progress.
- 50.5. **Cost of Improvements.** Lessee shall be responsible for the design and construction of its Improvements at Lessee's sole expense.
- 50.6. **No Structural Alterations Without Consent.** Lessee shall not make any structural alterations to the Premises without the prior written consent of Lessor, including but not limited to the removal of any load bearing walls. Lessor may withhold consent on the grounds that the structural alterations will require alterations in the Building and/or may require Lessee to pay all of the costs associated with the structural alterations both in the Premises and in the Building, at their sole discretion. Lessee shall notify Lessor prior to the removal of any wall so that Lessor or their representative can determine whether the wall is presently a load bearing wall.
51. **Early Termination.** In the event that Lessor conveys its interest in the Property at any time during the term of this Lease, Lessor's successor in interest shall have the unrestricted right to terminate this Lease without penalty upon thirty (30) days prior written notice to Lessee. Exercise of Lessor's termination right shall relieve Lessor of any obligation or liability to Lessee pursuant to Sections 2.3, 6.2, 8.2, 8.3, and 9 of this Lease.
52. **Modifications to Other Lease Terms.**

Section 12.1(g). **Vending Machines.** In the event that Lessor conveys its interest in the Property at any time during the term of this Lease, Lessor's successor in interest shall have the unrestricted right to have Lessee remove any/all vending machines, in Lessor's sole and complete discretion.

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Section 14. Condemnation. The following language is inserted and replaces the language in set forth in the fourth and fifth sentences of Section 14 of the printed form lease:

Waiver of Relocation Assistance Rights. Lessee shall not be entitled, to any rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Section 7260 et seq., or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect, and Lessee hereby waives any entitlement or claim to any such rights, benefits and privileges.

53. Counterparts. This Lease may be executed in counterparts, each of which, when so executed shall be deemed to be original and such counterparts together shall constitute and be one and the same instrument. The parties agree that if the signature of any party to this Lease is not an original, but is a digital, mechanical or electronic reproduction (such as, but not limited to, a photocopy, fax, e-mail, PDF, Adobe image, JPEG, telegram, telex or telecopy), then such digital, mechanical or electronic reproduction shall be as enforceable, valid and binding as, and the legal equivalent to, an authentic and traditional ink-on-paper original wet signature penned manually by its signatory.
54. Office of Foreign Assets Control ("OFAC") Representations. Lessor and Lessee (each, a "Representing Party") each represents and warrants to the other: (i) that neither the Representing Party nor any person or entity that directly owns a 10% or greater equity interest in it nor any of its officers, directors or managing members is a person or entity (each, a "Prohibited Person") with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the "Executive Order") signed on September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, (ii) that the Representing Party's activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the "Anti-Money Laundering Act"), and (iii) that throughout the term of this Lease the Representing Party shall comply with the Executive Order and with the Anti-Money Laundering Act.
55. Rent. Paragraph 1.5 of the Lease is hereby amended to include a 3% annual rent increase.

Dated: 12.13.17

Lessor:

ARES Commercial Properties, Inc.

By: Robert W. Harms
Name Printed: Robert W. Harms

Dated: 12/13/17

Lessee:

Stephen M. Paoli

By: STEVE M. PAOLI
Name Printed: [Signature]

EXHIBIT "A"
DISABILITY ACCESS OBLIGATIONS

NOTICE TO TENANT
DISABILITY ACCESS OBLIGATIONS UNDER
SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 38

Before you, as the Tenant, enter into this lease with us, the Landlord, for the following property: 167 11th Street, San Francisco, California (the "Property" or "Premises"), please be aware of the following important information about the lease:

You May Be Held Liable For Disability Access Violations On The Property. Even though you are not the owner of the Property, you, as the tenant, as well as the Property owner, may still be subject to legal and financial liabilities if the leased Property does not comply with applicable Federal and State disability access laws. You may wish to consult with an attorney prior to entering into this lease to make sure that you understand your obligations under Federal and State disability access laws. The Landlord must provide you with a copy of the Small Business Commission Access Information Notice under Section 38.6 of the Administrative Code in your requested language. For more information about disability access laws applicable to small businesses, you may wish to visit the website of the San Francisco Office of Small Business or call 415-554-6134.

The Lease Must Specify Who Is Responsible for Making Any Required Disability Access Improvements to the Property. Under City law, the lease must include a provision in which you, the Tenant, and the Landlord agree upon your respective obligations and liabilities for making and paying for required disability access improvements on the leased Property. The lease must also require you and the Landlord to use reasonable efforts to notify each other if they make alterations to the leased Property that might impact accessibility under federal and state disability access laws. You may wish to review these provisions with your attorney prior to entering into this lease to make sure you understand your obligations under the lease.

PLEASE NOTE: The Property may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits.

By signing below, I confirm that I have read and understood this Disability Access Obligations Notice, and that at least 24 hours prior to signing, I have been provided a copy of the Access Information Notice printed in the Lessee's native language (as required by San Francisco Administrative Code Chapter 38).

LESSEE: Stephen M. Paoli

Stephen M. Paoli

ML

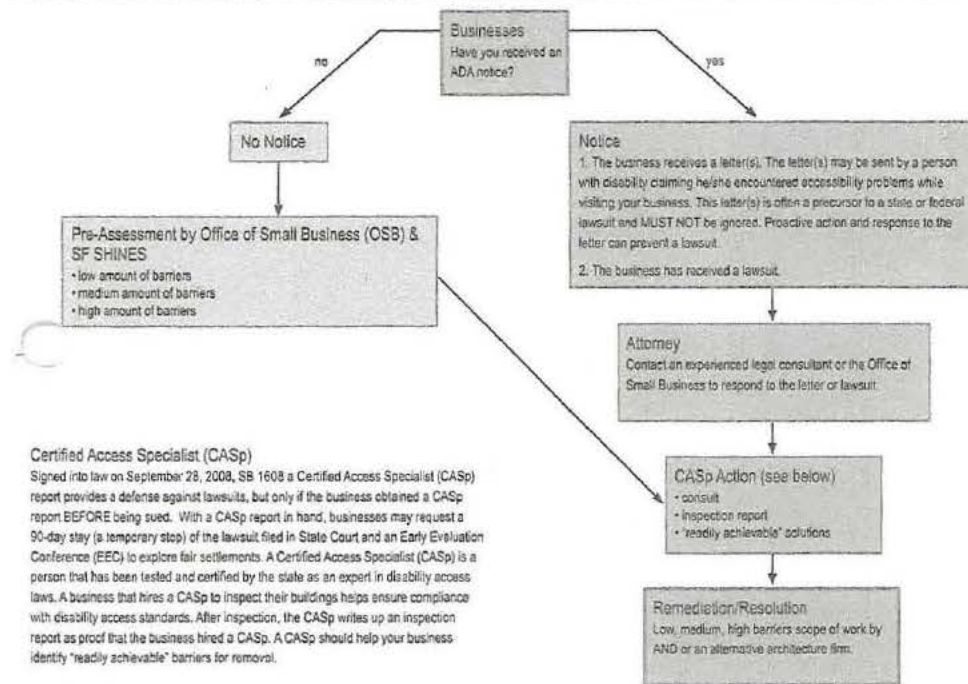
SP

Exhibit "B"

A Guide to Disabled Accessibility Compliance

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PROTECT YOUR BUSINESS FROM POTENTIAL ADA LAWSUITS



COMPLIANCE VS. LAWSUIT

Compliance is a recommended investment as not only will your business be less vulnerable to drive-by lawsuits, but you gain a growing market of seniors, families with baby strollers, and persons with disabilities. Cost will depend on the type of alterations, and on what is affordable at the present and future. If you decide to do nothing and rely on "luck" that you will not be sued, consider the potential costs of being an "unlucky" defendant. The reality today is that ADA lawsuits are targeting small stores and minority-owned businesses because they are likely to settle rather than incur the costs and risks of litigation. The average cost to comply with a plaintiff's requested barrier removal is less than \$4,000, according to amicus curiae brief filed in the Ninth Circuit case *Jerry Doran v. Del Taco, Inc.* Fighting a lawsuit including paying a settlement may cost around \$30,000, according to OSB. Investing in Certified Access Inspection and "readily achievable" compliance before a lawsuit is the best way to protect your business from expensive lawsuits.

BUSINESS RESOURCES

Office of Small Business
City Hall, room 110
1 Carlton B. Goodlett Place
San Francisco, CA 94102
415-554-6134, www.sfgov.org/osb

Certified Access Specialists
www.sfgov.org/casp

Asian Neighborhood Design
1245 Howard Street
San Francisco, CA 94103
415-675-0423, www.andel.org

SF Shines - Office of Economic
Workforce Development
City Hall, room 448
1 Carlton B. Goodlett Place
San Francisco, CA 94102
415-554-6969, www.oewd.org

San Francisco Bar Association
The Lawyer Referral and Information Service
(LRIS) program offers businesses legal
assistance from their panel of experienced
lawyers.
www.sfbabar.org/lawyerreferral/index.aspx

BUSINESS RESOURCES

Department of Justice ADA Guide for Small
Businesses
Business Briefs
www.ada.gov/business.htm#anchor-briefs
ADA Guide for Small Businesses
www.ada.gov/publicat.htm#Anchor-ADA-35326

DOJ toll-free ADA information line 800-514-0301

Department of Building Inspection - Technical Services
Division
DBI staff persons are available to review state access
requirements. Visit 1680 Mission Street, 4th floor to request a
review of your business plans.
415-558-6084, www.sfgov.org/dbi



A Guide to Disabled Accessibility Compliance

Small Business Commission Access Information Notice



Asian Neighborhood Design
1245 Howard Street
San Francisco, CA 94103
415-675-0423, www.andel.org

Office of Small Business
City Hall, room 110
1 Carlton B. Goodlett Place
San Francisco, CA 94102
415-554-6134, www.sfgov.org/osb

SF Shines - Office of Economic
Workforce Development
City Hall, room 448
1 Carlton B. Goodlett Place
San Francisco, CA 94102
415-554-6969, www.oewd.org



DISABLED ACCESSIBILITY

Two Sets of Access Laws

There are two different bodies of law in California that regulate disability access: a state building code, and a federal civil rights law. The state building code requirements for access are located in the California Code of Regulations, Title 24, Part 2, and are commonly referred to as Title 24.

The Americans with Disabilities Act of 1990 (ADA) is a sweeping federal civil rights law which prohibits discrimination against persons with disabilities. Specifically, Title III of the ADA requires public accommodations to provide goods and services to people with disabilities on an equal basis with the rest of the general public. The United States Department of Justice (DOJ) enforces the ADA.

Being compliant to the regulations of one law does not relieve your responsibilities to be compliant with the other set of laws.

Non Compliance

If the building is not compliant with California Title 24, the citizen complaint is routed to the Department of Building Inspection (DBI). DBI will send staff to visit the site and perform an inspection, and if necessary, the inspector will initiate actions to require the owner to correct the problem.

If the citizen's complaint is ADA driven, the plaintiff can take the business to civil court for remedy. The federal ADA does not have an "inspection" mechanism, and private lawsuits can be filed directly in federal courts by those who believe their civil rights have been violated.

Who is Required to Remove Barriers?

Barriers are defined by the ADA as obstacles to accessibility. Such obstacles make it difficult — sometimes impossible — for people with disabilities to do the things most of us take for granted — things like going shopping, working, dining in a restaurant or taking public transit. If your business provides goods and services to the public, you are required to remove barriers if doing so is "readily achievable." Such as business is called a public accommodation because it serves the public. If your business is not open to the public (no adjacent retail or open to tours), but is only a place of employment like a warehouse, manufacturing facility or office building, then there are fewer requirements to remove barriers. Such a facility is called a commercial facility. While the operator of a commercial facility has different requirements to remove barriers, you must comply with the ADA Standards for Accessible Design when you alter, renovate or expand your facility.

Readily Achievable

"Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. Determining if barrier removal is readily achievable is, by necessity, a case-by-case judgement. "Readily achievable" is based on factors including review of the overall nature of the business and its financial statements.

This document is intended as informal technical guidance.

It is NOT legal advice and does not replace the professional advice or guidance that an architect, CASp or attorney knowledgeable in ADA requirements can provide.

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LOW BARRIERS

obstacles to accessibility that are minor, and most likely can be "readily achievable"

A. Service Counter Height and Visibility

A portion specified by local codes of the counter must be between 28" - 34" above the floor.

B. Path of Travel Clearance

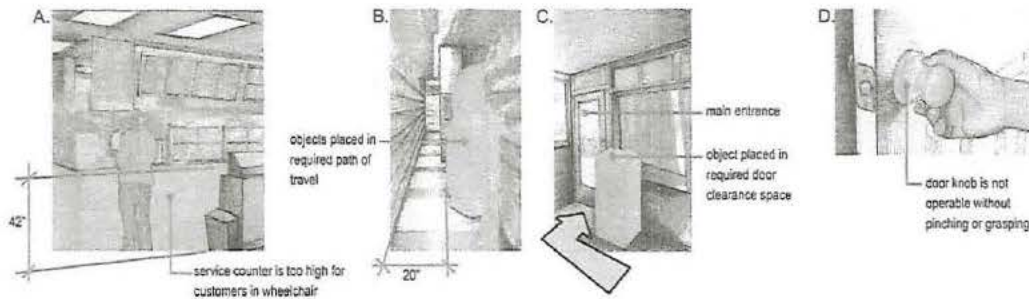
All aisles in public zones must be at least 36" wide and remain unobstructed.

