

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.4**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION**

Authorizing the Interim Director of Transportation to execute a seven-year industrial gross lease (Lease) between Infoimage of California, Inc. (Landlord), as landlord, and the San Francisco Municipal Transportation Agency (SFMTA), as tenant, for property designated as 890 Pennsylvania Avenue in San Francisco, California, Assessor's Block 4167 Lot 012 for the Transit Division's Track Department at an estimated total cost of \$3,374,118 including operating expenses.

**SUMMARY**

- The SFMTA Transit Track Department occupies 1399 Marin Street in San Francisco for the storage and parking of vehicles, equipment, materials, and personal property. 1399 Marin is scheduled for facility improvements and reuse as part of the SFMTA Building Progress Program, requiring temporary relocation of the Track Department.
- The SFMTA has negotiated a seven-year lease for a relocation site at 890 Pennsylvania Avenue with an initial annual rent of \$360,000 and totaling \$2,999,118 over the life of the lease.
- The SFMTA will also pay property operating expenses, including property taxes over the base year, utilities and general maintenance, estimated to cost the SFMTA approximately \$375,000 over seven years.
- The 890 Pennsylvania Avenue property is approximately 39,290 rentable square feet and is within the fair market value rental rate range for comparable nearby properties.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Industrial Gross Lease Agreement

**APPROVALS:**

**DATE**

DIRECTOR



November 25, 2019

SECRETARY



November 25, 2019

**ASSIGNED SFMTAB CALENDAR DATE:** December 3, 2019

## **PURPOSE**

Authorizing the Interim Director of Transportation to execute a seven-year industrial gross lease (Lease) between Infoimage of California, Inc. (Landlord), as landlord, and the San Francisco Municipal Transportation Agency (SFMTA), as tenant, for property designated as 890 Pennsylvania Avenue in San Francisco, California, Assessor's Block 4167 Lot 012 for the Transit Division's Track Department at an estimated total cost of \$3,374,118 including operating expenses.

## **STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

This action supports the following SFMTA Strategic Plan Goals and Objectives:

Goal 3: Improve the quality of life and environment in San Francisco and the region.  
Objective 3.5: Achieve financial stability for the agency.

Goal 4: Create a workplace that delivers outstanding service  
Objective 4.2: Improve the safety, security, and functionality of SFMTA work environments.

This action supports the following Transit First Policy principle:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.

## **DESCRIPTION**

The 890 Pennsylvania Avenue property is an approximately 39,290 square foot paved and fenced yard area. The site currently operates as a storage and maintenance yard for commuter shuttles. The existing tenant is relocating to another property. The proposed industrial gross lease (Lease) for 890 Pennsylvania Avenue provides the necessary amount of space to accommodate a temporary relocation of the Transit Track Department from its current location at 1399 Marin street which is leased from the Port of San Francisco.

The relocation of the Track Department represents the second of two relocations from 1399 Marin Street, as the first was the relocation of approximately 35 non-operative historic streetcars, cable cars and buses to a new leased facility at the Cow Palace. That action was approved by the SFMTA Board of Directors on March 20, 2018 via Resolution 180320-044.

With the relocation of the Track Department to 890 Pennsylvania Avenue, the 1399 Marin Street property will now be able to undergo a moderate rehabilitation to improve the site for enhanced new bus acceptance as well as prepare for the relocation of electric trolleys from the Potrero Yard, once that property enters the constructions phase of its redevelopment. The Potrero Yard redevelopment is currently in the predevelopment planning phase and is part of the SFMTA Building Progress Program.

### Industrial Lease Terms

The proposed Lease has a term of seven years. The Lease is expected to commence on January 1, 2020, with an initial annual base rental rate of \$9.16 per square foot for the 39,290 square feet property. The first-year annual base rent expenditure will be \$360,000, and over the life of the Lease, the total rental expenditure for this property will total \$2,999,118. As an industrial gross lease, the SFMTA will also pay for its property operating expenses, including property taxes over the base year. The estimated cost to the SFMTA for those operating expenses over the seven-year term is \$375,000. In total, the Lease is estimated to cost the SFMTA \$3,374,118. As reported, the initial price per square foot for 890 Pennsylvania Avenue is \$9.16 annual or \$.76 monthly. That amount is slightly better than fair market rents for industrial space in the surrounding vicinity which range between \$.80 to \$1.00 per square foot monthly or \$9.60 to \$12.00 annually. Under the proposed Lease, the property is leased in its “as is” condition and the SFMTA will be responsible for yet to be determined tenant improvements it desires in addition to the previously identified operational expenses.

### **STAKEHOLDER ENGAGEMENT**

As part of the SFMTA’s Building Progress Program, the relocation of the Track Department from 1399 Marin Street to 890 Pennsylvania Avenue is an important step towards the future redevelopment of the Potrero Yard. Stakeholder engagement for the Building Progress Program is a continuous internal and external outreach effort. The proposed Lease property is zoned for such use and currently operates as a bus storage and maintenance facility for commuter shuttles. The proposed SFMTA tenancy could potentially be less intensive than the existing use. The SFMTA will continue to engage all applicable parties and relevant stakeholders during the term of this Lease.

### **ALTERNATIVES CONSIDERED**

There is no open space within the existing SFMTA Real Estate portfolio that could accommodate 39,290 square feet of space sought for the Track Department. Representatives from the Transit Division, Facilities and Real Property Management, and the Facilities Management Team have discussed various relocation options and considered multiple sites, and through that due diligence process, have determined the 890 Pennsylvania Avenue property best meets the needs of the Track Department due to its size and location. 890 Pennsylvania Avenue is near the existing Track Department site at 1399 Marin Street, which is less than one-quarter of a mile away and approximately 100 feet from the SFMTA 700 Pennsylvania Avenue property. 700 Pennsylvania Avenue houses several Transit Division functions, shops, and offices.

### **FUNDING IMPACT**

Staff has conducted its due diligence and researched comparable leased property within a two-mile radius of 890 Pennsylvania and determined that the proposed rent and associated inflationary rent adjustments fall within a reasonable range of market value. The proposed Lease will be funded as a local operating fund budget expenditure within the Finance and Information Technology Division Facilities Budget.

## **ENVIRONMENTAL REVIEW**

On October 31, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the proposed Lease is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and may be found in the records of the Planning Department at 1650 Mission Street in San Francisco and is incorporated herein by reference.

## **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

None at this time and the City Attorney has reviewed this report.

## **RECOMMENDATION**

The recommendation is to authorize the Interim Director of Transportation to execute a seven-year industrial gross lease between Infoimage of California, Inc., as landlord, and the San Francisco Municipal Transportation Agency, as tenant, for property designated as 890 Pennsylvania Avenue in San Francisco, California, Assessor’s Block 4167 Lot 012 for the Transit Division’s Track Department at an estimated total cost of \$3,374,118 including operating expenses.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS  
RESOLUTION No. \_\_\_\_\_

WHEREAS, The SFMTA currently houses the Transit Division Track Department fleet at 1399 Marin Street facility, which is leased from the Port of San Francisco under a Memorandum of Understanding. The SFMTA plans to rehabilitate the 1399 Marin Street facility to better accommodate the site for expanded new bus acceptance and other Transit Division needs; and,

WHEREAS, The SFMTA has negotiated a lease agreement (Lease) with Infoimage of California, Inc, to relocate the Track Department from 1399 Marin Street to 890 Pennsylvania Avenue in San Francisco, which is an approximately 39,290 square foot paved parking lot with minor maintenance capabilities; and,

WHEREAS, Infoimage of California, Inc. will rent out the property in its “as is” condition and the SFMTA will be responsible for general repairs and any tenant improvements it desires; and,

WHEREAS, The initial annual rent will be \$360,000 and operating expenses is estimated at \$375,000 over the seven-year term of the Lease expected to commence on January 1, 2020; and,

WHEREAS, On October 31, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the proposed Lease is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorize the Interim Director of Transportation to execute an industrial gross lease between Infoimage of California, Inc., as landlord, and the San Francisco Municipal Transportation Agency, as tenant, for property designated as 890 Pennsylvania Avenue in San Francisco, California, Assessor’s Block 4167 Lot 012 for the Transit Division’s Track Department at an estimated rent and operating expense amount of \$3,374,118 for the seven years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of December 3, 2019.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation

LEASE

between

INFOIMAGE OF CALIFORNIA, INC.  
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Tenant

For the lease of  
890 Pennsylvania  
San Francisco, California

October 31, 2019

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EXHIBIT E	Self-Insurance Program



## LEASE

THIS LEASE (this "Lease"), dated for reference purposes only as of October 31, 2019 ("Reference Date"), is by and between INFOIMAGE OF CALIFORNIA, INC., a California corporation ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Tenant"), acting by and through the San Francisco Municipal Transportation Agency ("SFMTA").