C. Door Clearance

The pull side of doors must have a clearance specified by local codes.

D. Door Hardware

All doors must be operable without action of pinching or grasping.



MEDIUM BARRIERS

obstacles that require more attention, and likely professional guidance

A. Step at Entrance

The entrance must be accessible for occupants in wheelchairs, with sloping and clearance requirements specified by local codes.

B. Restroom Vanity Clearance

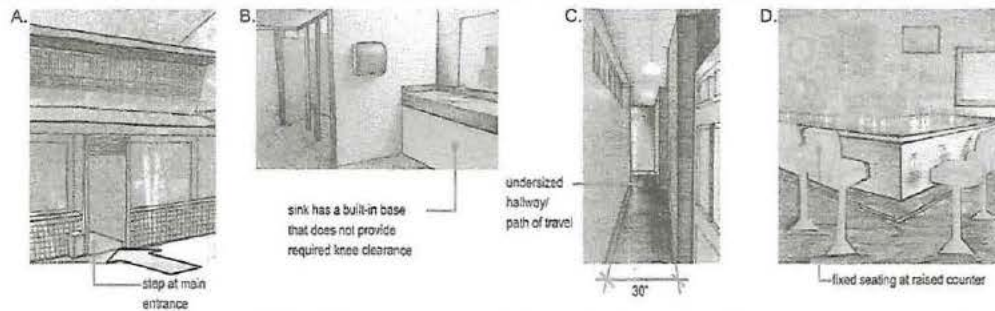
The sink must provide knee clearance specified by local codes.

C. Undersized Path of Travel

All aisles in public zones must be at least 36" wide.

D. No Accessible Seating

A portion specified by local codes of seating must be accessible.



HIGH BARRIERS

obstacles that require a lot of attention, and definite professional guidance

A. Multiple Steps at Entrance

The entrance must be accessible for occupants in wheelchairs, with sloping and clearance requirements specified by local codes.

B. Step in Dining/Counter Space

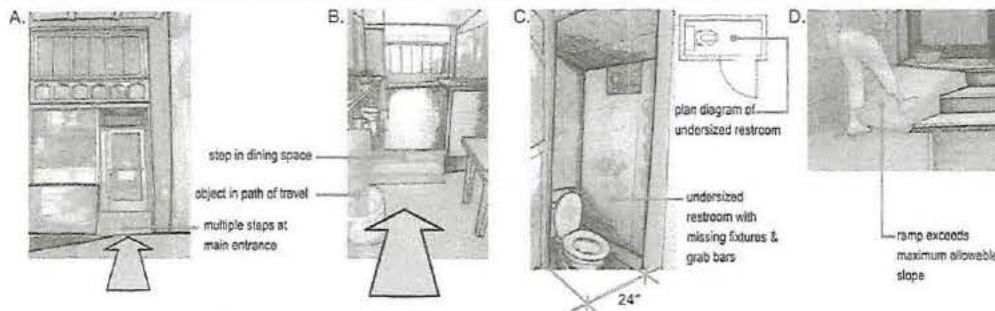
Public zones must be accessible for occupants in wheelchairs, see note A.

C. Undersized or Lack of Restroom

The correct number of accessible restrooms must be provided.

D. Ramp Exceeds Maximum Slope Allowed

The ramp must be accessible for occupants in wheelchairs, see note A.



ADA COMPLIANCE

barriers are minimized or removed

A. Compliant Entry

The entrance is accessible by stairs and a compliant ramp.

B. Path of Travel Clearance

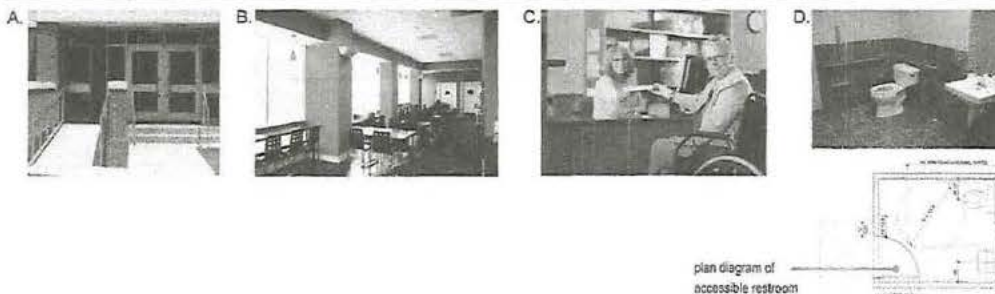
All aisles in public zones, including seating, restrooms, and food pick-up are at least 36" wide and remain unobstructed.

C. Compliant Counters

Service counter is between 28" - 34" above the floor.

D. Compliant Restroom

The accessible restroom has the required fixtures, dimensions and clearances.



COMMON MISCONCEPTIONS

I am exempt from compliance or "grandfathered"

The answer is "NO". A place of public accommodation must remove barriers when it is "readily achievable" to do so. Although the facility may be "grandfathered" according to the local building code, the federal ADA does not have a provision to "grandfather" a facility. While a local building authority may not require any modifications to bring a building "up to code" until a renovation or major alteration is done, the federal ADA requires that a place of public accommodation remove barriers that are readily achievable even when no alterations or renovations are planned. As a business you have an on-going obligation to bring your business into compliance.

I am exempt since my building has historic designation

Neither State nor Federal laws exempt historical buildings from compliance, but there are specific guidelines. In San Francisco, any building over 50 years old is considered as a potentially significant historical resource. Accessibility improvements to the entrance or exterior of these buildings may require additional review by Historic Preservation staff and may lengthen the permitting process. Another common misconception is that City staff will deny your application if the building is considered historic. This is extremely rare, though during the review process you will be required to find alternatives that respect historic designs and materials while also providing disabled access. Historically sensitive accessibility improvements may add cost to your project but are generally worth the investment over the long run.

Settling the lawsuit will relieve me of my responsibilities

Business owners need to know that the ADA is now a part of our society and that there is no limit to the number of times a business can be sued regarding accessible barriers. The best solution is to make the "readily achievable" physical changes and to understand that compliance is ongoing. If a business is sued over a physical barrier(s) to accessibility, they can still be sued for that same barrier in the future if it still exists.

Tenant vs. Landlord (Owner)

The federal ADA law states that any private entity who owns, leases, leases to, or operates a place of public accommodation shares in the obligation to remove barriers. Tenants and property owners also share in the obligation, so often times a negotiation must take place to determine who pays what costs, or percentage of costs for access compliance and/or litigation defense. Effective January 1, 2013, San Francisco law requires property owners of a commercial space of 7,500 square feet or less to provide a "Disabled Access Obligation Notice" before entering into or amending a lease. Effective July 1, 2013, State law requires a commercial property owner to state on a lease or rental agreement whether the property has undergone inspection by a certified access specialist (CASP). These two laws were passed to help ensure businesses are informed of their on-going obligation and aid in the prevention of lawsuits. There are also tax benefits that are available to each party in some cases to help pay for barrier removal.

AMENDED AND RESTATED
AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE

by and between

ARES COMMERCIAL PROPERTIES,, Inc.
A California corporation
as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,
as Buyer

For the purchase and sale of

Block 3510, Lots 035, 037, 039, 055 & 056
(11th Street between Minna and Natoma Streets)
San Francisco, California 94103

March 8, 2017

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- EXHIBIT H – Designation Agreement
- EXHIBIT I – Memorandum of Agreement

**AMENDED AND RESTATED
AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE**
(Block 3510, Lots 035, 037, 039, 055 & 056, San Francisco, CA 94103)
(11th Street between Minna and Natoma Streets)

THIS AMENDED AND RESTATED AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE (this "Agreement") dated for reference purposes only as of March 8, 2017 is by and between ARES COMMERCIAL PROPERTIES, Inc. a California corporation ("Seller"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Buyer" or "City").

IN CONSIDERATION of the payment of the non-refundable sum of Nine Million Seven Hundred Twenty Five Thousand and no/100 Dollars (\$9,725,000.00) by City, the receipt of which is hereby acknowledged by Seller, and the respective agreements contained hereinbelow, Seller and City agree as follows:

1. PURCHASE AND SALE

1.1 Property Included in Sale

Seller agrees to sell and convey to City, and City agrees to purchase from Seller, subject to the terms, covenants and conditions hereinafter set forth, the following:

(a) the real property consisting of approximately nineteen thousand five hundred (19,500) square feet of improved land, located in the City and County of San Francisco, commonly known as Block 3510, lots 035, 037, 039, 055 & 056. Sheet and more particularly described in Exhibit A attached h hereto (the "Land");

(b) all improvements and fixtures located on the Land, including, without limitation (i) as further detailed in Exhibit B, and (ii) those certain multi-story buildings containing approximately THIRTY NINE THOUSAND FIVE HUNDRED FORTY (39,540) square feet of net rentable area and known as 145 11th Street, 147 11th Street, 161-165 11th Street, 973 Minna Street, and 964 Natoma Street, as well as all other buildings and structures located on the Land, all apparatus, equipment and appliances used in connection with the operation or occupancy of the Land and its improvements such as heating and air conditioning systems and facilities used to provide any utility, refrigeration, ventilation, garbage disposal or other services, and together with all on-site parking (collectively, the "Improvements");

(c) any and all rights, privileges, and easements incidental or appurtenant to the Land or Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Land, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Land, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land or Improvements, and any and all of Seller's right, title and interest in and to all roads and alleys adjoining or servicing the Land or Improvements (collectively, the "Appurtenances");

(d) all personal property owned by Seller located on or in or used in connection with the Land or Improvements as of the date of this Agreement and as of the Closing Date (as defined in Section 6.2, Closing Date); and

All of the items referred to in Subsections (a), (b), (c), and (d) above are collectively referred to as the "Property."

2. PURCHASE PRICE

2.1 Purchase Price

The total purchase price for the Property is Nine Million Seven Hundred Twenty-Five Thousand Dollars (\$9,725,000.00) (the "Purchase Price").

2.2 Payment

On the Closing Date (as defined in Section 6.2 [Closing Date]), City shall pay the Purchase Price, adjusted pursuant to the provisions of Article 7 [Expenses and Taxes], and reduced by any credits due City hereunder.

Seller acknowledges and agrees that if Seller fails at Closing to deliver to City the documents required under Sections 6.3(h) and 6.3(i) [Seller's Delivery of Documents], City may be required to withhold a portion of the Purchase Price pursuant to Section 1445 of the United States Internal Revenue Code of 1986, as amended (the "Federal Tax Code"), or Section 18662 of the California Revenue and Taxation Code (the "State Tax Code"). Any amount properly so withheld by City shall be deemed to have been paid by City as part of the Purchase Price, and Seller's obligation to consummate the transaction contemplated herein shall not be excused or otherwise affected thereby.

2.3 Funds

All payments made by any party hereto shall be in legal tender of the United States of America, paid by cash or by wire transfer of immediately available funds to Title Company (as defined below), as escrow agent.

3. TITLE TO THE PROPERTY

3.1 Conveyance of Title to the Property

At the Closing Seller shall convey to City, or its nominee, marketable and insurable fee simple title to the Land, the Improvements and the Appurtenances, by duly executed and acknowledged grant deed in the form attached hereto as Exhibit C (the "Deed"), subject to the Accepted Conditions of Title (as defined in Section 3.2 [Title Insurance]).

3.2 Title Insurance

Delivery of title in accordance with the preceding Section shall be evidenced by the commitment of Stewart Title Guarantee Company (the "Title Company") to issue to City, or its nominee, an ALTA extended coverage owner's policy of title insurance (Form B - 1970 amended 4-6-90) (the "Title Policy") in the amount of the Purchase Price, insuring fee simple title to the Land, the Appurtenances and the Improvements in City, or its nominee, free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, creditors' claims, rights of tenants or other occupants (except for the tenants under existing leases disclosed to City without any rights or options to purchase any of the Property), and all other exceptions, liens and encumbrances except solely for the Accepted Conditions of Title pursuant to Section 5.1(a) below. The Title Policy shall provide full coverage against mechanics' and materialmen's liens arising out of the construction, repair or alteration of any of the Property, shall not contain any exclusion from coverage for creditor's rights or bankruptcy, and shall contain an affirmative endorsement that there are no violations of restrictive covenants, if any, affecting the Property such special endorsements as City may reasonably request. The Title Policy shall also provide

for reinsurance with direct access with such companies and in such amounts as City may reasonably request.

3.3 Bill of Sale

At the Closing Seller shall transfer title to the Personal Property by bill of sale in the form attached hereto as Exhibit D (the "Bill of Sale"), such title to be free of any liens, encumbrances or interests.

3.4 Assignment of Leases

At the Closing Seller shall transfer its title to the Leases by an assignment of leases in the form attached hereto as Exhibit E (the "Assignment of Leases"), such title to be free of any liens, encumbrances or interests, except for the Accepted Conditions of Title.

4. BUYER'S DUE DILIGENCE INVESTIGATIONS

4.1 Due Diligence and Time for Satisfaction of Conditions

City has been given a full opportunity to investigate the Property, either independently or through agents of City's own choosing, including, without limitation, the opportunity to conduct such appraisals, inspections, tests, audits, verifications, inventories, investigations and other due diligence regarding the economic, physical, environmental, title and legal conditions of the Property as City deems fit, as well as the suitability of the Property for City's intended uses. City agrees that it has completed its due diligence investigations on the Property and that the period for completion of all such investigations (the "Due Diligence Period") has expired.

4.2 Energy Consumption

City acknowledges and agrees that Seller delivered the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and Facility Summary (all as defined in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1680) for the Property, copies of which are attached as Schedule 1 to this Agreement, no less than 24 hours prior to City's execution of this Agreement.

5. ENTRY

During the Due Diligence Period and at all times prior to the Closing Date Seller shall afford City and its Agents reasonable access to the Property and all books and records located therein for the purposes of satisfying City with respect to the representations, warranties and covenants of Seller contained herein and the satisfaction of the Conditions Precedent including, without limitation, the drilling of test wells and the taking of soil borings. City hereby agrees to indemnify and hold Seller harmless from any damage or injury to persons or property caused by City or its Agents during any such entries onto the Property prior to the Closing, except to the extent such damage or injury is caused by the acts or omissions of Seller or any of its Agents. The foregoing Indemnity shall not include any claims resulting from the discovery or disclosure of pre-existing environmental conditions or the non-negligent aggravation of pre-existing environmental conditions on, in, under or about the Property, including the Improvements. Seller understands and agrees that any indemnity obligation of City in this Agreement shall not be enforceable unless and until the Effective Date has occurred. City agrees to provide that Seller will be a third party beneficiary under any contract City enters into for due diligence

investigations on the Property during the Due Diligence Period. In the event this Agreement is terminated for any reason other than Seller's default hereunder, City shall restore the Property to substantially the condition it was found subject to applicable laws. This indemnity shall survive the termination of this Agreement or the Closing, as applicable, provided that Seller must give notice of any claim it may have against City under such indemnity (i) within six (6) months of such termination if the claim is brought by a third party against Seller or (ii) within three (3) months of such termination or the Closing Date, as applicable, if the claim involves damage to Seller's Property or any other claim not brought by a third party against the Seller.

5.1 City's Conditions to Closing

The following are conditions precedent to City's obligation to purchase the Property (collectively, "Conditions Precedent"):

(a) City shall have reviewed and approved title to the Property, as follows:

(i) Within five (5) days after the date this Agreement is executed by Seller and approved as to form by City's Office of the City Attorney ("Approved as to Form Date"), Seller shall deliver to City a current extended coverage preliminary report on the Real Property, issued by Title Company, accompanied by copies of all documents referred to in the report (collectively, the "Preliminary Report");

(ii) Within the period referred to in clause (i) above, Seller shall deliver to Buyer copies of any existing or proposed easements, covenants, restrictions, agreements or other documents that affect the Property, and are not disclosed by the Preliminary Report, or, if Seller knows of no such documents, a written certification of Seller to that effect; and

(iii) City may at its option arrange for an "as-built" survey of the Real Property and Improvements prepared by a licensed surveyor (the "Survey"). Such survey shall be acceptable to, and certified to, City and Title Company and in sufficient detail to provide the basis for and the Title Policy without boundary, encroachment or survey exceptions.

City shall advise Seller, prior to the end of the Due Diligence period, what exceptions to title, if any, City is willing to accept (the "Accepted Conditions of Title"). City's failure to so advise Seller within such period shall be deemed disapproval of title. Seller shall have ten (10) days after receipt of City's notice of any objections to title to give City: (A) evidence satisfactory to City of the removal of all objectionable exceptions from title or that such exceptions will be removed or cured on or before the Closing; or (B) notice that Seller elects not to cause such exceptions to be removed. If Seller gives notice under clause (B), City shall have ten (10) business days to elect to proceed with the purchase or terminate this Agreement. If City shall fail to give Seller notice of its election within such ten (10) days, City shall be deemed to have elected to terminate this Agreement. If Seller gives notice pursuant to clause (A) and fails to remove any such objectionable exceptions from title prior to the Closing Date, and City is unwilling to take title subject thereto, Seller shall be in default hereunder and City shall have the rights and remedies provided herein or at law or in equity.

(b) City's review and approval, within the Due Diligence Period, of the physical and environmental conditions of the Property, including, without limitation, structural, mechanical, electrical and other physical conditions of the Property.

(c) City's review and approval, within the Due Diligence Period, of the environmental condition of the Property, including an examination for the presence or absence of any Hazardous Material (as defined in Section 8.1(j)). City shall be responsible for performing or

arranging any such reviews at City's expense, provided that if City's consultants reasonably determine that, based upon their Phase I examination, a Phase II examination is necessary with respect to all or a part of the Real Property, City may elect to perform a Phase II examination.

If any of City's investigations reveal any contamination of the Property with any Hazardous Material, then City may, at its sole election, by written notice to Seller on or before the end of the Due Diligence Period: (i) request that Seller, at Seller's sole cost, complete before the Closing through duly licensed contractors approved by City such activities as are necessary to cleanup, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Material located on or under the Property in compliance with all governmental laws, rules, regulations and requirements and in accordance with a written remediation plan approved by City in its sole discretion and by all regulatory agencies with jurisdiction; or (ii) provide City with a credit against the Purchase Price for the full cost estimated by City to remediate the Hazardous Materials, including without limitation testing and consultants costs (the "Hazardous Materials Credit"). If City notifies Seller of its election to request that Seller remediate the contamination as provided in clause (i) above, Seller shall have fifteen (15) days after receipt of City's notice, to elect, at Seller's sole option, to provide City with: (iii) Seller's election to remediate the contamination before the Closing pursuant to clause (i) above; or (iv) Seller's election to provide the Hazardous Materials Credit. Seller's failure to provide notice to Buyer within such fifteen (15)-day period shall be deemed notice of Seller's agreement to the Hazardous Material Credit under clause (iv) above. If Seller chooses to remediate the contamination as provided in clause (iii) above the Closing may be extended for a reasonable time to enable Seller to complete such remediation, provided any such extension shall be subject to City's prior written approval, which City may give or withhold in its sole discretion. Seller shall indemnify City for any claims relating to the remediation of such Hazardous Material pursuant to a separate written agreement in form and substance satisfactory to City.

(d) City's review and approval, within the Due Diligence Period, of the compliance of the Property with all applicable laws, regulations, permits and approvals.

(e) City's review and approval, within the Due Diligence Period, of (i) the following documents, all to the extent such documents exist and are either in the possession or control of Seller or may be obtained by Seller through the exercise of commercially reasonable efforts: structural calculations for the Improvements; site plans; certified copies of the as-built plans and specifications for the Improvements; recent inspection reports by Seller's engineers; service contracts; utility contracts; maintenance contracts; employment contracts, management contracts; brokerage and leasing commission agreements which may continue after Closing; certificates of occupancy; presently effective warranties or guaranties received by Seller from any contractors, subcontractors, suppliers or materialmen in connection with any construction, repair or alteration of the Improvements or any tenant improvements; insurance policies, insurance certificates of tenants, and reports of insurance carriers insuring the Property and each portion thereof respecting the claims history of the Property; environmental reports, studies, surveys, tests and assessments; soils and geotechnical reports; and any other contracts or documents of significance to the Property (collectively, the "Documents"); and (ii) such other information relating to the Property that is specifically requested by City of Seller in writing during the Due Diligence Period (collectively, the "Other Information").

(f) City's review and approval, within the Due Diligence Period, of all the Tenants rent payment histories for the three (3) most recent calendar years prior to Closing, all to the extent such documents exist and are either in the possession or control of Seller or may be obtained by Seller through the exercise of commercially reasonable efforts.

(g) City's review and approval, within the Due Diligence Period, of Seller's Tax Return, and income and expense statements for the Property for the three (3) most recent

calendar years prior to Closing to the extent such income and expense statements exist and are either in the possession or control of Seller or may be obtained by Seller through the exercise of commercially reasonable efforts.

(h) City's confirmation at Closing of: (i) those certain leases and other occupancy agreements affecting the Property and identified in Schedule 1 of the Exhibit E, Assignment of Leases ("Leases"), and (ii) a current rent roll for the Property, prepared by Seller, all to the extent such documents exist and are either in the possession or control of Seller or may be obtained by Seller through the exercise of commercially reasonable efforts. In the event any lease, license, or other occupancy agreement other than the Leases affects the Property at the time of Closing and has not been previously approved in writing by City in its sole discretion, then the Condition Precedent described in this Section 5.1(h) shall have failed and City may terminate or pursue other available remedies as set forth in this Agreement, in its sole discretion.

(i) Seller's obtaining and delivering to City, before the Closing Date, tenant estoppel certificates in form and substance satisfactory to City from any and all tenants occupying any portion of the Property. Such certificates shall be substantially in the form attached hereto as Exhibit F and shall be dated no earlier than thirty (30) days prior to the Closing Date. Notwithstanding the foregoing, to the extent Seller is unable, despite its best efforts, to obtain estoppel certificates from no more than one (1) tenant, Seller shall be obligated to, warrant and represent to City, with respect to such missing estoppel certificates, as of the date represented and warranted: (A) that the Leases for those tenants are in full force and effect; (B) the amount of the tenants' security deposits; (C) the dates through which rent has been paid; (D) that neither any of those tenants nor Seller is in default under the Leases; and (E) the lease expiration date and the terms of any options to extend, if any City shall be obligated to accept such a certification in lieu of any such missing estoppel certificates. The representations and warranties in the certificate of Seller shall survive the Closing.

(j) Seller shall not be in default in the performance of any covenant or agreement to be performed by Seller under this Agreement, and all of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date. At the Closing Seller shall deliver to City a certificate certifying that each of Seller's representations and warranties contained in Section 8.1 [Representations and Warranties of Seller] below are true and correct as of the Closing Date.

(k) The physical condition of the Property shall be substantially the same on the Closing Date as on the date of City's execution of this Agreement, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Section 9.1 [Risk of Loss]), and, as of the Closing Date, there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, which after the Closing would materially adversely affect the value of the Property or the ability of City to operate the Property for its intended use, and no proceedings shall be pending or threatened which could or would cause the change, redesignation or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Property.

(l) Title Company shall be committed at the Closing to issue to City, or its nominee, (i) the Title Policy as provided in Section 3.2 [Title Insurance] and (ii) an ALTA extend coverage policy of leasehold title insurance in the amount of the Purchase Price, subject only to the Accepted Conditions of Title together with the same endorsements as the Title Policy.

(m) City's receipt and acceptance of funds issued by the State of California intended to fund the acquisition of the Property.

(n) The transactions contemplated herein shall have been approved by all applicable City departments and agencies, including, without limitation, the Recreation and Parks Commission.

(o) The City's Mayor and the Board of Supervisors, in the respective sole discretion of each, shall have enacted a resolution approving, adopting and authorizing this Agreement and the transactions within seventy five (75) days of the expiration of the Due Diligence Period.

(p) Seller shall have delivered the items described in Section 6.3 below [Seller's Delivery of Documents] on or before the Closing.

The Conditions Precedent contained in the foregoing Subsections (a) through (p) are solely for the benefit of City. If any Condition Precedent is not satisfied, City shall have the right in its sole discretion either to waive in writing the Condition Precedent in question and proceed with the purchase or, in the alternative, terminate this Agreement, provided that the Conditions Precedent described in items (n) and (o) above may not be waived. The waiver of any Condition Precedent shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller. If City shall not have approved or waived in writing all of the Conditions Precedent in items (a) through (h) by the end of the Due Diligence Period, then this Agreement shall automatically terminate. In addition, the Closing Date may be extended, at City's option, for a reasonable period of time specified by City (but not to exceed 90 days), to allow such Conditions Precedent to be satisfied, subject to City's further right to terminate this Agreement upon the expiration of the period of any such extension if all such Conditions Precedent have not been satisfied.

In the event the sale of the Property is not consummated because of a default under this Agreement on the part of Seller or if a Condition Precedent cannot be fulfilled because Seller frustrated such fulfillment by some affirmative act or negligent omission, City may, at its sole election, either (1) terminate this Agreement by delivery of notice of termination to Seller, whereupon Seller shall pay to City any title, escrow, inspection fees incurred by City and any other expenses incurred by City in connection with the performance of its due diligence review of the Property, and neither party shall have any further rights or obligations hereunder, or (2) continue this Agreement pending City's action for specific performance and/or damages hereunder, including, without limitation, City's costs and expenses incurred hereunder.