Landlord and City hereby agree as follows:

### 1. BASIC LEASE INFORMATION

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

Lease Reference Date:	October 31, 2019
Landlord:	INFOIMAGE OF CALIFORNIA, INC.
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Premises ( <u>Section 2.1</u> ):	The real property ("Real Property") designated as Block 4167 Lot 012, commonly known as 890 Pennsylvania Avenue in San Francisco, California, and further depicted and described in <u>Exhibit A</u> .
Rentable Area of Premises ( <u>Section 2.1</u> ):	Approximately 39,290 rentable square feet (City has satisfied itself regarding the dimensions and layout of the Premises)
Term ( <u>Section 3</u> ):	Commencement date, as may be modified under <u>Section 3.2</u> : January 1, 2020  Expiration date, as may be modified under <u>Section 3.2</u> : December 31, 2026
Base Rent ( <u>Section 4.1</u> ):	"Lease Year" means a twelve (12) month period between January 1 and December 31, as may be modified under <u>Section 3.2</u> .  Lease Year 1: \$30,000.00 per month Lease Year 2: \$34,000.00 per month  Lease Year 3: \$35,020.00 per month Lease Year 4: \$36,071.00 per month Lease Year 5: \$37,153.00 per month Lease Year 6: \$38,267.00 per month Lease Year 7: \$39,415.50 per month

Additional Charges ( <u>Section 4.2</u> ):	Excess Tax Charges
Use ( <u>Section 5.1</u> ):	The parking and storage of vehicles, trailers, storage containers, equipment, materials, and personal property.
Utilities and Services ( <u>Section 9.1</u> ):	City to arrange for the provision of all utilities and services it desires at the Premises at its sole cost. Landlord has no obligation to provide any utility connections for the Premises.
Notice Address of Landlord ( <u>Section 22.1</u> ):	Infoimage of California, Inc. Attention: Calvin Fong 141 Jefferson Drive Menlo Park, CA 94025 Fax No.: _____
and to:	Rory Campbell Hanson Bridgett LLP 425 Market Street, 26th Floor San Francisco CA 94105 Calvin Fong 141 Jefferson Drive Menlo Park, CA 94025
Key Contact for Landlord:	Calvin Fong
Landlord Contact Telephone No.:	(650) 473-6388
Notice Address for Tenant ( <u>Section 22.1</u> ):	San Francisco Municipal Transportation Agency 1 South Van Ness Avenue, 8 <sup>th</sup> Floor San Francisco, CA 94103 Attn: Manager, Strategic Real Estate Facilities and Real Property Management Fax No.: (415) 701-4341
and to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4682 Attn: Carol Wong Deputy City Attorney Fax No.: (415) 554-4757
Key Contact for Tenant:	Jason Gallegos
Tenant Contact Telephone No.:	(415) 646-2449
Alternate Contact for Tenant:	William Zhao
Alternate Contact Telephone No.:	(415) 646-2622
Brokers ( <u>Section 22.8</u> ):	Calco Commercial, Inc. and CBRE

[END OF BASIC LEASE INFORMATION]

## 2. PREMISES

### 2.1 Leased Premises

Subject to the provisions of this Lease, and matters reflected in the Official Records of the City and County of San Francisco ("Records"), Landlord leases to City and City leases from Landlord, the Real Property, together with all improvements and fixtures on and appurtenances to the Real Property (collectively, the "Premises"). The Premises contain the rentable area specified in the Basic Lease Information, which the City has confirmed for itself and finds acceptable. City also acknowledges that the Premises currently include certain improvements and defects that may require alteration for City's uses of the Premises, and City acknowledges that City will be accepting the Premises in the condition reflected in Exhibits B and B-1 and as otherwise provided in this Lease. City has the right, at City's cost and election, to repair the broken sections of the existing fence at the Premises and repair the existing pavement at the Premises in a manner that matches the functioning portions of such fence and pavement respectively (collectively, the "Approved Alterations"), all of which have been approved by Landlord.

### 2.2 Disability Access

California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. For purposes of section 1938(a) of the California Civil Code, Landlord hereby discloses to City, that the Premises have not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

*A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises. [Cal. Civ. Code Section 1938(e)].*

The law does not require landlords to have the inspections performed, but the Landlord may not prohibit City from obtaining a CASp inspection of the Premises for its occupancy or potential occupancy if desired by City. The Premises are being leased "As Is." If a CASp inspection is pursued and completed, City shall pay for the costs of any such inspection and any required compliance obligations.

## 3. TERM

### 3.1 Term of Lease

The Premises are leased for a term (the "Term") commencing on January 1, 2020 (the "Commencement Date"), as may be modified under Section 3.2 below. The Term shall end on the expiration date specified in the Basic Lease Information (referred to as the "Expiration Date"), as may be modified under Section 3.2 below, or such earlier date on which this Lease terminates pursuant its terms (the "Termination Date"). Collectively, the end of the Term, whether as of the Expiration Date or a Termination Date is herein referred to as the "Surrender

Date."

### **3.2 Delivery of Possession**

Landlord will exercise commercially reasonable and good faith efforts to deliver possession of the Premises to City by the Commencement Date. If, despite such efforts, Landlord is unable to deliver possession by such date, Landlord shall not be in default nor subject to any claim or liability of any kind under this Lease, and such failure shall not affect the validity of this Lease. However, if there is such a delay in delivering possession, City shall have no obligation to pay Rent (as defined in Section 4) for the period between the scheduled Commencement Date and the actual delivery of possession, the "Commencement Date" shall be modified to be the actual date City receives such possession, the Expiration Date shall be extended by the same number of days as the Commencement Date was extended to match the actual delivery of possession, and the definition of Lease Year shall be modified to mean the twelve month period following the modified Commencement Date and each anniversary of the modified Commencement Date. If Landlord is unable to deliver possession of the Premises to City within sixty (60) days of the scheduled Commencement Date, then City may, at its option, terminate this Lease upon ten (10) days' notice. If Landlord delivers possession within such ten-day notice period, this Lease shall continue in full force and effect and the termination right shall be void. If Landlord fails to deliver possession within such ten-day notice period, this Lease will terminate and neither party shall have any further liability under this Lease except for those obligations that had matured as of the Surrender Date (e.g. any indemnity obligations) if City or any of its Agents (as defined in Section 22.5 below) enter the Premises prior to the Commencement Date.

## **4. RENT**

### **4.1 Base Rent**

Beginning on the Commencement Date, City shall pay to Landlord during the Term the annual Base Rent specified in the Basic Lease Information (the "Base Rent"). The Base Rent shall be payable in equal consecutive monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice. City shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise specifically provided to the contrary in this Lease. If the Commencement Date occurs on a day other than the first day of a calendar month or the Surrender Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30)-day month.

### **4.2 Additional Charges**

City shall pay to Landlord any charges or other amounts required under this Lease as additional rent ("Additional Charges"), including the charges for Real Estate Taxes provided for hereinbelow. All such Additional Charges shall be payable to Landlord at the place where the Base Rent is payable. Landlord shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. The Base Rent and Additional Charges are sometimes collectively referred to below as "Rent."

### **4.3 Definitions**

For purposes hereof, the following terms shall have the meanings hereinafter set forth:

(a) "Base Year" means the 12-month period after the Commencement Date.

(b) "Excess Tax Charges" means the amount, if any, by which Real Estate Taxes for any Tax Year exceeds Real Estate Taxes for the Base Year, prorated for any partial Lease Year.

(c) "Real Estate Taxes" means all taxes, assessments and charges levied upon or with respect to the Premises. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services thereof, service payments in lieu of taxes that are now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision thereof, public corporation, district, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes.

Notwithstanding the foregoing, Real Estate Taxes shall exclude (1) franchise, transfer, inheritance, gross receipts, or capital stock taxes or income taxes of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax, (2) any penalties, fines, interest or charges attributable to the late payment of any taxes, except to the extent attributable to City's failure to pay its portion of Real Estate Taxes hereunder, and (3) any personal property taxes payable by City hereunder.

(d) "Tax Year" means the tax year for Real Estate Taxes, starting on July 1 of each calendar year and ending 12 months thereafter on June 30; and any partial year during which the Term of this Lease applies through the Surrender Date; provided that Landlord, upon notice to City, may change the Tax Year from time to time to any other twelve (12) consecutive month period and, if there is any such change, City's payment of Excess Tax Charges shall be equitably adjusted for the Tax Year involved in any such change.

#### **4.4 Payment of Excess Tax Charges**

During the Term, commencing after the end of the Base Year, City shall pay to Landlord each month, as Additional Charges, one twelfth (1/12) of the Excess Tax Charges imposed on Landlord for the then applicable Tax Year. City shall make such payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to City. With reasonable promptness not to exceed thirty (30) days after Landlord has received the tax bills for any Tax Year, Landlord shall furnish City with a statement ("Landlord's Tax Statement") setting forth the amount of Real Property Taxes and Excess Tax Charges for such Tax Year. If the actual Excess Tax Charges for such Tax Year exceeds the estimated Excess Tax Charges paid by City for such Tax Year, City shall pay to Landlord (whether or not this Lease has terminated) the unpaid portion of actual Excess Tax Charges within thirty (30) days after the receipt of Landlord's Tax Statement. If the total amount of estimated Excess Tax Charges paid by City for such Tax Year exceeds the actual Excess Tax Charges for such Tax Year, such excess shall be credited against the next installments of Excess Tax Charges due from City hereunder, or at City's option, such excess shall be refunded to City.