5.2 Cooperation with City

Seller shall cooperate with City and do all acts as may be reasonably requested by City with regard to the fulfillment of any Conditions Precedent including, without limitation, execution of any documents, applications or permits, but Seller's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any Condition Precedent. Seller hereby irrevocably authorizes City and its Agents to make all inquiries with and applications to any person or entity, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations.

6. ESCROW AND CLOSING

6.1 Opening of Escrow

On or before the Effective Date (as defined in Article 11 [General Provisions]), the parties shall open escrow by depositing an executed counterpart of this Agreement with Title Company, and this Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and City agree to

execute such additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

6.2 Closing Date

Up until the first year anniversary of the Effective Date (the "Notice Period"), Seller may notify City in writing (the "Seller's Closing Notice") that it desires to consummate the purchase and sale contemplated hereby (the "Closing"). If such notice has not been received by City prior to expiration of the Notice Period, the date of Seller's Closing Notice shall be the first anniversary of the Effective Date. The Closing shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of Title Company located at 100 Pine St., Suite 450, San Francisco, CA 94111, on the thirtieth (30th) day after the date of Seller's Closing Notice or such earlier date as City and Seller may mutually agree (the "Closing Date"), provided that the Due Diligence Period has expired and subject to the provisions of Article 5 [Conditions Precedent]. The Closing Date may not be extended without the prior written approval of both Seller and City, except as otherwise expressly provided in this Agreement. In the event the Closing does not occur on or before the Closing Date, Title Company shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return to the depositor thereof items which may have been deposited hereunder. Any such return shall not, however, limit the provisions hereof or otherwise relieve either party hereto of any liability it may have for its wrongful failure to close.

6.3 Seller's Delivery of Documents

At or before the Closing, Seller shall deliver to City through escrow, the following:

- (a) a duly executed and acknowledged Deed;
- (b) duly executed Bill of Sale;
- (c) four (4) duly executed and acknowledged counterparts of the Assignment of Leases;
- (d) duly executed tenant estoppel certificates as required pursuant to Section 5.1(g) hereof;
- (e) originals of the Documents, Leases and any other items relating to the ownership or operation of the Property not previously delivered to City;
- (f) a properly executed affidavit pursuant to Section 1445(b)(2) of the Federal Tax Code in the form attached hereto as Exhibit G, and on which City is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code;
- (g) a properly executed California Franchise Tax Board Form 590 certifying that Seller is a California resident if Seller is an individual or Seller has a permanent place of business in California or is qualified to do business in California if Seller is a corporation or other evidence satisfactory to City that Seller is exempt from the withholding requirements of Section 18662 of the State Tax Code;
- (h) such resolutions, authorizations, or other corporate documents or agreements relating to Seller and its shareholders as City or the Title Company may reasonably

require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller;

- (i) closing statement in form and content satisfactory to City and Seller; and
- (j) the duly executed certificate regarding the continued accuracy of Seller's representations and warranties as required by Section 5.1 hereof.

6.4 City's Delivery of Documents and Funds

At or before the Closing, City shall deliver to Seller through escrow the following:

- (a) an acceptance of the Deed executed by City's Director of Property;
 - (b) four (4) duly executed [and acknowledged] counterparts of the Assignment of Leases;
 - (c) a closing statement in form and content satisfactory to City and Seller;
- and
- (d) the Purchase Price, as provided in Article 2 hereof.

6.5 Other Documents

Seller and City shall each deposit such other instruments as are reasonably required by Title Company as escrow holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof, including, without limitation, an agreement (the "Designation Agreement") designating Title Company as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Federal Tax Code and the regulations promulgated thereunder, and executed by Seller, City and Title Company. The Designation Agreement shall be substantially in the form attached hereto as Exhibit H and, in any event, shall comply with the requirements of Section 6045(e) of the Federal Tax Code and the regulations promulgated thereunder.

7. EXPENSES AND TAXES

7.1 Rent and Other Apportionments

The following are to be apportioned through escrow as of the Closing Date:

- (a) **Rent**

Rent under the Leases shall be apportioned as of the Closing Date, regardless of whether or not such rent has been paid to Seller. With respect to any rent arrearage arising under the Leases, after the Closing, City shall pay to Seller any rent actually collected which is applicable to the period preceding the Closing Date; provided, however, that all rent collected by City shall be applied first to all unpaid rent accruing on and after the Closing Date, and then to unpaid rent accruing prior to the Closing Date. City shall not be obligated to take any steps to recover any rent arrearage, and Seller shall not be permitted to do so.

(b) Lease Costs

Seller shall pay all leasing commissions and tenant improvement costs accrued in connection with any Lease executed on or before the Closing (including, without limitation, leasing commissions attributable to expansion or extension options which are not exercised until after the Closing). City shall be entitled to a credit against the Purchase Price for the total sum of all security deposits paid to Seller by tenants under any Leases, and any interest earned thereon, as well as for any free rent, operating expense abatements, or other unexpired concessions under any Leases to the extent they apply to any period after the Closing.

(c) Other Tenant Charges

Where the Leases contain tenant obligations for taxes, common area expenses, operating expenses or additional charges of any other nature, and where Seller shall have collected any portion thereof in excess of amounts owed by Seller for such items for the period prior to the Closing Date, there shall be an adjustment and credit given to City on the Closing Date for such excess amounts collected. City shall apply all such excess amounts to the charges owed by City for such items for the period after the Closing Date and, if required by the Leases, shall rebate or credit tenants with any remainder. If it is determined that the amount collected during Seller's ownership period exceeded expenses incurred during the same period by more than the amount previously credited to City at Closing, then Seller shall promptly pay the deficiency to City.

(d) Utility Charges

Seller shall cause all the utility meters to be read on the Closing Date, and will be responsible for the cost of all utilities used prior to the Closing Date. All utility deposits paid by Seller shall remain the property of Seller and City shall reasonably cooperate to cause such deposits to be returned to Seller to the extent Seller is entitled thereto.

(e) Other Apportionments

Amounts payable under any contracts assumed pursuant hereto, annual or periodic permit or inspection fees (calculated on the basis of the period covered), and liability for other normal Property operation and maintenance expenses and other recurring costs shall be apportioned as of the Closing Date.

7.2 Closing Costs

City shall pay the cost of the Survey, the premium for the Title Policy and the cost of the endorsements thereto, and escrow and recording fees. City shall pay the cost of any transfer taxes applicable to the sale. Seller shall be responsible for all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured by the Property including, without limitation, any prepayment fees, penalties or charges. Any other costs and charges of the escrow for the sale not otherwise provided for in this Section or elsewhere in this Agreement shall be allocated in accordance with the closing customs for San Francisco County, as determined by Title Company.

7.3 Real Estate Taxes and Special Assessments

General real estate taxes payable for the tax year prior to year of Closing and all prior years shall be paid by Seller at or before the Closing. General real estate taxes payable for the tax year of the Closing shall be prorated through escrow by Seller and City as of the Closing Date. At or before the Closing, Seller shall pay the full amount of any special assessments

against the Property, including, without limitation, interest payable thereon, applicable to the period prior to the Closing Date.

7.4 Preliminary Closing Adjustment

Seller and City shall jointly prepare a preliminary Closing adjustment on the basis of the Leases and other sources of income and expenses, and shall deliver such computation to Title Company prior to Closing.

7.5 Post-Closing Reconciliation

If any of the foregoing prorations cannot be calculated accurately on the Closing Date, then they shall be calculated as soon after the Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent prorations shall promptly pay such sum to the other party.

7.6 Survival

The provisions of this Section shall survive the Closing.

8. REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of Seller

Seller represents and warrants to and covenants with City as follows:

(a) To the best of Seller's knowledge, there are now, and at the time of the Closing will be, no material physical or mechanical defects of the Property, and no violations of any laws, rules or regulations applicable to the Property, including, without limitation, any earthquake, life safety and handicap laws (including, but not limited to, the Americans with Disabilities Act).

(b) The Leases, Documents and Other Information furnished to City are all of the relevant documents and information pertaining to the condition and operation of the Property to the extent available to Seller, and are and at the time of Closing will be true, correct and complete copies of such documents and the Leases are and at the time of Closing will be in full force and effect, without default by (or notice of default to) any party.

(c) No document or instrument furnished or to be furnished by the Seller to the City in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

(d) Seller does not have knowledge of any condemnation, either instituted or planned to be instituted by any governmental or quasi-governmental agency other than City, which could detrimentally affect the use, operation or value of the Property.

(e) To Seller's knowledge, all water, sewer, gas, electric, telephone, and drainage facilities and all other utilities required by law or by the normal use and operation of the Property are and at the time of Closing will be installed to the property lines of the Property and are and at the time of Closing will be adequate to service the Property.

(f) There are no easements or rights of way which have been acquired by prescription or which are otherwise not of record with respect to the Property, and there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Property to gain access to other real property. There are no disputes with regard to the location of any fence or other monument of the Property's boundary nor any claims or actions involving the location of any fence or boundary.

(g) There is no litigation pending or, after due and diligent inquiry, to the best of Seller's knowledge, threatened, against Seller or any basis therefor that arises out of the ownership of the Property or that might detrimentally affect the use or operation of the Property for its intended purpose or the value of the Property or the ability of Seller to perform its obligations under this Agreement.

(h) Seller is the legal and equitable owner of the Property, with full right to convey the same, and without limiting the generality of the foregoing, Seller has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Property.

(i) Seller is a corporation duly organized and validly existing under the laws of the State of California and is in good standing under the laws of the State of California; this Agreement and all documents executed by Seller which are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by Seller, are, or at the Closing will be, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, are, and at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

(j) Seller represents and warrants to City that it has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Seller has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(k) Seller knows of no facts nor has Seller failed to disclose any fact that would prevent City from using and operating the Property after Closing in the normal manner in which it is intended. Notwithstanding such representation, Seller makes no warranty regarding City's intended use of the Property.

(l) Seller hereby represents and warrants to and covenants with City that the following statements are true and correct and will be true and correct as of the Closing Date: (i) the Property to the best of Seller's knowledge is not in violation of any Environmental Laws; (ii) the Property is not now, nor to the best of Seller's knowledge has it ever been, used in any manner for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except as described in Schedule 1 ("Seller's Environmental Disclosure"); (iii) there has been no release and there is no threatened release of any Hazardous Material in, on, under or about the Property; (iv) there have not been and there are not now any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under the Property, or if there have been or are any such tanks or wells located on the Property, their location, type, age and content has been specifically identified in Seller's Environmental Disclosure, they have been properly registered with all appropriate authorities, they are in full compliance with all applicable statutes, ordinances and

regulations, and they have not resulted in the release or threatened release of any Hazardous Material into the environment. (v) the Property does not consist of any landfill or of any building materials that contain Hazardous Material; and (vi) the Property is not subject to any claim by any governmental regulatory agency or third party related to the release or threatened release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Property, or the migration of Hazardous Material from or to other property. As used herein, the following terms shall have the meanings below:

(i) "Environmental Laws" shall mean any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Property, including, without limitation, soil, air and groundwater conditions.

(ii) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Improvements or are naturally occurring substances on or about the Property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

(iii) "Release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under or about the Property. Release shall include, without limitation, "release" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

(m) There are now, and at the time of Closing will be, no occupancy agreements affecting any of the Property except the Leases. At the time of Closing there will be no outstanding written or oral contracts made by Seller for any of the Improvements that have not been fully paid for and Seller shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Property prior to the time of Closing. There are no obligations in connection with the Property which will be binding upon City after Closing except for matters which are set forth in the Preliminary Report and except for the Leases.

(n) Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

(o) There are no free rent, operating expense abatements, incomplete tenant improvements, rebates, allowances, or other unexpired concessions (collectively referred to as "Offsets") or any termination, extension, cancellation or expansion rights under any existing or

pending Leases (with the exception of those summarized in Schedule attached hereto); and all of the Leases are absolutely net (including the full pass-through of management fees), except for replacement of major capital items, such as roof, foundation and structural components. Seller has paid in full any of landlord's leasing costs incurred by Seller in connection with any tenant improvements.

(p) No brokerage or similar fee is due or unpaid by Seller with respect to any Lease. No brokerage or similar fee shall be due or payable on account of the exercise of, without limitation, any renewal, extension or expansion options arising under any Leases.

(q) The copies of the Leases delivered by Seller to City on or before the commencement of the Due Diligence Period contain all of the information pertaining to any rights of any parties to occupy the Property, including, without limitation, all information regarding any rent concessions, over-standard tenant improvement allowances or other inducements to lease. None of the tenants of the Property has indicated to Seller either orally or in writing its intent to terminate its respective Lease prior to expiration of the respective term of such Lease.

8.2 Indemnity

Seller, on behalf of itself and its successors and assigns, hereby agrees to indemnify, defend and hold harmless City, its Agents and their respective successors and assigns, from and against any and all liabilities, claims, demands, damages, liens, costs, penalties, losses and expenses, including, without limitation, reasonable attorneys' and consultants' fees, resulting from any misrepresentation or breach of warranty or breach of covenant made by Seller in this Agreement or in any document, certificate, or exhibit given or delivered to City pursuant to or in connection with this Agreement. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material. The indemnification provisions of this Section shall survive beyond the Closing, or, if title is not transferred pursuant to this Agreement, beyond any termination of this Agreement.