#### **4.5 Proration**

If the Surrender Date shall occur on a date other than the first or last day of a Tax Year, City's payment of Excess Tax Charges for the Tax Year in which the Surrender Date occurs, shall be prorated based on a three hundred sixty-five (365)-day year.

#### **4.6 Audits**

City shall have the right, upon not less than five (5) business days' notice to Landlord, to audit the Landlord's books and records relating to the imposition and Landlord's payment of Real Estate Taxes. If such audit discloses any discrepancies which would result in a reduction of Excess Tax Charges paid by City for any Tax Year, Landlord shall immediately refund to City the amount of any overpayment by City. City shall pay the cost of such audit, provided that if such audit discloses any discrepancies which result in a reduction of City's Excess Tax Charges

of three percent (3%) or more for any Tax Year, then Landlord shall pay the costs of such audit.

#### **4.7 Records**

Landlord shall maintain at its offices in San Francisco, in a safe, complete and organized manner, all of its records pertaining to the Real Estate Taxes and any other charges paid by Landlord but reimbursed by the City pursuant to this Lease, for a period of not less than three (3) years following the Surrender Date. This shall not entitle City to audit any portion of Landlord's books and records not directly related to the Landlord costs reimbursed by City under this Lease or such City reimbursements. Landlord shall maintain such records on a current basis and in sufficient detail to facilitate adequate audit and review thereof. All such books and records shall be available for inspection, copying and audit by City and its representatives, at City's expense, subject to the provisions of Section 4.6 (Audits).

#### **4.8 Landlord's Compliance with San Francisco Business and Tax and Regulations Code**

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

### **5. USE**

#### **5.1 Permitted Use**

City may use the Premises for the uses specified in the Basic Lease Information, as further described in this Section 5.1, and for no other use without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. It is the intent of the parties that City's use of the Premises shall be for parking, storage and the marshalling of staff and teams for City's project operations; no maintenance or repair operations are allowed on the Premises except as required under Section 8.2. City may store asphaltic material on the Premises during the Term, provided it is contained within a 20' x 20' square and is not more than 6' high and complies with all other requirements of this Lease.

#### **5.2 Interference with Access**

So long as there is not a City Event of Default or a force majeure event that mandates restrictions on access to the Premises, Landlord: (i) shall not interfere with City's access to the Premises on a continuous basis (i.e. twenty-four (24) hours per day, seven (7) days per week), and (ii) shall not interfere with the City's access to existing utilities at the Premises. Landlord is not responsible in any way for any interruption of utility services unless caused by Landlord's active negligence or willful misconduct with respect to the Premises.

Landlord may interrupt City's access to the Premises if there is an immediate threat of the Premises being rendered unsafe for human occupancy. Landlord shall notify Tenant of such interruption as soon as reasonably possible. If City's use of any of the Premises or access thereto is interrupted as a result of the Premises being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease, then Landlord shall immediately undertake all necessary steps to correct such condition; and if such condition continues for three (3) consecutive business days and impairs City's ability to carry on its business in the Premises, the Rent payable hereunder on and after the third business day of such

interruption shall be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises. If any such default by Landlord shall continue for thirty (30) days or more after City's use is interrupted and impairs City's ability to carry on its business in the Premises, then City shall have the right, without limiting any of its other rights under this Lease to terminate this Lease, unless Landlord supplies City with evidence reasonably satisfactory to City that City's normal and safe use will be restored within sixty (60) days of the date City's use was interrupted, and such use is actually restored within such 60-day period. Nothing in this Section 5.2 shall limit City's or Landlord's rights with respect to any disruption due to casualty pursuant to Section 12 (Damage and Destruction) hereof; and the provisions of Section 12 supersede these when applicable.

## **6. REGULATION OF USES.**

### **6.1 No Liens**

City covenants and agrees to keep the Premises and every part thereof free and clear of and from any and all mechanics', material suppliers' and other liens for: (a) work or labor done, services performed, materials, appliances, or power contributed, used or furnished, or to be used, in or about the Premises for or in connection with any operations of City at the Premises; (b) any Alterations; or (c) any work or construction by, for or permitted by City on or about the Premises (collectively, "Liens"). City shall promptly and fully pay and discharge any and all claims upon which any such Lien may or could be based, and keep the Premises free and clear of, and save and hold Landlord, the Premises harmless from, any and all such Liens and claims of Liens, damages, liabilities, costs (including, without limitation, attorneys' fees and costs), suits or other proceedings pertaining thereto.

### **6.2 Environmental Issues**

(a) "Hazardous Substance" shall mean any material or substance or waste that is designated, defined, classified or regulated as hazardous to the environment or human health or animal health or safety due to its radioactivity, ignitability, corrosivity, reactivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness or other harmful or potentially harmful properties or effects, or that is defined as a "hazardous substance," "pollutant", "contaminant", "waste" or "hazardous waste" pursuant to or under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and its implementing regulations ("CERCLA", also commonly known as the "Superfund" law; 42 U.S.C. Section 9601 et seq.), the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., as amended, and its implementing regulations ("RCRA"), the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., as amended, and its implementing regulations ("TOSCA"), Section 25316 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 improvements at the Premises or are naturally occurring substances on or about the Premises; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(b) All of the laws and regulations so recited in Subsection 6.2(a), above, and all amendments now existing or hereafter coming into effect regarding such laws and regulations, and all other state and local laws and regulations that would regulate the use of any chemical or substance at the Premises due to public health risks or environmental concerns, are collectively herein referred to as "Environmental Requirements." The term "Environmental Requirements" also includes any standards imposed on the use of Hazardous Substances under any licenses, permits, orders, approvals, or authorizations of any judicial officer, governmental agencies, or instrumentalities of the United States, California, and political subdivisions thereof, including all applicable judicial, administrative and regulatory decrees, judgments, orders and directives relating to the protection of human health, safety, wildlife or the environment.

(c) City and City's Agents may only use Hazardous Substances at the Premises to the extent required in connection with the uses permitted under this Lease, and any such use must be in full compliance with all Environmental Requirements.

(d) City shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required for City's use of Hazardous Substances at the Premises. City shall in all respects handle, treat, deal with and manage any and all Hazardous Substances used by City in strict conformity with all applicable present and future Environmental Requirements.

(e) City shall deliver to Landlord true and correct copies of the following documents relating to the use, storage, handling, treatment, generation, release or disposal of Hazardous Substances at the Premises during the Term prior to the Commencement Date, or if unavailable at that time, concurrent with the receipt from or submission to a governmental authority: permits; approvals; reports and correspondence; and storage and management plans, notice of violations of any Environmental Requirements or of any Release, as defined in Section 6.3, below.

(f) City shall indemnify, protect, defend, reimburse, and save and hold harmless Landlord and all of its affiliated organizations, and their respective trustees, directors, officers, members, employees, agents, and insurance carriers (the "Landlord Released Parties") from and against any and all claims, demands, suits, actions (including, without limitation, notices of noncompliance, charges, directives, and requests for information), causes of action, orders, judgments, settlements, damages, losses, diminutions in value, penalties, fines, actions, proceedings, obligations, liabilities, encumbrances, liens, costs (including, without limitation, costs of investigation and defense of any claim, whether or not such claim is ultimately defeated, and costs of any good faith settlement or judgment), and expenses of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' and consultants' fees and disbursements, any of which are incurred at any time, arising out of or related to Environmental Requirements ("Environmental Claims") to the extent caused by (i) any use, treatment, keeping, handling, storage, transport, sale or Release, at, on, under or from the Premises of any Hazardous Substances by City or any City Agent or Invitee (as defined in Section 22.5 below) during the Term ("City Environmental Activity"), (ii) any non-compliance by City, its Agents or Invitees with the Environmental Requirements at the Premises, or (iii) any other acts or omissions of City or City's Agents or Invitees in or about the Premises pursuant to this Lease which results in a Release after the Effective Date. City shall not be liable or responsible for any existing Hazardous Substances on the Premises, unless City elects to engage in Alterations that disturb the existing soils; if the City engages in any such Alterations, it shall be fully responsible for complying with all Environmental Requirements applicable to such Alterations at its sole cost, including e.g. procuring all permits, licenses, authorizations for all such work.

### **6.3 No Nuisance**

City shall not do any act, or allow any Agent or Invitee to do any act, nor permit anyone to use the Premises for any purpose that: (a) in any manner causes, creates, or results in a nuisance or waste; (b) is of a nature to involve substantial hazard, such as the manufacture or use of explosives, chemicals or other products that may explode, or that otherwise may harm the health or welfare of persons or the physical environment; (c) would or could invalidate or be in conflict with the provisions of any fire or other insurance policies covering the Premises; (d) would or could result in a refusal by insurance companies of good standing to insure the Premises in amounts required hereunder; (e) involves any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing, or other movement of Hazardous Substances into the environment in violation of the Environmental Requirements (a "Release" or "Released"); or (f) violates any covenant,



condition, agreement or easement applicable to the Premises.