9. RISK OF LOSS AND POSSESSION

9.1 Risk of Loss

If any of the Property is damaged or destroyed prior to the Closing Date, or if condemnation proceedings are commenced against any of the Property, then the rights and obligations of Seller and City hereunder shall be as follows:

(a) If such damage or destruction is fully covered by Seller's insurance except for the deductible amount thereunder, and the insurer agrees to timely pay for the entire cost of such repair, and such damage or destruction would cost less than the Purchase Price of Ten Million Dollars (\$10,000,000.00) (the "Threshold Damage Amount") to repair or restore, then this Agreement shall remain in full force and effect and City shall acquire the Property upon the terms and conditions set forth herein. In such event, City shall receive a credit against the Purchase Price equal to such deductible amount, and Seller shall assign to City at Closing all of Seller's right, title and interest in and to all proceeds of insurance on account of such damage or destruction (the "Insurance Proceeds") pursuant to an instrument satisfactory to City.

(b) If such damage or destruction is not fully covered by Seller's insurance, other than the deductible amount, and would cost less than the Threshold Damage Amount to repair or restore, then the transaction contemplated by this Agreement shall be consummated

with City receiving a credit against the Purchase Price at the Closing in an amount reasonably determined by Seller and City (after consultation with unaffiliated experts) to be the cost of repairing such damage or destruction.

(c) If the cost of such damage or destruction would equal or exceed the Threshold Damage Amount, then, City shall have the right, at its election, to terminate this Agreement in its entirety. City shall have thirty (30) days after Seller notifies City that an event described in this Subsection (c) has occurred to make such election by delivery to Seller of an election notice. City's failure to deliver such notice within such thirty (30)-day period shall be deemed City's election to terminate this Agreement in its entirety. If this Agreement is terminated in its entirety or in part pursuant to this Subsection (c) by City's delivery of notice of termination to Seller, then City and Seller shall each be released from all obligations hereunder pertaining to that portion of the Property affected by such termination. If City elects not to terminate this Agreement, City shall receive a credit against the Purchase Price equal to such deductible amount, and Seller shall assign to City at Closing all of the Insurance Proceeds.

9.2 Insurance

Through the Closing Date, Seller shall maintain or cause to be maintained, at Seller's sole cost and expense, a policy or policies of property insurance in amounts equal to the full replacement value of the Improvements and the Personal Property, insuring against all insurable risks, including, without limitation, fire, vandalism, malicious mischief, lightning, windstorm, and other perils customarily covered by casualty insurance and the costs of demolition and debris removal. Seller shall furnish City with evidence of such insurance upon request by City.

9.3 Possession

Possession of the Property shall be delivered to City on the Closing Date.

10. MAINTENANCE; CONSENT TO NEW CONTRACTS

10.1 Maintenance of the Property by Seller

Between the date of Seller's execution of this Agreement and the Closing, Seller shall maintain the Property in good order, condition and repair, reasonable wear and tear excepted, shall perform all work required to be done by the landlord under the terms of any Lease, and shall make all repairs, maintenance and replacements of the Improvements and any Personal Property and otherwise operate the Property in the same manner as before the making of this Agreement, as if Seller were retaining the Property.

10.2 City's Consent to New Contracts Affecting the Property; Termination of Existing Contracts

After the date the Director of Property submits legislation for approval by City's Board of Supervisors of this Agreement, Seller shall not enter into any Lease or contract, or any amendment thereof, or permit any tenant of the Property to enter into any sublease, assignment or agreement pertaining to the Property, or waive any rights of Seller under any Lease or Assumed Contract, without in each instance obtaining City's prior written consent thereto which consent maybe withheld if the term extends beyond the Closing Date. City agrees that it shall not unreasonably withhold or delay any such consent for any lease which will expire 30 days prior to the Closing Date. Seller shall terminate prior to the Closing, at no cost or expense to City, any and all management agreements affecting the Property that City does not agree in writing prior to the Closing to assume.

11. GENERAL PROVISIONS

11.1 Notices

Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, against receipt, (ii) one (1) day after being deposited with a reliable overnight courier service, or (iii) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

City:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property
Re: **11th Street Open Space**
Facsimile No.: (415) 552-9216

with copy to:

Elizabeth A. Dietrich
Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Re: **11th Street Open Space**

Seller:

Robert Harms, President
Ares Commercial Properties
695 DeLong Avenue, Suite 260
Novato, CA 94945
Facsimile No.: (415) 899-1594

With a copy to:

Matthew Wertheim, Esq.
2135 Lombard Street
San Francisco, CA 94123
Facsimile No.: (415) 775-8955

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above. For convenience of the parties, copies of notices may also be given by telefacsimile, to the telephone number listed above, or such other numbers as may be provided from time to time. However, neither party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

11.2 Brokers and Finders

Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, 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 purchase and sale contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim shall be

responsible for such commi. n or fee and shall indemnify and hold mless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive the Closing.

11.3 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. City shall have the right, upon notice to Seller, to assign its right, title and interest in and to this Agreement to one (1) or more assignees at any time before the Closing Date.

11.4 Amendments

Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by City and Seller.

11.5 Continuation and Survival of Representations and Warranties

All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Closing, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond any termination of this Agreement. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Seller in conjunction with the transaction contemplated hereby shall constitute representations and warranties hereunder.

11.6 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11.7 Merger of Prior Agreements

The parties intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings including, without limitation, the Offer to Purchase between the parties hereto. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

11.8 Parties and Their Agents; Approvals

The term "Seller" as used herein shall include the plural as well as the singular. If there is more than one (1) Seller, then the obligations under this Agreement imposed on Seller shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party. All approvals, consents or other determinations permitted or required by City hereunder shall be

made by or through City's Director of Property unless otherwise provided herein, subject to applicable law.

11.9 Interpretation of Agreement

The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

11.10 Attorneys' Fees

In the event that either party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Agreement, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

11.11 Sunshine Ordinance

Seller understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. Seller hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

11.12 Conflicts of Interest

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

aware of any such fact during the term of this Agreement, Seller shall immediately notify the City.

11.13 Notification of Limitations on Contributions

Through its execution of this Agreement, Seller acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Seller acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Seller further acknowledges that the prohibition on contributions applies to each Seller; each member of Seller's board of directors, and Seller's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Seller; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Seller. Additionally, Seller acknowledges that Seller must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Seller further agrees to provide to City the names of each person, entity or committee described above.

11.14 Non-Liability of City Officials, Employees and Agents

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Seller, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Seller, its successors and assigns, or for any obligation of City under this Agreement.

11.15 Memorandum of Agreement

At any time on or after the Effective Date, the parties, upon City's request, shall execute and acknowledge a memorandum hereof, on the form attached hereto as Exhibit I, which will be recorded in the Official Records of the County in San Francisco, California.

11.16 Counterparts

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

11.17 Effective Date

As used herein, the term "Effective Date" shall mean the date on which the City's Board of Supervisors and Mayor enact a resolution approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

11.18 Severability

If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Agreement, or the

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

11.19 Agreement Not to Market Prior to Effective Date

Seller agrees that unless and until this Agreement terminates pursuant to its terms, Seller shall not negotiate with any other parties pertaining to the sale of the Property and shall not market the Property to third parties.

11.20 Acceptance of Agreement by Seller

This Agreement shall be null and void unless Seller accepts it and returns to City four (4) fully executed counterparts hereof on or before 5:00 p.m. San Francisco Time on March 20, 2017.

11.21 Cooperative Drafting.

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

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SELLER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH LEGISLATION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

11.22 Original Agreement.

City and Seller acknowledge and agree that this Agreement supercedes and replaces in its entirety that certain Agreement of Purchase and Sale for Real Estate between Seller and City dated as of June 10, 2016 regarding the purchase of the Property for the purchase price of Ten Million Dollars (\$10,000,000) (the "Original Agreement"). The Original Agreement was executed by Seller and conditionally approved by City's Recreation and Park Commission, but was not approved by City's Board of Supervisors and was not executed by City. City and Seller agree that the terms and conditions of the Original Agreement have no force or effect.

[SIGNATURES ON FOLLOWING PAGES]

The parties have d executed this Agreement as of the res ive dates written below.

SELLER:

ARES COMMERCIAL PROPERTIES,
a California corporation

By: Robert Harms
Its: President

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
JOHN UPDIKE
Director of Property

Date: 12/8/17

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Elizabeth A. Dietrich
Deputy City Attorney

Title Company agrees to act as escrow holder in accordance with the terms of this Agreement and to execute the Designation Agreement (attached hereto as Exhibit I) and act as the Reporting Person (as such term is defined in the Designation Agreement). Title Company's failure to execute below shall not invalidate the Agreement between City and Seller.

TITLE COMPANY:

STEWART TITLE GUARANTY COMPANY

By: _____
Its: _____

Date: _____

EXHIBIT A

REAL PROPERTY DESCRIPTION

All that certain real property located in the County of San Francisco, State of California, described as follows:

PARCEL ONE:

BEGINNING at a point on the northwesterly line of Natoma Street, distant thereon 100 feet northeasterly from the northeasterly line of Eleventh Street; running thence northeasterly along said line of Natoma Street 50 feet; thence at a right angle northwesterly 75 feet; thence at a right angle southwesterly 50 feet; thence at a right angle southeasterly 75 feet to the point of beginning.

BEING portion of MISSION BLOCK NO. 6.

PARCEL TWO:

BEGINNING at a point on the southeasterly line of Minna Street, distant thereon 100 feet northeasterly from the northeasterly line of Eleventh Street; running thence northeasterly along said line of Minna Street 41 feet and 8 inches; thence at a right angle southeasterly 80 feet; thence at a right angle southwesterly 41 feet and 8 inches; thence at a right angle northwesterly 80 feet to the point of beginning.

BEING portion of MISSION BLOCK NO. 6.

PARCEL THREE:

BEGINNING at the point of intersection of the northeasterly line of Eleventh Street and the northwesterly line of Natoma Street; running thence northwesterly along said line of Eleventh Street 125 feet; thence at a right angle northeasterly 100 feet; thence at a right angle southeasterly 125 feet to the northwesterly line of Natoma Street; thence at a right angle southwesterly along last mentioned line 100 feet to the point of beginning.

BEING portion of MISSION BLOCK NO. 6.

Assessor's Block 3510, Lots 035, 037, 039, 055 & 056

EXHIBIT B

REAL PROPERTY DETAILS

[TO COME FROM SELLER]

EXHIBIT C

GRANT DEED

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

The undersigned hereby declares this instrument to be
exempt from Recording Fees (CA Govt. Code § 27383)
and Documentary Transfer Tax (CA Rev. & Tax Code
§ 11922 and S.F. Bus. & Tax Reg. Code § 1105)

(Space above this line reserved for Recorder's use only)

GRANT DEED

(Assessor's Parcel No. _____)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Ares Commercial Properties, a California corporation, hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof (the "Property").

TOGETHER WITH any and all rights, privileges and easements incidental or appurtenant to the Property, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Property, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Property, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land and all of Grantor's right, title and interest in and to any and all roads and alleys adjoining or servicing the Property.

[SIGNATURES ON FOLLOWING PAGE]

Executed as of this _____ dth of _____, 20____.

ARES COMMERCIAL PROPERTIES,
a California corporation

By: Robert Harms
Its: President

Date: _____

State of California

County of San Francisco

) ss
)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the foregoing Grant Deed to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

By: _____
John Updike
Director of Property

EXHIBIT D
BILL OF SALE

For good and valuable consideration the receipt of which is hereby acknowledged, Ares Commercial Properties, a California corporation ("Seller"), does hereby sell, transfer and convey to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Buyer"), all personal property owned by Seller and located on or in or used in connection with the Land and Improvements (as such terms are defined in that certain Agreement of Purchase and Sale of Real Estate dated as of _____, 20____, between Seller and Buyer (or Buyer's predecessor in interest), including, without limitation, those items described in Schedule 1 attached hereto.

Seller does hereby represent to Buyer that Seller is the lawful owner of such personal property, that such personal property is free and clear of all encumbrances, and that Seller has good right to sell the same as aforesaid and will warrant and defend the title thereto unto Buyer, its successors and assigns, against the claims and demands of all persons whomsoever.

DATED this _____ day of _____, 20____.

SELLER:

ARES COMMERCIAL PROPERTIES,
a California corporation

By: Robert Harms
Its: President

Date: _____

EXHIBIT E

ASSIGNMENT OF LEASES

THIS ASSIGNMENT is made and entered into as of this ____ day of _____, 20____, by and between Ares Commercial Properties, a California corporation ("Assignor"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Assignee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date (as defined below), Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, claim and interest in and under certain leases executed with respect to that certain real property commonly known as _____ (the "Property") as more fully described in Schedule 1 attached hereto (collectively, the "Leases").