#### **6.4 Right to Repair**

Should City fail to perform or observe any of its obligations or agreements pertaining to Hazardous Substances or Environmental Requirements, then Landlord shall have the right, but not the obligation, without limitation of any other rights of Landlord hereunder, to enter the Premises personally or through Landlord's Agents and perform the same after providing City with at least two (2) business days' prior written notice, except in the event of an emergency, in which case Landlord shall provide City with written notice of such entry as soon as reasonably possible. City agrees to indemnify Landlord for the costs thereof and liabilities therefrom as set forth above in this Article 6, and shall be entitled to interest on its costs if not reimbursed within ten (10) days of the invoice date, plus all costs of managing the failure by City to perform its obligations (including, e.g. the costs of attorneys, consultants, samples, laboratory charges, or otherwise).

#### **6.5 General Provisions**

(a) The obligations of City under this Article 6 shall not be affected by any investigation by or on behalf of Landlord, or by any information which Landlord may have or obtain as a result of any such investigation.

(b) The provisions of this Article 6 shall survive any expiration or termination of this Lease.

### **7. ALTERATIONS**

#### **7.1 Alterations by City**

Except for the Approved Alterations, City shall not make or permit any material alterations, installations, additions or improvements (collectively, "Alterations") to the Premises without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold or delay. An Alteration is "material" if it (i) is permanent in nature; (ii) requires a permit to install; or (iii) will materially affect the surface or subsurface improvements. Alterations permitted hereunder shall be made at City's cost in compliance with applicable Laws (as defined in Section 10.1 below). Landlord shall, without cost to itself, cooperate with City in securing building and other permits and authorizations needed in connection with any permitted Alterations. If City requests Landlord's approval to a proposed Alteration, Landlord shall not be entitled to any construction or other administrative fee in connection with any Alteration other than a commercially reasonable administrative fee to compensate Landlord for its actual review costs equal to no more than the lesser of Fifteen Thousand Dollars (\$15,000) and five percent (5%) of the total "hard" costs of the proposed Alteration to compensate Landlord for its review costs. City shall not be required to remove any Alterations upon the expiration or sooner termination of this Lease unless Landlord notifies City in writing at the time Landlord approves such Alterations that they must be removed at the Surrender Date.

#### **7.2 Title to Improvements**

Except for City's Personal Property (as defined in the next Section), all Alterations made at the Premises during the Term shall be and remain Landlord's property, unless Landlord agrees in writing to the contrary when approving the proposed Alteration; provided, however, that Landlord agrees the Approved Alterations shall be and remain Landlord's property once installed by City. City acknowledges its Alterations, at Landlord's election, shall be and remain Landlord's property once installed at the Premises and that City may not remove Alterations that Landlord has elected to make its property, unless Landlord expressly consents to such removal.

### 7.3 City's Personal Property

All vehicles, trailers, equipment, materials, and personal property stored at the Premises by or for the account of City (collectively, "City's Personal Property") shall be and remain City's property. At any time during the Term, City may remove any of City's Personal Property, provided City shall repair any damage to the Premises resulting from their presence or use at the Premises on or before the Surrender Date. Except as otherwise set forth to the contrary in this Section 7.3, on the Surrender Date, City shall have removed City's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises), below.

Landlord acknowledges that some of City's Personal Property may be financed by equipment lease financing and subject to a security interest or owned by an equipment company and leased to City ("Secured Personal Property"). Landlord, on City's reasonable request, shall execute and deliver any access agreement (each, an "Access Agreement") required by the supplier, lessor, or lender (each, a "Secured Party") of Secured Personal Property that includes the following essential protections for Landlord and the requesting Secured Party: (i) the installation of the Secured Personal Property will not alter or impair Landlord's rights under the Lease (except that Landlord shall have no lien on such Secured Personal Property); (ii) the Secured Party shall have the right to remove the applicable Secured Personal Property upon meeting the conditions of this Section 7.3, which includes: (A) the Secured Party (and any Agent exercising its rights under the Access Agreement) must have public liability, worker's compensation and auto insurance commensurate with the insurance coverage required of Tenant under this Lease prior to exercising any entry onto the Premises; (B) the removal of the Secured Personal Property shall not damage the Premises or, if it does, the Secured Party must repair the damage caused by such removal; (C) the Secured Party's removal of the applicable Secured Personal Property and all required repairs must occur by the Surrender Date, as it may be extended by an additional period ("Extension Period") of no more than thirty (30) days after the Surrender Date, which shall only occur if the Secured Party or City pays Rent in advance for the Extension Period (which Rent will be equal to 110% of the Rent due immediately before the Surrender Date); (D) the Secured Party will hold harmless, defend and indemnify the Landlord from and against any claims, actions, proceedings, liabilities, losses and damages (including, e.g. consequential damages) arising out of the Secured Party's breach of the Access Agreement or any claims arising from its entry onto the Premises (other than the active negligence of Landlord or its Agents); (E) if a Secured Party does not remove the applicable Secured Personal Property from the Premises by the Surrender Date, as may be extended by any Extension Period then, without limiting Landlord's remedies, the Secured Party will be deemed to have abandoned and waived its rights to the Secured Personal Property, and Landlord may dispose of these items as it deems appropriate in its sole discretion. Time is of the essence in connection with each of these provisions. The Secured Party's obligations to defend and indemnify Landlord under the Access Agreement shall survive any termination of the Access Agreement.

Any Access Agreement executed by Landlord and a Secured Party shall terminate on the earlier to occur of (i) written confirmation from the Secured Party of the termination of such Secured Party's ownership or security interest in the applicable Secured Personal Property and (ii) the Surrender Date (as it may be extended by any Extension Period).

### 7.4 Alteration by Landlord

City acknowledges that it has reviewed the Premises on multiple occasions and is aware of the status of the Premises, including the defects described in Exhibits B and B-1, attached hereto. Landlord has no obligations to make any alterations to the Premises in order to prepare the Premises for delivery to City. In addition, Landlord has no obligation to make any future alterations of the Premises, regardless of the circumstances, unless Landlord causes material damage to the Premises after the Effective Date through the active negligence or willful misconduct of its Agents, or it is expressly set out in the terms of this Lease.

## **8. REPAIRS AND MAINTENANCE**

### **8.1 Landlord's Repairs**

Landlord shall have no obligation to repair or maintain any portion of the Premises; all such obligations are those of the City. However, to the extent the Premises are damaged through the active negligence or willful misconduct of Landlord or its Agents, Landlord shall be obligated to repair such damages as provided in this Lease. Tenant shall not be obligated to maintain or repair any part of the Property outside of the Premises unless Tenant has caused Alterations to those portions of the Property, in which case, all of the obligations to comply with the provisions for Alterations shall apply, including the obligation to maintain and repair such Alterations.

### **8.2 City's Repairs**

Excepting only Landlord's repair obligations under Section 8.1, City shall repair and maintain at its cost the Premises and shall keep the Premises in good working order and in a graffiti-free, safe and sanitary condition, except for ordinary wear and tear and damage by casualty. City shall make any repairs and replacements required under this Section 8.2: **(i)** at City's cost, **(ii)** by contractors or mechanics selected by City and reasonably approved by Landlord, **(iii)** so that same shall be at least substantially equal in quality, value and utility to the original work or installation prior to damage thereof, and **(iv)** in compliance with all applicable Laws, including, without limitation, any applicable contracting requirements under City's Charter and Administrative Code and Disabilities Laws (as defined in Section 10.1 below).

### **8.3 Liens**

City shall keep the Premises free from liens arising out of any work performed, material furnished or obligations incurred by City during the Term. Landlord shall have the right to post on the Premises any notices permitted or required by law or that are needed for the protection of Landlord or the Premises from mechanics' and material suppliers' liens. City shall give Landlord at least ten (10) days' prior written notice of commencement of any Alterations, repair or construction by City on the Premises.

## **9. UTILITIES AND SERVICES**

### **9.1 Utilities and Services**

City shall be responsible for paying for all utilities and services it requires for its activities at the Premises. For the avoidance of doubt, Landlord shall not be responsible for providing and maintaining the connections needed to deliver utilities to the Premises, although Landlord must reasonably cooperate with City in facilitating the maintenance of existing utility connections to the extent requested by City under this Lease at City's cost.

### **9.2 Disruption in Utilities**

City has reviewed the available utilities to the Premises and deems them adequate for City's proposed uses of the Premises. Landlord has no obligation whatsoever to procure or maintain any utility connections; however, it will reasonably cooperate if City requires utilities, so long as it is at no cost to Landlord. If any utility connections are disrupted by any City activities or breach of its obligations under this Lease, City will use its best efforts to restore disrupted utility connections as soon as possible. If Landlord's performance or breach of its obligations under this Lease causes any interruption (including any failure or stoppage) of any utilities to the Premises and the interruption materially interferes with City's ability to carry on its business in the Premises for a period of more than one (1) business day, Rent shall be equitably abated to the extent of such disruption in use until the utilities are restored. If City elects to restore such utilities and incurs costs in doing so, then City may offset the reasonable cost thereof against the Rent next due under this Lease. Such abatement, or right to provide the services and offset

against Rent due to Landlord's performance or breach of its obligations, shall continue until Landlord cures the interruption or the utilities have been restored so that the lack of any remaining services no longer materially interferes with City's ability to carry on its business in the Premises. If essential utilities are not provided to the Premises by the utility companies due to Landlord's performance or breach of its obligations for more than thirty (30) days and such failure materially interferes with City's ability to carry on its business in the Premises, then City may, without limiting any of its other rights or remedies hereunder or at law or in equity, terminate this Lease upon written notice to Landlord. City shall not be entitled to any abatement or offset of Rent or right to terminate due to the failure, stoppage or interruption of any utilities to the Premises that is not caused by Landlord's performance or breach of its obligations under this Lease.

## **10. COMPLIANCE WITH LAWS; PREMISES CONDITION**

### **10.1 Premises Condition**

Landlord is providing the Premises to the City "as is, where is, and with all faults" condition; Landlord has no obligation to do anything to prepare the Premises for occupancy.

### **10.2 City's Compliance with Laws; Indemnity**

City shall use the Premises during the Term in compliance with applicable Laws as they apply to its use of the Premises, including the installation of any improvements required by applicable Laws to qualify the Premises for the uses and Alterations that the City intends to pursue, and complying with the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities (collectively, "Disabilities Laws"). City shall further comply with Disabilities Laws in the placement of City's Personal Property at the Premises and any Alterations made by City. Without limiting Section 16.1 (City's Indemnity), City shall Indemnify Landlord against any and all Claims arising out of City's failure to comply with all applicable Laws as provided in this Article 10.

### **10.3 City's Compliance with Insurance Requirements**

City shall not conduct any use in or about the Premises that would: **(a)** invalidate or be in conflict with any fire or other casualty insurance policies covering the Premises or any property located therein, **(b)** result in a refusal by fire insurance companies of good standing to insure the Premises or any such property in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering the Premises, **(c)** cause an increase in the fire insurance premium for the Premises unless City agrees to pay such increase, or **(d)** subject Landlord to any liability or responsibility for injury to any person or property by reason solely of any business operation being conducted by City in the Premises; provided, however, Landlord shall provide City with reasonable prior written notice of any applicable insurance requirements existing from time to time. If such additional insurance requirements would materially frustrate City's use of the Premises for the uses specified in the Basic Lease Information, City shall have the right to terminate this Lease by delivering no less than ten (10) days prior written notice of such termination to Landlord.

## **11. SUBORDINATION**

**(a)** Landlord represents and warrants that, to its actual knowledge (as reflected by the actual knowledge of its CEO Howard Lee as of the Effective Date, there will be no existing mortgages or deeds of trusts encumbering the Premises or Landlord's interest or estate therein as of the Effective Date other than the deed of trust recorded in the Records as Document No. I208532-01 on July 5, 2006, as assigned by an assignment of deed of trust recorded in the

Records as Document No. I208533-00 on July 5, 2006 ("Existing Lien"). Subject to subsection (b) below, this Lease shall be subject and subordinate at all times to the following (each an "Encumbrance"): the lien of any mortgages or deeds of trust and renewals, modifications, consolidations, replacements and extensions of any of the foregoing that may be executed by Landlord after the Effective Date in any amount for which any part of the Premises or Landlord's interest or estate therein is subject. Notwithstanding the foregoing, if the ground lessor, mortgagee, trustee, or holder of any such mortgage or deed of trust elects to have City's interest in this Lease be superior to any such later instrument, then upon notice thereof to City, this Lease shall be deemed superior, whether this Lease was executed before or after the date of said instrument or the recording thereof. At City's request, the holder of the Encumbrance shall enter into a subordination and nondisturbance agreement ("SNDA") with City in a commercially reasonable form evidencing such subordination or superiority of this Lease.

**(b)** If a SNDA for the Existing Lien is not procured within thirty (30) days of the Effective Date, City may elect to terminate the Lease not later than forty-five (45) days of the Effective Date. If City does not timely terminate the Lease pursuant to the foregoing sentence, then the SNDA requirement for such Existing Lien shall be deemed waived. It is a condition of this Lease that any ground lessor, mortgagee and/or trustee under a deed of trust enter into a SNDA regarding an Encumbrance in accordance with subsection 11 (a), above. Any SNDA required under this Section 11 shall provide, in pertinent part, that if any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to that mortgagee or beneficiary, or in the event any ground lease or underlying lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, cut off, or foreclosed nor shall the rights and possession of City hereunder be disturbed as long as City is not then in default in the payment of rental or other sums due hereunder, and is not otherwise in default under the terms of this Lease and City continues to perform its obligations under this Lease. City shall attorn to and become the tenant of the successor-in-interest to Landlord, provided that City has received proper written notice of such succession and the name and address of the successor landlord. Note, however, that the holder of any Encumbrance shall not be obligated to (A) honor or return any security deposit from City or any prepaid rent unless that holder actually receives such security deposit or prepaid rent nor (B) respond to or cure any default by Landlord except to the extent such default continues after such holder obtains possession of the Premises. Tenant's covenant under subsection (a) above to subordinate this Lease to any Encumbrance or other hypothecation executed after the Commencement Date is conditioned upon each such senior instrument containing the commitments specified in this subsection (b). City agrees to execute upon request by Landlord and in a form reasonably acceptable to City, any required documents needed to reflect the priority or subordination of this Lease with respect to any such Encumbrance as provided herein.

## **12. DAMAGE AND DESTRUCTION**

If the Premises are damaged by fire or other casualty that is caused by the active negligence or willful misconduct of City or its Agents or Invitees, City shall be responsible for all damages caused to the Premises by such fire or casualty and City shall not be entitled to terminate this Lease nor an abatement of Rent due to such damage.

If the Premises are damaged by fire or other casualty that is not caused by the active negligence or willful misconduct of City, its Agents or Invitees, then within twenty (20) days after the date of such damage, Landlord shall notify City whether or not, in Landlord's reasonable judgment made in good faith, such repairs can be made within the ninety (90) days after the date of such damage (the "Repair Period") and if there will be sufficient insurance proceeds to pay for the required repairs from the insurance it maintains for the Premises. If the damage can be repaired within the Repair Period but there are sufficient insurance proceeds to pay for the required repairs or either Landlord or the City elects, in their sole discretion, to provide the shortfall in such proceeds within thirty (30) days of Landlord delivering written notice to City of such shortfall (a "Covered Event"), Landlord shall repair the same without delay. If there is a

Covered Event, (i) this Lease shall remain in full force and effect, and (ii) City shall be entitled to an abatement of Rent while such repairs are being made to the extent to which such damage and the making of such repairs interfere with City's operations at the Premises.

If the Premises are damaged by fire or other casualty that is not caused by the active negligence or willful misconduct of City, its Agents or Invitees nor a Covered Event (an "Uncovered Event"), then either party may terminate this Lease within thirty (30) days of the Uncovered Event. If there is an Uncovered Event and neither party timely terminates the Lease, this Lease shall remain in full force and effect, and there shall be no abatement of Rent and Tenant will occupy the Premises in their damaged condition.

Notwithstanding anything to the contrary in the foregoing, Landlord's shall have no obligation to repair, and the Rent shall not be abated as a result of, any damage to City's Personal Property, whether by fire or any other cause, and City shall have no claim against Landlord for any loss or damage to such Personal Property.

If this Lease is terminated under this Section, and such casualty is not due to the active negligence or willful misconduct of Tenant, its Agents or Invitees, then between the date of the applicable casualty until the Surrender Date, Rent shall be reduced by a proportionate amount based upon the extent to which such damage interferes with the conduct of City's business in the Premises, and City shall pay such reduced Rent up to the Surrender Date. Landlord shall refund to City any Rent previously paid for any period of time beyond the Surrender Date.

If at any time during the last six (6) months of the Term of this Lease there is damage that Landlord would be required to repair hereunder and it will require more than thirty (30) days to complete the repairs, Landlord or City may, at the respective option of each, terminate this Lease as of the date such damage occurred by giving written notice to the other party of its election to do so within thirty (30) days after the date of such damage.

The parties intend that the provisions of this Section govern fully their rights and obligations in the event of damage or destruction, and Landlord and City each hereby waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

### **13. EMINENT DOMAIN**

#### **13.1 Definitions**

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

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

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

#### **13.2 General**

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this

Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and Landlord intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

### **13.3 Total Taking; Automatic Termination**

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

### **13.4 Partial Taking; Election to Terminate**

**(a)** If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety if all of the following exist: (i) the partial Taking, in City's reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by City for its intended purposes or otherwise materially adversely affects City's normal operations in the Premises, (ii) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but Landlord is unwilling or unable to cure such condition, and (iii) City elects to terminate.

**(b)** In the case of a partial taking of a substantial portion of the Premises, and if subsection (a) above does not apply, City and Landlord shall each have the right to terminate this Lease by written notice to the other within thirty (30) days after the Date of Taking, provided that, as a condition to City's right to terminate, the portion of the Premises taken shall, in City's reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City's normal operations in the Premises.