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. Assignor represents and warrants that as of the date of this Assignment and the Effective Date the attached Schedule 1 includes all of the Leases and occupancy agreements affecting any of the Property. As of the date hereof and the Effective Date, there are no assignments of or agreements to assign the Leases to any other party.
2. Assignor hereby agrees to indemnify Assignee against and hold Assignee harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), originating prior to the Effective Date (as defined below) and arising out of the landlord's obligations under the Leases.
3. Except as otherwise set forth in the Purchase Agreement (as defined below), effective as of the Effective Date (as defined below), Assignee hereby assumes all of the landlord's obligations under the Leases and agrees to indemnify Assignor against and hold Assignor harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), originating on or subsequent to the Effective Date (as defined below) and arising out of the landlord's obligations under the Leases.
4. Any rental and other payments under the Leases shall be prorated between the parties as provided in the Purchase Agreement between Assignor, as Seller, and Assignee, as City, dated as of _____ (the "Purchase Agreement").
5. In the event of any litigation between Assignor and Assignee arising out of this Assignment, the losing party shall pay the prevailing party's costs of litigation, including, without limitation, reasonable attorneys' fees and costs.
6. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.
7. This Assignment shall be governed by and construed in accordance with the laws of the State of California.
8. For purposes of this Assignment, the "Effective Date" shall be the date of the Closing (as defined in the Purchase Agreement).

9. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

Assignor and Assignee have executed this Assignment as of _____ day and year first written above.

ASSIGNOR:

ARES COMMERCIAL PROPERTIES,
a California corporation

By: Robert Harms
Its: President

Date: _____

ASSIGNEE:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
JOHN UPDIKE
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
[DEPUTY'S NAME]
Deputy City Attorney

SCHEDULE 1

EXHIBIT E ASSIGNMENT OF LEASES

1. Standard Industrial/Commercial Single-Tenant Lease – Gross
Dated October 28, 2005
Tenant: Adventure Ambassadors, a California corporation
Premises: 964 Natoma Street, San Francisco
Term: through June 30, 2018
Amendments: First Amendment to Lease dated as of December 3, 2008; Second Amendment to Lease dated as of June 25, 2009; Third Amendment to Lease dated as of May 3, 2010; Fourth Amendment to Lease dated as of April 16, 2012; and Fifth Amendment to Lease dated as of February 23, 2015
2. Standard Industrial/Commercial Single-Tenant Lease – Gross
Dated September 24, 1991
Tenant: Hinshaw Supply Company of California, Inc.
Premises: 145-147 Eleventh Street, San Francisco
Term: month-to-month
Lease Addenda: (1) dated September 24, 1991; (2) dated September 4, 1996; (3) dated September 20, 2006; (4) dated September 26, 2011; and (5) dated October 4, 2011
3. Standard Industrial/Commercial Single-Tenant Lease – Gross
Dated September 19, 2016
Tenant: Dixon and Moe LLC, a California limited liability company
Premises: 165 11th Street, San Francisco
Term: through September 30, 2019
Lease Addenda: (1) dated September 19, 2016

EXHIBIT F

TENANT'S ESTOPPEL CERTIFICATE

DATE: _____

TENANT:

PREMISES:

LEASE DATE:

COMMENCEMENT DATE:

EXPIRATION DATE:

TERM IN MONTHS:

DATE RENT AND OPERATING EXPENSE
PARKING:

PAYMENTS ARE DUE:

OPTIONS: Check if you have any of these
options or rights, and provide details in
Sections 5 or 9 below.

_____ Extension Option
_____ Termination Option
_____ Expansion Option
_____ Purchase Option

CURRENT MONTHLY PAYMENTS:

BASE RENTAL:

TAXES:

OP. EXP. CAP:

_____ Check here if you have rental escalations and provide details in Section 6 below:

SECURITY DEPOSIT:

THE UNDERSIGNED, AS TENANT OF THE ABOVE REFERENCED PREMISES
("PREMISES") UNDER THE LEASE DATED AS OF THE ABOVE-REFERENCED LEASE
DATE, BETWEEN _____
("LANDLORD") AND TENANT, HEREBY CERTIFIES, REPRESENTS AND WARRANTS

TO THE CITY AND COUNTY OF SAN FRANCISCO ("CITY"), AND ITS ASSIGNEES, AS FOLLOWS:

1. Accuracy. All of the information specified above and elsewhere in this Certificate is accurate as of the date hereof.
2. Lease. The copy of the Lease attached hereto as Exhibit A is a true and correct copy of the Lease. The Lease is valid and in full force and effect. The Lease contains all of the understandings and agreements between Landlord and Tenant and has not been amended, supplemented or changed by letter agreement or otherwise, except as follows (if none, indicate so by writing "NONE" below):
3. Premises. The Premises consist of _____, and Tenant does not have any options to expand the Premises except as follows (if none, indicate so by writing "NONE" below):
4. Acceptance of Premises. Tenant has accepted possession of the Premises and is currently occupying the Premises. There are no unreimbursed expenses due Tenant including, but not limited to, capital expense reimbursements.
5. Lease Term. The term of the Lease commenced and will expire on the dates specified above, subject to the following options to renew or rights to terminate the Lease (if none, indicate so by writing "NONE" below):
6. Rental Escalations. The current monthly base rental specified above is subject to the following escalation adjustments (if none, indicate so by writing "NONE" below):
7. No Defaults/Claims. Neither Tenant nor Landlord under the Lease is in default under any terms of the Lease nor has any event occurred which with the passage of time (after notice, if any, required under the Lease) would become an event of default under the Lease. Tenant has no claims, counterclaims, defenses or setoffs against Landlord arising from the Lease, nor is Tenant entitled to any concession, rebate, allowance or free rent for any period after this certification. Tenant has no complaints or disputes with Landlord regarding the overall operation and maintenance of the property within which the Premises are located (the "Property"), or otherwise.
8. No Advance Payments. No rent has been paid in advance by Tenant except for the current month's rent.
9. No Purchase Rights. Tenant has no option to purchase, or right of first refusal to purchase, the Premises, the Property or any interest therein (if none, indicate so by writing "NONE" below):
10. Notification by Tenant. From the date of this Certificate and continuing until, Tenant agrees to notify City immediately of the occurrence of any event or the discovery of any fact that would make any representation contained in this Certificate inaccurate as of the date hereof or as of any future date.
11. No Sublease/Assignment. Tenant has not entered into any sublease, assignment or any other agreement transferring any of its interest in the Lease or the Premises.
12. No Notice. Tenant has not received notice of any assignment, hypothecation, mortgage, or pledge of Landlord's interest in the Lease or the rents or other payments payable thereunder, except those listed below (if none, indicate so by writing "NONE" below):

13. Hazardous Materials. Tenant has not used, treated, stored, disposed of or released any Hazardous Materials on or about the Premises or the Property. Tenant does not have any permits, registrations or identification numbers issued by the United States Environmental Protection Agency or by any state, county, municipal or administrative agencies with respect to its operation on the Premises, except for any stated below, and except as stated below no such governmental permits, registrations or identification numbers are required with respect to Tenant's operations on the Premises. For the purposes hereof, the term "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids, and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

14. Reliance. Tenant recognizes and acknowledges it is making these representations to City with the intent that City, and any of its assigns, will fully rely on Tenant's representations.

15. Binding. The provisions hereof shall be binding upon and inure to the benefit of the successors, assigns, personal representatives and heirs of Tenant and City.

16. Due Execution and Authorization. The undersigned, and the person(s) executing this Certificate on behalf of the undersigned, represent and warrant that they are duly authorized to execute this Certificate on behalf of Tenant and to bind Tenant hereto.

EXECUTED BY TENANT ON THE DATE FIRST WRITTEN ABOVE.

By:

[NAME]

[TITLE]

By:

[NAME]

[TITLE]

EXHIBIT G

**CERTIFICATE OF TRANSFEROR
OTHER THAN AN INDIVIDUAL
(FIRPTA Affidavit)**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the transferee of certain real property located in the City and County of San Francisco, California, that withholding of tax is not required upon the disposition of such U.S. real property interest by Ares Commercial Properties, Inc., a California Corporation ("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor's U.S. employer identification number is 94-1224708 and
3. Transferor's office address is 695 Delong Avenue, Suite 260, Novato, CA 94945.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Dated: _____, 20__.

On behalf of:

ARES COMMERCIAL PROPERTIES,
a California corporation

By: Robert Harms
Its: President

EXHIBIT H

DESIGNATION AGREEMENT

This DESIGNATION AGREEMENT (the "Agreement") dated as of _____, 20____, is by and between Ares Commercial Properties, a California corporation ("Seller"), the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), and STEWART TITLE GUARANTY COMPANY ("Title Company").

A. Pursuant to that certain Purchase Agreement entered into by and between Seller and City, dated _____, 20____ (the "Purchase Agreement"), Seller has agreed to sell to City, and City has agreed to purchase from Seller, certain real property located in City and County of San Francisco, California, more particularly described in Exhibit A attached hereto (the "Property"). The purchase and sale of the Property is sometimes hereinbelow referred to below as the "Transaction").

B. Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the "Reporting Requirements") require an information return to be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Transaction.

C. Pursuant to Subsection 2(b)(i) of the Purchase Agreement, an escrow has been opened with Title Company, Escrow No. _____, through which the Transaction will be or is being accomplished. Title Company is either (i) the person responsible for closing the Transaction (as described in the Reporting Requirements) or (ii) the disbursing title or escrow company that is most significant in terms of gross proceeds disbursed in connection with the Transaction (as described in the Reporting Requirements).

D. Seller, City and Title Company desire to designate Title Company as the "Reporting Person" (as defined in the "Reporting Requirements") with respect to the Transactions.

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

1. Title Company is hereby designated as the Reporting Person for the Transaction. Title Company shall perform all duties that are required by the Reporting Requirements to be performed by the Reporting Person for the Transaction.

2. Seller and City shall furnish to Title Company, in a timely manner, any information requested by Title Company and necessary for Title Company to perform its duties as Reporting Person for the transaction.

3. Title Company hereby requests Seller to furnish to Title Company Seller's correct taxpayer identification number. Seller acknowledges that any failure by Seller to provide Title Company with Seller's correct taxpayer identification number may subject Seller to civil or criminal penalties imposed by law. Accordingly, Seller hereby certifies to Title Company, under penalties of perjury, that Seller's correct taxpayer identification number is 94-1224708.

4. The names and addresses of the parties hereto are as follows:

SELLER:

Attn: _____
Facsimile No.: () _____

CITY:

Director of Property
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Facsimile No.: (415) 552-9216

TITLE COMPANY:

Attn: _____
Facsimile No.: () _____

5. Each of the parties hereto shall retain this Agreement for a period of four (4) years following the calendar year during which the date of closing of the Transaction occurs.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date and year first above written.

SELLER:

ARES COMMERCIAL PROPERTIES,
a California corporation

By: Robert Harms
Its: President

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
JOHN UPDIKE
Director of Property

Date: _____

Title Company:

STEWART TITLE GUARANTY COMPANY

Date: _____

By: _____

Its: _____

EXHIBIT I

MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property

The undersigned hereby declares this instrument to be
exempt from Recording Fees (CA Govt. Code § 27383)
and Documentary Transfer Tax (CA Rev. & Tax Code
§ 11922 and S.F. Bus. & Tax Reg. Code § 1105)

(Space above this line reserved for Recorder's use only)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT dated as of _____, 20____, is by
and between Ares Commercial Properties, a California corporation ("Seller"), and the CITY
AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City").

1. Seller is the owner of certain real property located in the City and County of
San Francisco, California, commonly known as _____,
more particularly described in Exhibit A
attached to and incorporated by this reference in this Memorandum of Agreement (the "Real
Property").
2. Seller and City have entered into that certain unrecorded Agreement for the
Purchase and Sale of Real Estate dated as of _____, 20____ incorporated by this
reference into this Memorandum (the "Agreement"), pursuant to which Seller agreed to sell, and
City agreed to purchase, the Real Property upon all the terms and conditions set forth in the
Agreement.
3. The purpose of this Memorandum of Agreement is to give notice of the
Agreement and the respective rights and obligations of the parties thereunder, and all of the
terms and conditions of the Agreement are incorporated herein by reference as if they were fully
set forth herein.
4. This Memorandum of Agreement shall not be deemed to modify, alter or amend
in any way the provisions of the Agreement. In the event any conflict exists between the terms
of the Agreement and this instrument, the terms of the Agreement shall govern and determine for
all purposes the relationship between Seller and City and their respective rights and duties.
5. This Memorandum of Agreement shall be binding upon, and shall inure to the
benefit of, the parties hereto and their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of
Agreement as of the date first written above.