**(c)** Either party electing to terminate under the provisions of this Section 13.4 shall do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the date an order of possession is issued, or if no such order is issued, then on the later of the thirtieth (30<sup>th</sup>) day after such written notice is given or the Date of Taking.

### **13.5 Termination of Lease; Rent and Award**

Upon termination of this Lease in its entirety pursuant to Section 13.3 (Total Taking; Automatic Termination), or pursuant to an election under Section 13.4 (Partial Taking; Continuation of Lease) above, then: **(a)** City's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and **(b)** Landlord shall be entitled to the entire Award in connection therewith, except that City shall receive any Award made by separate award and specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

### **13.6 Partial Taking; Continuation of Lease**

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 13.4 (Partial Taking; Continuation of Lease) above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: **(a)** Rent shall be reduced by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and **(b)** Landlord shall be entitled to the entire Award in connection therewith, provided that City shall receive any separate Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

### **13.7 Temporary Taking**

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and City shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, City shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by City for the period of the Taking.

### **14. ASSIGNMENT AND SUBLETTING**

City shall have the right from time to time, upon notice to Landlord, but without the need for consent of Landlord, to transfer this Lease or use and occupancy of all or any of the Premises to any department, commission or agency of the City and County of San Francisco for uses permitted under this Lease. Except as provided in this Section 14 below, City shall not directly or indirectly sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises, without Landlord's prior written consent in each instance, which shall not be unreasonably withheld or delayed. If Landlord consents to City's sublease of the Premises or assignment of this Lease to any other party, Landlord shall receive any payments paid by such assignee or subtenant to City in connection with such sublease or assignment to the extent they exceed City's Rent obligations (proportionately adjusted for any sublease of a portion of the Premises) after City has recovered its costs incurred in connection with such sublease or assignment, including, without limitation, compensation to brokers and agents, lease buyout costs, tenant improvement costs, Rent paid while the Premises (or the affected portion of the Premises) was vacant and being actively marketed, and marketing expenses.

### **15. DEFAULT; REMEDIES**

#### **15.1 Events of Default by City**

Any of the following shall constitute an event of default by City hereunder (each, a "City Event of Default") and shall constitute a breach of this Lease:

(a) City's failure to make any timely payment of Rent and to cure such nonpayment within five (5) business days after receipt of written notice thereof from Landlord, provided that for the first two (2) monthly payments of Rent at the beginning of the Term and for the first monthly payment of Rent after the beginning of each new fiscal year for City, City shall have twenty (20) days to cure any such nonpayment after written notice thereof from Landlord;

(b) City's abandons the Premises (within the meaning of California Civil Code Section 1951.3);

(c) City fails to timely surrender the Premises on the Surrender Date in the condition required under this Lease or in violation of Section 20; or

(d) City's failure to perform any other covenant or obligation of City hereunder (not involving the payment of money) and to cure such non-performance within thirty (30) days of the date of receipt of notice thereof from Landlord, provided that if more than thirty (30) days are reasonably required for such cure, no City Event of Default shall occur if City commences such cure within such period and diligently prosecutes such cure to completion.

#### **15.2 Landlord's Remedies**

Upon the occurrence of any City Event of Default, Landlord shall have all rights and remedies



available pursuant to law, equity, or granted hereunder, including the following:

**(a)** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate City's right to possession of the Premises and to recover, among other damages, 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 rental loss for the same period that City proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2.

**(b)** All of the rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as Landlord does not terminate City's right to possession, if City has the right to sublet or assign, subject only to reasonable limitations.

### **15.3 Landlord's Default**

It shall be a "Landlord Event of Default" for Landlord if Landlord fails to perform any covenant or obligation of Landlord hereunder and to cure such non-performance within thirty (30) days of the date of receipt of notice thereof from City (subject to force majeure), provided that if more than thirty (30) days are reasonably required for such cure, no Landlord Event of Default shall occur if Landlord commences such cure within such period and diligently prosecutes such cure to completion. If there is a Landlord Event of Default, then, without limiting any of City's other cure rights under this Lease, City may, at its sole option, cure such default at Landlord's expense. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the cure period provided above, then whether or not City elects to cure Landlord's default as provided herein, the Base Rent and any other charges hereunder shall be abated based on the extent to which such a Landlord Event of Default interferes with City's ability to carry on its business at the Premises. Notwithstanding the foregoing, if a Landlord Event of Default continues for sixty (60) days and impairs City's ability to carry on its business in the Premises, then City shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days after the expiration of such sixty (60)-day period. The City waives all rights and remedies that would change the remedies allocated under this Section 15.3, all of which are intended to supersede any conflicting statutory remedies or rights. City waives any and all claims for special or consequential damages, except to the extent that these are part of a Claim to be the subject of an Indemnity by Landlord under Article 16 below.

## **16. INDEMNITIES**

### **16.1 City's Indemnity**

City shall indemnify, defend and hold harmless ("Indemnify") Landlord and its Agents from and against any and all third-party liabilities, actions, proceedings, losses, damages, claims, costs and expenses, including, without limitation, reasonable attorneys' fees (collectively, "Claims"), suffered or incurred as a result of **(a)** City's use of the Premises, **(b)** any default by City in the performance of any of its obligations under this Lease, **(c)** any misrepresentation or breach of warranty by the City in this Lease, or **(d)** any acts or omissions of City or its Agents in, on or about the Premises. This indemnity shall not apply to the extent the City establishes that the Claim arises out of the active negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents by reason of any Claim to be Indemnified by City hereunder (a "City Defense Claim"), City may, at its sole option, elect to defend such City Defense Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City and reasonably approved by Landlord, or both.

City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding for a City Defense Claim, provided that this shall not limit the City's

obligation to fully Indemnify the Landlord from that City Defense Claim. Moreover, Landlord shall have the right, but not the obligation, to participate in the defense of any City Defense Claim at its sole cost. However, if Landlord defends itself against a City Defense Claim because City negligently handles such a Claim, or incorrectly asserts it is not a City Defense Claim or reserves rights to contest that it is not a City Defense Claim and a court of competent jurisdiction determines such Claim is a City Defense Claim, or the City does not competently defend against it, then City shall pay Landlord's reasonable costs of defending the Claim. City's obligations under this Section shall survive the expiration or termination of the Lease.

## **16.2 Landlord's Indemnity**

Landlord shall Indemnify City and its Agents against any and all Claims incurred as a result of **(a)** any default by Landlord in the performance of any of its obligations under this Lease, **(b)** any misrepresentation or breach of warranty by Landlord in this Lease, or **(c)** any active negligence or willful misconduct by Landlord or its Agents in, on, or about the Premises, except to the extent the Claim is due to the active negligence or willful misconduct of City or its Agents. In any action or proceeding brought against City or its Agents by reason of any Claim to be Indemnified by Landlord hereunder (a "Landlord Defense Claim"), Landlord may, at its sole option, elect to defend such Claim by attorneys selected by Landlord provided all such attorneys are approved by City, which shall be reasonably exercised.

Landlord shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding for a Landlord Defense Claim, provided that this shall not limit the Landlord's obligation to fully Indemnify City from that Landlord Defense Claim. Moreover, City shall have the right, but not the obligation, to participate in the defense of any Landlord Defense Claim at its sole cost. However, if City defends itself against a Landlord Defense Claim because Landlord negligently handles such a Claim, or incorrectly asserts it is not a Landlord Defense Claim or reserves rights to contest that it is not a Landlord Defense Claim and a court of competent jurisdiction determines such Claim is a Landlord Defense Claim, or the Landlord does not competently defend against it, then Landlord shall pay City's reasonable costs of defending the Claim. The Landlord's obligations under this Section shall survive the expiration or termination of this Lease.

## **17. INSURANCE**

Landlord acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Lease so long as it maintains a self-insurance program that meets the standards described in the attached Exhibit E. City assumes the risk of damage to any of City's Personal Property, except for damage caused by the active negligence or willful misconduct of Landlord or its Agents.

## **18. ACCESS BY LANDLORD**

Landlord reserves for itself and any designated Agent the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord shall give any reasonable notice), after giving City at least twenty four (24) hours' advance written or oral notice unless there is an emergency with respect to public health and safety, for the purpose of **(a)** inspecting the Premises, **(b)** supplying any service to be provided by Landlord hereunder, **(c)** showing the Premises to any prospective purchasers, mortgagees or, during the last six (6) months of the Term of this Lease, tenants, **(d)** posting notices of non-responsibility, and **(e)** altering, improving or repairing the Premises, provided that the entrance to the Premises shall not be blocked thereby and City's use shall not be interfered with. If there is an emergency with respect to public health and safety that prevents such advance notice, Landlord shall notify City as soon as reasonably possible.

## **19. ESTOPPEL CERTIFICATES**

Either party, from time to time during the Term upon not less than ten (10) days' prior written

notice from the other party, may reasonably request the other party to execute, acknowledge and deliver to such persons or entities designated by such other party a certificate stating: **(a)** the Commencement Date and Expiration Date of this Lease, **(b)** that this Lease is unmodified and in full force and effect (or, if there have been modifications, this the Lease is in full force and effect as modified and stating the modifications), **(c)** that there are no defaults under this Lease (or if so, specifying the same), and **(d)** the date to which Rent has been paid.

## **20. SURRENDER OF PREMISES**

Upon the Surrender Date, City shall surrender the Premises to Landlord in good order and condition, reasonable use and wear, and damage by fire or other casualty excepted. If the Term ends due to a breach and termination, and provided City has paid the applicable Rent for such extension, City shall have an additional ten (10) days after the termination date to remove from the Premises all of City's Personal Property and any Alterations City is to remove from the Premises pursuant to the provisions of Article 7 above. City shall repair or pay the cost of repairing any damage to the Premises resulting from such removal not later than the Surrender Date or the ten-day extension period if Rent has been paid for the extension. City's obligations under this Section shall survive the expiration or earlier termination of this Lease. If City fails to properly remove any Alterations or City's Personal Property as required in Article 7 above by the Surrender Date, Landlord shall have the right, at City's cost, to cause all such City Personal Property and Alterations to be removed from the Premises as contemplated by the Lease at City's cost, and as to City's Personal Property, to have it stored or disposed of at City's sole cost. Time is of the essence, and the failure of City to properly and timely surrender the Premises shall be a City Event of Default (and a breach) without any right to cure under Section 15.1.

## **21. HAZARDOUS SUBSTANCES**

### **21.1 Landlord's Representations and Covenants**

Landlord represents and warrants to City that, except as disclosed on the attached Exhibits B and B-1, Landlord has not received written notice that **(a)** the Premises are in violation of any Environmental Requirements, **(b)** the Premises contains any underground storage tanks, **(c)** there has been a Release of any Hazardous Substances in, on, under or about the Premises; or **(d)** the Premises are subject to any investigation or claim by any governmental regulatory agency or third party related to a Release in, on or about the Premises.

### **21.2 Landlord's Environmental Indemnity**

Without limiting Landlord's Indemnity in Section 16.2 (Landlord's Indemnity), above, Landlord shall Indemnify City and its Agents against any and all Claims arising during or after the Term of this Lease **(a)** as a result of any breach of any of Landlord's representations, warranties or covenants in the preceding Section 21.1, or **(b)** arising from a new Release caused by Landlord or its Agents during the Term.

### **21.3 City's Covenants**

Except as specifically allowed under Article 6 of this Lease, City shall not use, treat, keep, store, transport, handle, sell, or Release any Hazardous Substances at, on, under or from the Premises during the Term, nor allow any of its Agents or Invitees to do so.

### **21.4 City's Environmental Indemnity**

A "Hazardous Materials Violation" means (i) City's breach of its obligations under Article 6 or under this Article 21, or (ii) if City, its Agents or Invitees cause the Release of any Hazardous Substances from, in, on or about the Premises with respect to its use of the Premises pursuant to this Lease. City shall Indemnify Landlord and its Agents against any and all Claims arising during or after the Term to the extent caused by a Hazardous Materials Violation. City's obligations under this Section will include defending Landlord against any cost, loss, demand,

claim, or liability, including reasonable and actual attorneys' fees and disbursements and costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal or restorative work required by any environmental regulatory agency with jurisdiction under Environmental Requirements resulting from a Hazardous Materials Violation. The foregoing Indemnity shall not include any Claims resulting from the non-negligent aggravation by City, its Agents or Invitees of physical conditions of the Premises existing as of the Commencement Date, unless this was due to Alterations pursued by City, in which case, the City must Indemnify Landlord, whether or not the Claim is tied to negligence.

### **21.5 Survival**

The provisions of this Article 21 shall survive any expiration or termination of this Lease.

## **22. GENERAL PROVISIONS**

### **22.1 Notices**

Except as otherwise specifically provided in this Lease, any notice given under this Lease shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, to: (a) City at Tenant's address set forth in the Basic Lease Information; or (b) Landlord at Landlord's address set forth in the Basic Lease Information; or (c) such other address as either Landlord or City may designate as its new address for such purpose by notice given to the other in accordance with this Section. Any notice hereunder shall be deemed to have been given and received two (2) days after the date when it is mailed if sent by first-class, certified mail, one day after the date when it is mailed if sent by Express Mail, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile.

### **22.2 No Implied Waiver**

No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. No acceptance of full or partial Rent by Landlord while City is in default hereunder shall constitute a waiver of such default by Landlord. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Landlord or City given in one instance under the terms of this Lease shall not relieve the other party of any obligation to secure the consent to any other or future instance under the terms of the Lease.

### **22.3 Amendments**

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, the SFMTA Director of Transportation, or his or her designee, shall be authorized to provide such

approval, except as otherwise provided by applicable law, including the Charter of the City and County of San Francisco. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Landlord, and City's agreement may be made upon the sole approval of the SFMTA Director of Transportation, or his or her designee; provided, however, material amendments or modifications to this Lease (a) changing the legal description of the Premises, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Premises from the use authorized under Section 5.1 (Permitted Use) of this Lease, and (e) any other amendment or modification which materially increases City's liabilities or financial obligations under this Lease shall additionally require the approval of SFMTA Board of Directors. Whenever any such amendment is to be provided, City shall provide reasonable assurances to Landlord that all of these authorizations are in effect and bind the City.

#### **22.4 Authority**

Landlord represents and warrants to City that it is the sole owner of the Premises and the execution and delivery of this Lease by Landlord does not violate any provision of any agreement, law or regulation to which Landlord or the Premises is subject. If Landlord is a corporation, limited liability company or a partnership, each of the persons executing this Lease on behalf of Landlord does hereby covenant and warrant that Landlord is a duly authorized and existing entity, that Landlord has and is qualified to do business in California, that Landlord has the full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Landlord are authorized to do so. On City's request, Landlord shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

City represents and warrants to Landlord that the execution and delivery of this Lease by City does not violate any provision of any agreement, law or regulation to which City is subject, and that City has the full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of City are authorized to do so. On Landlord's request, City shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing representations and warranties.

#### **22.5 Parties and Their Agents; Approvals**

If applicable, the word "Landlord" as used in this Lease shall include the plural as well as the singular. As used in this Lease, the term "Agents" when used with respect to either party shall include the agents, employees, officers and contractors of such party, and the term "Invitees" when used with respect to City shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of City. All approvals, consents or other determinations permitted or required by City under this Lease, including but not limited to the exercise of any option granted to City, shall be made by or through the SFMTA Director of Transportation unless otherwise provided in this Lease, subject to any applicable limitations in the City's Charter. If there is more than one entity that comprises Landlord, the obligations and liabilities under this Lease imposed on Landlord shall be joint and several.

#### **22.6 Interpretation of Lease**

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intent and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Except as otherwise specifically provided herein, wherever in this Lease Landlord or City is required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval of consent shall be stated in reasonable detail in writing. Provisions in this Lease relating to number of days shall be calendar

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

#### **22.7 Successors and Assigns**

Subject to the provisions of Section 14 (Assignment and Subletting) relating to assignment and subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and City and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Lease.

#### **22.8 Brokers**

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein, except for the brokers identified in the Basic Lease Information, whose commission, if any is due, shall be the sole responsibility of Landlord pursuant to a separate written agreement between Landlord and such brokers, and City shall have no liability therefor. If any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

#### **22.9 Severability**

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

#### **22.10 Governing Law**

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

#### **22.11 Entire Agreement**

The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) 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 written or oral agreements or understandings. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease.

#### **22.12 Attorneys' Fees**

If either Landlord or City fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the

prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). 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.

### **22.13 Holding Over**

Should City hold over in possession of the Premises after the expiration of the Term with Landlord's consent, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a month-to-month tenancy. Such tenancy shall be on all the terms and conditions set forth in this Lease and at the monthly Base Rent in effect during the last month of the Term of this Lease or such other rental as Landlord and City may mutually agree in writing as a condition to Landlord's consent to such holding over, and City shall continue as a month-to-month tenant until the tenancy shall be terminated by Landlord giving City or City giving Landlord at least thirty (30) days' prior written notice of termination. Should City hold over without Landlord's consent, the rent payable by City during the period of such holding over shall be one hundred fifty percent (150%) of the monthly Base Rent in effect during the last month of the Term of this Lease, and such tenancy shall otherwise be on the terms and conditions contained herein.

### **22.14 Cumulative Remedies**

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

### **22.15 Time of Essence**

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

### **22.16 Survival of Indemnities**

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

### **22.17 Signs**

City may erect or post signs on or about the Premises subject to Landlord's prior approval. Landlord reserves the right to review the placement, design, and plan for any such sign prior to its erection or posting and agrees that the approval thereof shall not be unreasonably withheld or delayed.