SELLER:

ARES COMMERCIAL PROPERTIES,
a California corporation

By: Robert Harms
Its: President

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
JOHN UPDIKE
Director of Property

Date: _____

[SIGNATURES ON FOLLOWING PAGE]

State of California

County of San Francisco

) ss
)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California

County of San Francisco

) ss
)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

SCHEDULE 1

ENERGY DISCLOSURE DOCUMENTS




OFFICE OF THE CITY ADMINISTRATOR



London N. Breed, Mayor
Naomi M. Kelly, City Administrator

MEMORANDUM

TO: All City agencies and tenants

FROM: Naomi M. Kelly 
City Administrator

CC: Matt Hansen, Director of Risk Management
Andrico Penick, Director of Property

SUBJECT: City Policy Regarding Enforcement of Certain Tenant Lease Obligations by City Departments From March 17, 2020 through April 30, 2020 ("Policy")

DATE: March 27, 2020

Background

The policy described below (this "Policy") is prompted by the remarkably rapid developments in the recognition of and reaction to the COVID-19 pandemic. Two of the most impactful developments for the City's economy over the last two weeks include the March 16 Order by Mayor London Breed instituting shelter-in-place requirements to slow the spread of the disease and the March 17 Order by Mayor Breed declaring a 30-day moratorium on commercial evictions related to financial impacts caused by COVID-19 for small and medium-sized businesses that have less than \$25 million in annual gross receipts (the "Eviction Moratorium Order").

Many City agencies lease space to private tenants for a variety of business and recreational uses. In keeping with the spirit of the broad moratorium under the Eviction Moratorium Order, the City now wishes to issue further guidance so that affected tenants can have confidence in being able to retain their leasehold while they use their financial reserves on immediately pressing operational needs to retain employees and remain viable to the maximum extent possible. This Policy is directive to all General Fund agencies with private tenants (each, a "City Landlord Agency"). Mayor Breed encourages City enterprise agencies with private tenants to pursue similar tenant relief actions as appropriate to their respective portfolios.

It is important to note that this Policy is a baseline for Citywide action regarding leases within the geographic boundaries of San Francisco. Individual agencies may target additional relief policies beyond these terms (including but not limited to extended payment dates and relief for those classes of tenant otherwise excepted below) based on each agency's mission and the financial situation of each agency in relation to their respective tenant portfolios. Every business saved will help the City's recovery when the spread of the disease is curbed enough to allow the economy to regain its footing.

Policy

1. Summary:

Under this Policy, to the extent not otherwise prevented by law or the City's own obligations to its lenders, trustees, bond holders and/or taxing agencies, City Landlord Agencies are directed to waive all late charges, default interest and associated penalties and fees for any delinquent rent payments that were or are due for use of City property for commercial purposes within San Francisco city limits during the period of March 17 through April 30, 2020 due to the impact of COVID-19. City Landlord Agency staff are also directed to follow the policies and timeframes set forth in the Eviction Moratorium Order with respect to the initiation of any default enforcement or eviction process due to the failure to pay rent owed under any commercial lease due to the impact of COVID-19 while the Eviction Moratorium Order is in effect.

2. Lease Obligations and Payment Provisions:

The relief offered by this Policy is contingent upon the tenant's continued compliance with all lease obligations other than the payment of rent (such as maintenance and repair obligations, percentage rent reporting obligations and obligations to pay taxes). Subject to any extension of these deadlines and/or additional relief targeted by individual City Landlord Agencies as noted in sections 3 and 4 below, this Policy requires tenant's resumption of normal timely rent payments on May 1, 2020 and payment of any rent arrearages (including for March and April 2020) in full no later than June 30, 2020. Any amounts not paid in full as of June 30, 2020 (or such later date as set forth under any subsequent relief program approved by the tenant's City Landlord Agency) would then be subject to interest and penalties from and after that date.

The forbearance program outlined in this Policy does not change the terms or conditions of any lease or other agreement. Further, this policy will not affect ongoing lease enforcement actions or lease enforcement actions for defaults not related to the current emergency. For any tenant claiming the benefit of force majeure or similar provisions in its lease, those provisions will control.

3. Agency Action:

The City has a range of agencies that lease property to private entities, and these agencies have differing authority for leasing property. City Landlord Agencies are directed to take all actions necessary to implement this Policy, to the extent further action is needed.

4. **Further Tenant Relief:**

This Policy is intended as a temporary emergency measure to provide clarity to the City's tenants. Each City Landlord Agency will monitor the performance of its tenants during this time and will determine whether in and in what form it should offer additional tenant relief in light of public health and safety developments.

5. **Other Sources of Relief:**

All departments are directed to work with the Risk Manager to document and seek recovery from any possible private or public insurance program or other assistance that is forthcoming in the ongoing response to this situation. Tenants have been and should continue to be encouraged to investigate any coverage available to them under any business interruption or similar policies or programs along with public assistance efforts.

6. **Eligibility:**

This Policy applies to all leases, licenses and other agreements to use City land located within the geographic boundaries of San Francisco under the jurisdiction of a City Landlord Agency. This Policy does not apply to MOUs among City departments, vessel berthing agreements and permits to enter where access to the property was not interrupted by the permittor. In any scenario where a tenant has subleased some or all of its space, including master tenants, such relief will only be available to the extent that the City's tenant has offered equivalent relief to the subtenant(s).




OFFICE OF THE CITY ADMINISTRATOR



London N. Breed, Mayor
Naomi M. Kelly, City Administrator

MEMORANDUM

TO: All City agencies and tenants

FROM: Naomi M. Kelly
City Administrator 

CC: Matt Hansen, Director of Risk Management
Andrico Penick, Director of Property

SUBJECT: City Policy Regarding Enforcement of Certain Tenant Lease Obligations by City Departments From March 17, 2020 through December 31, 2020 (“Policy”)

DATE: June 1, 2020

This memorandum updates and replaces the memorandum of March 27, 2020 regarding enforcement of certain tenant lease obligations by extending the Policy through December 31, 2020.

Background

The policy described below (this “Policy”) is prompted by the remarkably rapid developments in the recognition of and reaction to the COVID-19 pandemic. Two of the most impactful developments for the City’s economy over the last few months include the issuance and extensions of the March 16 Order by the Local Health Officer instituting shelter-in-place requirements to slow the spread of the disease, and the March 18 Order by Mayor Breed declaring a 30-day moratorium on commercial evictions related to financial impacts caused by COVID-19 for small and medium-sized businesses that have less than \$25 million in annual gross receipts (the “Eviction Moratorium Order”).

Many City agencies lease space to private tenants for a variety of business and recreational uses. In keeping with the spirit of the broad moratorium under the Eviction Moratorium Order, the City now wishes to issue further guidance so that affected tenants can have confidence in being able to retain their leasehold while they use their financial reserves on immediately pressing operational needs to retain employees and remain viable to the maximum extent possible. This Policy is directive to all General Fund agencies with private tenants (each, a “City Landlord Agency”). Mayor Breed encourages City enterprise agencies with private tenants to pursue similar tenant relief actions as appropriate to their respective portfolios.

It is important to note that this Policy is a baseline for Citywide action regarding City leases within the geographic boundaries of San Francisco. Individual agencies may target additional relief policies beyond these terms (including but not limited to extended payment dates and relief for those classes of tenant otherwise excepted below) based on each agency's mission and the financial situation of each agency in relation to their respective tenant portfolios. Every business saved will help the City's recovery when the spread of the disease is curbed enough to allow the economy to regain its footing.

Policy

1. Summary:

Under this updated Policy, to the extent not otherwise prevented by law or the City's own obligations to its lenders, trustees, bond holders and/or taxing agencies, City Landlord Agencies are directed to waive all late charges, default interest and associated penalties and fees for any delinquent rent payments that were or are due for use of City property for commercial purposes within San Francisco city limits during the period of March 17 through December 31, 2020 due to the impact of COVID-19. City Landlord Agency staff are also directed to follow the policies and timeframes set forth in the Eviction Moratorium Order with respect to the initiation of any default enforcement or eviction process due to the failure to pay rent owed under any commercial lease due to the impact of COVID-19 while the Eviction Moratorium Order is in effect.

2. Lease Obligations and Payment Provisions:

The relief offered by this updated Policy is contingent upon the tenant's continued compliance with all lease obligations other than the payment of rent (such as maintenance and repair obligations, percentage rent reporting obligations and obligations to pay taxes). Subject to any extension of these deadlines and/or additional relief targeted by individual City Landlord Agencies as noted in sections 3 and 4 below, this Policy requires tenant's resumption of normal timely rent payments on January 1, 2021 and payment of any rent arrearages in full no later than June 30, 2021. Any amounts not paid in full as of June 30, 2021 (or such later date as set forth under any subsequent relief program approved by the tenant's City Landlord Agency) would then be subject to interest and penalties from and after that date.

The forbearance program outlined in this Policy does not change the terms or conditions of any lease or other agreement. Further, this policy will not affect ongoing lease enforcement actions or lease enforcement actions for defaults not related to the current emergency. For any tenant claiming the benefit of force majeure or similar provisions in its lease, those provisions will control.

3. Agency Action:

The City has a range of agencies that lease property to private entities, and these agencies have differing authority for leasing property. City Landlord Agencies are directed to take all actions necessary to implement this Policy, to the extent further action is needed.

4. **Further Tenant Relief:**

This Policy is intended as a temporary emergency measure to provide clarity to the City's tenants. Each City Landlord Agency will monitor the performance of its tenants during this time and will determine whether in and in what form it should offer additional tenant relief in light of public health and safety developments.

5. **Other Sources of Relief:**

All departments are directed to work with the Risk Manager to document and seek recovery from any possible private or public insurance program or other assistance that is forthcoming in the ongoing response to this situation. Tenants have been and should continue to be encouraged to investigate any coverage available to them under any business interruption or similar policies or programs along with public assistance efforts.

6. **Eligibility:**

This Policy applies to all leases, licenses and other agreements to use City land located within the geographic boundaries of San Francisco under the jurisdiction of a City Landlord Agency. This Policy does not apply to MOUs among City departments, vessel berthing agreements and permits to enter where access to the property was not interrupted by the permittor. In any scenario where a tenant has subleased some or all of its space, including master tenants, such relief will only be available to the extent that the City's tenant has offered equivalent relief to the subtenant(s).



London Breed, Mayor
Naomi M. Kelly, City Administrator



Andrico Q. Penick
Director of Real Estate

December 18, 2020

Honorable Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102

Subject: Amendments to Real Property Leases – Forgive Tenant Rent During COVID-19 Pandemic

Dear Board Members:

Attached for your consideration is an Ordinance approving and authorizing amendments to certain leases (set forth below) to forgive rent due between April 2020 and December 2020 with nonresidential tenants, and waiving Administrative Code and Environmental Code requirements enacted after the most recent modification of each lease, in order to allow for expeditious rent forgiveness necessitated by the financial hardship caused by the public health emergency related to the COVID-19 pandemic.

Background

On February 25, 2020, Mayor London Breed proclaimed a state of emergency in response to the spread of the novel coronavirus 2019 or COVID19. On March 3, 2020, the Board of Supervisors concurred in the February 25th Proclamation and in the actions taken by the Mayor to meet the emergency.

To mitigate the spread of COVID19, on March 16, 2020, the Local Health Officer issued Order No. C19-07 generally requiring individuals to stay in their homes (“Shelter in Place”), and requiring businesses to cease many non-essential operations at physical locations in the City and County of San Francisco. The Health Officer’s Order continues to be updated and revised to address public health issues presented by the pandemic. The Health Order, as amended, still does not allow for certain businesses to resume normal operations at this time or for the foreseeable future.

The COVID-19 pandemic has caused, and will likely continue to cause, abrupt and serious impacts on the local economy, on the operations of local businesses and nonprofit organizations, and on the job security of employees. Many of the affected businesses and other entities, including City Administrator Office’s Real Estate Division tenants, are experiencing significant operating deficits and hardships in paying rent for a variety of reasons, including reductions in income due to lower customer

demand, required closures, or limits on full-scale operations. Many of these entities face unprecedented challenges to remain financially solvent during the public health emergency. These difficulties cascade beyond the operators to their employees, whose jobs may be eliminated or hours cut due to the reduced customer demand or required closures or limitations on full-scale operations.

The City Administrator's Office, Real Estate Division, leases space in City owned buildings to dozens of tenants for a variety of business and recreational uses. In response to the severe economic impacts on these tenants, on March 27, 2020, the City Administrator issued a Memorandum, "City Policy Regarding Enforcement of Certain Tenant Lease Obligations by City Departments from March 17, 2020 through April 30, 2020 ("Policy")", which was updated on June 1, 2020 to extend the Policy through December 31, 2020, allowing City departments to (i) waive all late charges, default interest and associated penalties and fees for any delinquent rent payments that were or are due for use of City property within San Francisco City limits due to the impact of COVID-19, (ii) provide resumption of normal timely rent payments on January 1, 2021, and (iii) payment of any rent arrearages (including March 2020 – December 2020) in full no later than June 30, 2021.

The City Administrator and Director of Property have determined that rent forgiveness, not just rent deferral, is necessary to maintain rent revenues in the long-term, facilitate at-risk businesses and nonprofit corporations to reopen when the Health Orders allow, and to continue to provide the City with much needed entertainment, art, culture and small business services and materials. Unlike rent deferral, which changes the timing of rent payments that are due under a lease but does not change the lease terms, rent forgiveness reduces or eliminates rent payments that are due.

Administrative Code Section 23, and Charter Section 9.118, requires the Board of Supervisors to review and approve certain leases and amendments to those leases. A change in the rent amount, including rent forgiveness, would require Board of Supervisors approval under subsection (c) of Charter Section 9.118 and section 23.30 of Chapter 23.

The City has over the years adopted a number of Administrative Code and Environment Code ordinances the requirements of which must be included in new leases or amendments of existing leases entered by City agencies. To require tenants to comply with certain ordinances enacted after execution of the tenant's lease or, if applicable, the most recent amendment of the lease, as a condition of entering into a new lease or a lease amendment to qualify for rent forgiveness, would likely impose costs that further impede a tenant's survival and frustrate the purpose of providing relief to ensure a tenant's ability to sustain operations through this challenging period.

By waiving the requirement of Board of Supervisors approval of future lease amendments regarding rent forgiveness between January 1, 2021 through June 30, 2021 and also waiving Administrative Code and Environment Code requirements, if any, imposed on leases and lease amendments when said requirements were enacted after execution of the tenant's lease, or if applicable, most recent lease amendment, this ordinance will increase the chances that a tenant will be able to effectively sustain operations or reopen, thereby avoid the cascade of negative impacts to the City, the tenant and the tenant's employees, if rent forgiveness is denied or delayed.

Leases

The leases at issue are:

Rent to be forgiven as set forth below for the period of April - December 2020:

New Asia Restaurant	\$202,500.00
New Conservatory Theatre Center	\$ 32,723.92
Old Mint	\$198,000.00
Paoli	\$ 22,500.00
TOTAL	\$455,723.92

(a) New Asia Restaurant

(i) On or about June 28, 2017, the City and County of San Francisco, Mayor's Office of Housing and Community Development, purchased 772 Pacific Avenue for development of affordable housing.

(ii) At that time, the City was assigned the existing lease for the New Asia Restaurant located on the ground floor. The New Asia Restaurant is one of the few banquet locations in the District and has been a staple in the area for almost two decades. It leases the space for \$22,500 per month and its lease expires December 31, 2021.

(iii) The New Asia Restaurant has been closed since the middle of March 2020 and has accepted a rent deferral plan and will owe the City \$202,500 as of December 2020. However, with the continued Health Orders requiring closure and/or limited seating/outdoor seating (which is physically impossible at this location), the New Asia Restaurant has basically been closed since the pandemic commenced and with difficulties in continuing to employ its 200 employees, believes it will remain closed for the foreseeable future.

(b) New Conservatory Theatre Center

(i) The Real Estate Division currently leases the Lower Level of 25 Van Ness Avenue (Assessor's Parcel No. 0834, Lot No. 004), in the City and County of San Francisco, to The New Conservatory Theatre Center, a California non-profit corporation ("NCTC" or "Tenant"), who has been leasing the lower level of 25 Van Ness and providing quality live entertainment since 1984.

(ii) On October 20, 2018, the Mayor and Board of Supervisors approved Resolution No. 327-18, on file with the Clerk of the Board of Supervisors in File No. 180769, extending the Lease through September 30, 2023.

(iii) Having received funds from the federal CARES Act, NCTC has been able to pay rent since March 2020 through August 2020 during the pandemic and was in compliance with its Lease and all lease provisions until September 1, 2020, when the Director of Property granted a rent deferral per the City Administrator's March 27, 2020 memorandum.

(iv) NCTC has been closed since March 2020 due to the Health Orders and remains closed at this time and for the foreseeable future. It will owe the City \$32,723.92 as of December 2020.

(v) A term of NCTC's Rent Deferral Agreement is that should it receive further federal aid for rent from the CARES Act or similar legislation, it will commence rent payments immediately to the extent and amount received even if it remains closed due to the City's Health Orders.

(c) **Historic United States Mint Lease**

(i) On March 31, 2017, the City and the California Historical Society ("CHS") entered into an Exclusive Negotiation Agreement for CHS to serve as the City's "Lead Community Partner" for Phase I Due Diligence component of the Old Mint Restoration Project, which is expected to cost upwards of \$120 million.

(ii) During the analysis, inspections, testing, and refurbishment, the City desired to activate the space to prevent continued deterioration, encampments, and vandalism, as well as, support community events in the signature space. After a request for proposals/bids process, NPU, Inc., a California corporation, (an event planning and venue management company) was awarded a lease commencing March 1, 2020 and terminates in February 2022 excluding options. The City receives a base rent of \$22,000 per month and fifty percent of all venue rental fees and \$2,500 per ticketed event.

(iii) Due to the Health Orders, NPU has been unable to host or schedule any events at the Old Mint since March 2020. In addition, all pre-scheduled events have been postponed or cancelled through December 2020 for a loss of approximately \$192,000 in anticipated participation rent and approximately \$198,000 in base rent to the City as of December 2020.

(iv) The tenant applied for but did not receive any federal funds to assist with rent payments or employees' wages. The owners of the company have used their personal savings to assist in continuing to pay their employees and to remain in business.

(d) **Pop-Up Restaurant - Stephen M. Paoli**

(i) On May 4, 2018, the City purchased a building at 11th Street and Natoma ultimately for recreation and park purposes.

(ii) The City was assigned several existing leases including a ground floor lease with Stephen M. Paoli that operates a "pop-up" restaurant. The lease terminates in June 2021.

(iii) Mr. Paoli's business has been closed since March 2020. He has one employee in addition to himself. This business is his only source of income. He applied for federal funds, grants and loans to help pay his rent and employee but he did not receive anything.

(iv) He pays \$2,500 per month in rent and will owe \$22,500 as of December 2020.

Ordinance

The Ordinance provides for the rent forgiveness to the above-mentioned leases and in the above-mentioned amounts for the time period of April through December 2020.

The Ordinance also provides that the City Administrator through the Director of Property may further amend these leases, and other existing Real Estate Division managed leases, without approval of the amendment by the Board of Supervisors under Charter Section 9.118 (c) or Chapter 23, section 23.30, and without modifying the Lease to include Administrative Code and Environment Code Requirements that were enacted since the most recent modification to their Lease, provided that all of the following conditions are satisfied:

(a) The Lease has already been approved by the Board of Supervisors under Chapter 23 if required;

(b) The Lease amendment modifies the Lease only to forgive some or all of the rent owed during the time period between January 1, 2021 and June 30, 2021;

(b) The Tenant must be in compliance with all other existing lease provisions;

(c) Rent may be forgiven during the time period of January 2021 up to June 30, 2021, and this ordinance does not mandate that the City amend the Lease, grant any further rent forgiveness, or require the City Administrator or Director of Property to take any other action;

(d) Each tenant must disclose information regarding all monies received from any government-funded financial aid, grant or loan program intended for rent, including CARES Act and similar federal, state, or local aid; such funds are not eligible for forgiveness and will be deducted from any forgiveness amount;

(e) The parties will release each other from claims for rent forgiven under any amendment;

(f) Tenant's failure to comply with the Lease or the amendment will result in termination of rent forgiveness as of the date of default;

(g) The amendment does not waive, suspend, or modify any other revision or obligation of either party under the existing Lease; and

(h) Tenant must comply with all applicable laws including all "back to work" requirements and other workforce-related ordinances, orders, and laws relating to the COVID-19 pandemic, including those addressing workplace safety and employment rights.

If you have any questions regarding the Ordinance, please contact Claudia Gorham of Real Estate at 415.713.6020 or Claudia.gorham@sfgov.org.

Respectfully,



Andrico Q. Penick
Director of Property

From: [Gosiengfiao, Rachel \(ADM\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Gorham, Claudia \(ADM\)](#); [Penick, Andrico](#); [Quetone, Tal \(ADM\)](#)
Subject: Legislative Package - RENT FORGIVENESS
Date: Monday, December 28, 2020 9:10:41 AM
Attachments: [RED Rent Forgiveness Leg Dig Ver1.docx](#)
[Approval Email from CAT - Rent Forgiveness.msg](#)
[Rent Forgiveness Legislation 12 27 2020.docx](#)
[Cvr Ltr Rent Forgiveness AQP 12 18 2020.pdf](#)
[NCTC 25 Van Ness Form 126f4BOS---Notification of Contract 12 18 2020.pdf](#)
[New Asia 772 Pacific SFEC Form 126f4BOS---Notification of Contract.pdf](#)
[Old Mint - NPU - Form 126 12 18 2020.pdf](#)
[Paoli 167 11st Form 126.pdf](#)
[Andrico's Approval of Legislation - RENT FORGIVENESS .msg](#)

Good morning, BOS Legislation:

Please find the attached legislative package relative to the subject matter.

If you have any questions, please contact me and Claudia J. Gorham.

Thank you,

Rachel Gosiengfiao

Executive Assistant

Real Estate Division

25 Van Ness Avenue, Suite 400

San Francisco, CA 94102

415.554.9880 direct | 415.552.9216 fax

rachel.gosiengfiao@sfgov.org



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 210001

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Claudia Gorham	415.554.9871
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
ADM RED	claudia.gorham@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR Pasko Partners (Stephen M. Paoli)	TELEPHONE NUMBER 415-571-4082
STREET ADDRESS (including City, State and Zip Code) 121 Barbaree Way, Tiburon CA, 94920	EMAIL steve@jointventurekitchen.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 210001
DESCRIPTION OF AMOUNT OF CONTRACT \$30,000 minus \$22,500 in rent forgiveness		
NATURE OF THE CONTRACT (Please describe) Rent forgiveness provided to the tenant in the amount of \$22,500, between April 2020 and December 2020 due to financial hardship caused by the public health emergency related to the COVID-19 pandemic.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	PAOLI	STEVE	Other Principal Officer
2	SKORO	KRISTINA	Other Principal Officer
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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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☐ Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK	DATE SIGNED
BOS Clerk of the Board	

**San Francisco Ethics Commission**

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 210001

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

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3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Claudia J. Gorham	415.554.9871
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
ADM RED	claudia.gorham@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR New Conservatory Theater Center, California Non-Profit	TELEPHONE NUMBER 415-861-4914
STREET ADDRESS (including City, State and Zip Code) 25 Van Ness Avenue, Lower Level, SF, CA 94102	EMAIL ednctc@gmail.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 210001
DESCRIPTION OF AMOUNT OF CONTRACT \$98,171.76 minus \$32,723.92 in rent forgiveness		
NATURE OF THE CONTRACT (Please describe) Rent forgiveness provided to the tenant in the amount of \$32,732.92 between April 2020 and December 2020 due to financial hardship caused by the public health emergency related to the COVID-19 pandemic.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Decker	Ed	Other Principal Officer
2	Malloy	Jeff	Other Principal Officer
3	Berry	David	Other Principal Officer
4	Eugley	Jeff	Other Principal Officer
5	Frank	J. Conrad	Other Principal Officer
6	Hofkin	Leah A.	Other Principal Officer
7	Holgate	Robert	Other Principal Officer
8	Kelly	Maurice	Other Principal Officer
9	Lazarus	Eli	Other Principal Officer
10	Mlay	Serenity Siya	Other Principal Officer
11	Nance	Andrew	Other Principal Officer
12	Roux	Renee	Other Principal Officer
13	Smith	Andrew	Other Principal Officer
14	Vales	Larry	Other Principal Officer
15	Valko	Eric	Other Principal Officer
16	Walker	Stephanie	Other Principal Officer
17	Yaros	Chris	Other Principal Officer
18	Zook	Dana	Other Principal Officer
19	Decker	Ed	CEO

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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20	Pence	Brad	CFO
21	Hodgen	Barbara	COO
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BOS Clerk of the Board	



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Angela Calvillo	415-554-5184
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Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Sandi Levine	415.361.1555
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
ADM RED	sandi.levine@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR Hon So, Inc. a California Corporation (New Asia)	TELEPHONE NUMBER 415-391-6666
STREET ADDRESS (including City, State and Zip Code) 772 Pacific Avenue, San Francisco CA, 94133	EMAIL ShirleyLiu8823@yahoo.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 210001
DESCRIPTION OF AMOUNT OF CONTRACT \$292,000 minus \$202,500 in rent forgiveness		
NATURE OF THE CONTRACT (Please describe) Rent forgiveness provided to the tenant in the amount of \$202,500, between April 2020 and December 2020 due to financial hardship caused by the public health emergency related to the COVID-19 pandemic.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	So	Hon Keung	CEO
2	So	Hon Keung	Board of Directors
3	So	Candy Mei-Yiu	CFO
4	So	Candy Mei-Yiu	Board of Directors
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☐ Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

10. VERIFICATION

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I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK	DATE SIGNED
BOS Clerk of the Board	



ONESF
Building Our Future
onesanfrancisco.org

There's only one San Francisco. Let's take care of it.



**Ordinance Authorizing the City Administrator to
amend certain leases and forgive rent.**

Leases subject to Rent Forgiveness

New Asia Restaurant	\$202,500.00
New Conservatory Theatre Center	\$ 32,723.92
Paoli	\$ 22,500.00
TOTAL	\$257,723.92

Waive Administrative and Environment Code requirements not already imposed

Any additional or future changes, subject to Board review and approval.

Questions