### **22.18 Quiet Enjoyment and Title**

Landlord covenants and represents that, subject to matters of Record, it has full right, power and authority to grant the leasehold estate hereunder, and covenants that City, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term of this Lease as against all persons or

entities claiming by and through Landlord or on account of any action, inaction or agreement of Landlord or its Agents. Without limiting the provisions of Section 16.2 (Landlord's Indemnity), Landlord agrees to Indemnify City and its Agents against Claims arising out of any assertion that would interfere with City's right to quiet enjoyment as provided in this Section in violation of the preceding sentence.

#### **22.19 Bankruptcy**

Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. Landlord and City agree that City's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services, facilities and amenities of the Premises as provided herein, and that if any of such services, facilities or amenities are terminated, or materially limited or restricted on account of any such case or proceeding, or for any other reason, City shall have the right to (a) contract directly with any third-party provider of such services, facilities or amenities to obtain the same, and (b) offset against the Base Rent or other charges payable hereunder any and all reasonable costs and expenses incurred by City in obtaining such services, facilities or amenities.

#### **22.20 Transfer of Landlord's Interest**

Landlord shall have the right to transfer its interest in the Premises or this Lease to any other financially responsible person or entity. In the event of any such transfer, Landlord shall be relieved, upon notice to City of the name and address of Landlord's successor, of any obligations accruing hereunder from and after the date of such transfer and upon delivering to City an express assumption by the transferee of all of Landlord's obligations hereunder.

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

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

#### **22.22 MacBride Principles - Northern Ireland**

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

#### **22.23 Controller's Certification of Funds**

The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by City under this Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Lease commences, sufficient funds for the payment of Rent and any other payments required under this Lease are not appropriated, then City may terminate this Lease, without penalty, liability or expense of any kind to City, as of the last date on which sufficient funds are appropriated. City shall use its reasonable efforts to give Landlord reasonable advance notice of such termination.



## 22.24 Prevailing Wages and Working Conditions

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Landlord agrees to require its Contractors and Subcontractors performing (i) labor in the construction of a “public work” as defined in California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling if paid for in whole or part out of public funds), or (ii) Covered Construction at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “Prevailing Wage Requirements”). Landlord agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Landlord shall include, and require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Landlord’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor’s or Subcontractor’s failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party.

## 22.25 Non Discrimination in City Contracts and Benefits Ordinance

### (a) Covenant Not to Discriminate

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

### (b) Subcontracts

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

### (c) Non-Discrimination in Benefits

Landlord does not as of the date of this Lease and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or

membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

**(d) CMD Form**

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

**(e) Incorporation of Administrative Code Provisions by Reference**

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

**22.26 Counterparts**

This Lease 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.

**22.27 Effective Date**

The date on which this Lease shall become effective (the "Effective Date") is the date on which this Lease is duly executed by the parties hereto.

**22.28 Certification by Landlord**

By executing this Lease, Landlord certifies that neither Landlord nor any of its officers or members have been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. If Landlord or any of its officers or members have 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, disbarment, discipline or prohibition may result in the termination or suspension of this Lease. Landlord acknowledges that this certification is a material term of this Lease.

**22.29 Memorandum of Lease**

On or before the Effective Date, Landlord shall deliver the memorandum of lease in the form attached hereto as Exhibit C (the "Memorandum of Lease") to City, duly executed by Landlord and acknowledged and City shall have the right to cause the Memorandum of Lease to be recorded in the Records. On or before the Surrender Date, City shall deliver the quitclaim deed in the form attached hereto as Exhibit D (the "Quitclaim Deed") to Landlord, duly executed by City and acknowledged not later than the Surrender Date, except that if this Lease terminates

pursuant to Section 3.2, City shall deliver the duly executed and notarized Quitclaim Deed to Landlord within two (2) business days of such termination. Landlord shall have the right to cause the Quitclaim Deed to be recorded in the Records on or after the Surrender Date. Each party specifically agrees that any breach of the terms of this Section 22.29 shall entitle the counterparty to all remedies available at law, including specific performance, and shall include a right to recover consequential damages.

### **22.30** Sunshine Ordinance

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

### **22.31** Conflicts of Interest

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

### **22.32** Notification of Prohibition on Contributions

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

### **22.33** Preservative-Treated Wood Containing Arsenic

Landlord may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code, Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac

copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Landlord may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Landlord from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### **22.34 Cooperative Drafting**

This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, 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 Lease.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL THE SFMTA BOARD OF DIRECTORS HAS DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS THE SFMTA BOARD OF DIRECTORS APPROVES THIS LEASE, IN ITS RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

IF THE RESOLUTION REQUIRED BY THE PRECEDING PARAGRAPH IS NOT DELIVERED TO LANDLORD WITHIN THIRTY (30) DAYS OF THE EXECUTION BY LANDLORD OF THIS LEASE, THE LEASE SHALL AUTOMATICALLY BE VOID AND OF NO FURTHER FORCE OR EFFECT.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

LANDLORD:

INFOIMAGE OF CALIFORNIA, INC.,  
a California corporation

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

[ \_\_\_\_\_ ]  
Director of Transportation

San Francisco Municipal Transportation Agency  
Board of Directors

Resolution No: \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest:  
Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

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

Carol Wong  
Deputy City Attorney

**EXHIBIT A**

**DEPICTION AND DESCRIPTION OF PREMISES**



(Boundary of Premises outlined in yellow)

## **EXHIBIT B**

### **EXISTING CONDITION OF THE PREMISES AND APPROVED ALTERATIONS**

The Premises is a 39,290 square foot (+-) triangular-shaped parcel (approximate 0.9 acre) which is generally level with a surface elevation of approximately 60 feet above mean sea level. Site access is secured by a chain link fence and locked gates. The land surface is mostly asphaltic paving. Portions of the paving and fence at the Premises are in need of repair.

Approved Alterations consist of the following:

- Patching breaks in the existing surface paving to the same (or better) condition as the surrounding paving on the Premises as necessary.
- Repairing damaged portions of the fencing to the same (or better) condition as the surrounding fencing on the Premises as necessary.
- Installing 4 storage containers and bringing power to the units without any connections below the existing surface paving.
- Installing one trailer without any connections below the existing surface paving for the marshalling of staff.
- Adding supplementary lighting features without any connections below the existing surface paving.
- Creating an enclosed area for asphalt storage.
- Restriping parking spaces as necessary.

**EXHIBIT B-1**

**ENVIRONMENTAL REPORTS**

(On-file with SFMTA Strategic Real Estate)

PES Environmental Inc. Engineering and Environmental Services – Summary of Remedial Operations Soil Removal Action - 890 Pennsylvania Avenue, San Francisco, Ca. November 10, 1995.

PES Environmental Inc. Engineering and Environmental Services – Summary of Focused Environmental Assessment, 890 Pennsylvania Avenue, San Francisco, Ca. June 5, 2015.



**EXHIBIT C**

**FORM OF MEMORANDUM OF LEASE**

RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:

City and County of San Francisco  
San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 8th Floor  
San Francisco, California 94103  
Attn: Manager, Strategic Real Estate Facilities and  
Real Property Management

Exempt from recording fees pursuant to California  
Government Code Section 27383.

Documentary Transfer Tax: NONE – Exempt pursuant  
to California Revenue & Taxation Code § 11922 and  
San Francisco Business and Tax Regulations Code  
Section 1105

[Address]  
Block [ ], Lot [ ]

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

**MEMORANDUM OF LEASE**

This Memorandum of Lease ("Memorandum"), dated for reference purposes as of October 31, 2019, is by and between INFOIMAGE OF CALIFORNIA, INC., a California corporation ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City").

**Recitals**

A. Concurrently herewith, Landlord and City have entered into that certain Lease, dated \_\_\_\_\_, 20\_\_ (the "Lease"), pursuant to which Landlord leased to City and City leased from Landlord the real property more particularly described in the attached Exhibit A (the "Property"), which is incorporated by this reference.

B. Landlord and City desire to execute this Memorandum to provide constructive notice of the Lease to all third parties, and all of the terms and conditions of the Lease are incorporated herein by reference as if they were fully set forth herein and reference is made to the Lease itself for a complete and definitive statement of the rights and obligations of Landlord and Tenant thereunder.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Term. Pursuant to the terms of the Lease, Landlord leased the Property to City for a term commencing on January 1, 2020. The Term of the Lease shall expire on December 31, 2026, unless earlier terminated in accordance with the terms of the Lease.

2. Lease Terms. The lease of the Property to City is made pursuant to the Lease, which is incorporated in this Memorandum by reference. This Memorandum shall not be deemed to modify, alter or amend in any way the provisions of the Lease. In the event any

conflict exists between the terms of the Lease and this Memorandum, the terms of the Lease shall govern. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Lease.

3. Successors and Assigns. This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease.

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

LANDLORD:

INFOIMAGE OF CALIFORNIA, INC.,  
a California corporation

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, acting by and through the  
San Francisco Municipal Transportation Agency

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

[Name]

Director of Transportation

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California            )  
  )  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_,  
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)

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California            )  
  )  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_,  
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)

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California            )  
  )  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_,  
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)

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

**EXHIBIT D**

**FORM OF QUITCLAIM DEED**

**EXHIBIT E**

**SELF-INSURANCE PROGRAM**