

GROUND LEASE

(T5-T6)

by and between

CITY OF OAKLAND

("Landlord")

and

SAMUEL MERRITT UNIVERSITY

("Tenant")

Dated as of November 14, 2022

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EXHIBITS

A	Legal Description of the Property
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D	Form of Termination and Quitclaim Deed
E	Required Insurance
F	Acknowledgement of Campaign Contribution Limits Form
G	Form of Memorandum of Lease

**GROUND LEASE
(T5-T6)**

THIS GROUND LEASE (T5-T6) (this “**Lease**”), dated as of November ____, 2022 (“**Effective Date**”) is entered into by and between the CITY OF OAKLAND, a municipal corporation (“**City**” or “**Landlord**”), and SAMUEL MERRITT UNIVERSITY, a California nonprofit public benefit corporation (“**Tenant**”). Landlord and Tenant are hereinafter sometimes referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

This Lease is entered into upon the following facts, understandings and intentions of the Landlord and Tenant:

A. These Recitals refer to and use certain capitalized terms that are defined in Article 38 of this Lease.

B. The City owns Lot 2 as shown on Parcel Map 10430, filed March 6, 2018 in Map Book 338, Pages 65-67, Alameda County Records (the “**Parcel Map**”), which is a portion of the block bounded by Broadway, 11th Street, 12th Street and Clay Street, City of Oakland, California, commonly known as T-5/T-6 (the “**Property**” or “**Site B**”) as more particularly described on Exhibit A attached hereto and as shown on the Parcel Map attached hereto as Exhibit B, which are both incorporated herein by this reference.

C. Site B, together with the adjacent Site A, are subject to that certain T-5/T-6 Hotel and Residential Project Disposition and Development Agreement dated effective November 6, 2015, by and between the City and Strada T5 LLC, a California limited liability company (“**Strada**”), recorded on March 12, 2018 in the Official Records of Alameda County, California (the “**Official Records**”) as Instrument No. 2018050055 (the “**Original DDA**”).

D. The Original DDA provides for two phases of development, consisting of Phase 1 on Site A and Phase 2 on Site B.

E. Pursuant to that certain unrecorded Assumption of Obligations and Acknowledgement and Consent dated as of December 20, 2016, by and between Strada and 1100 Clay Venture, LLC, a Delaware liability company (the “**1100 Clay Venture**”) (the “**2016 Assumption**”), a joint venture comprised of 1100 Clay Venture Holdings, LLC, and Strada, assumed all of Strada’s obligations, right, title and interest in the Original DDA with respect to development of Phase 1 on Site A.

F. In connection with the 2016 Assumption, Strada T5 and 1100 Clay Venture entered into that certain unrecorded Assignment and Assumption Agreement dated December 20, 2016, pursuant to which Strada T5 assigned to 1100 Clay Venture all of its right title and interest in the DDA with respect to Phase 1 and Site A.

G. The City and Strada amended the Original DDA as it relates to Site B by that certain First Amendment to T-5/T-6 Hotel and Residential Project Disposition and Development Agreement dated as of February 4, 2020, by and between the City and Strada, recorded on

_____, 2022 in the Official Records as Instrument No. _____ (the “**First Amendment**”); which was extended and amended by certain unrecorded letters from the City to Strada, dated September 22, 2020, January 29, 2021, August 16, 2021, and July 29, 2022 (collectively, the “**Letters**”); and further amended by that certain Second Amendment to T-5/T-6 Hotel and Residential Project Disposition and Development Agreement dated as of November __, 2022, recorded on _____, 2022 in the Official Records as Instrument No. _____ (the “**Second Amendment**”).

H. The Original DDA, as amended by the First Amendment, extended by the Letters, and amended by the Second Amendment shall be referred to herein as the “**Existing DDA**”.

I. The Second Amendment, among other things, changed the title of the Existing DDA to “Lease Disposition and Development Agreement (T5T6)” and shall be referred to herein as the “**LDDA**”.

J. Pursuant to the LDDA, Site B will be developed for university use, which may include, without limitation, offices, classrooms, teaching labs, common spaces, parking and possible health services facilities, and related uses (collectively, the “**Project**”).

K. All conditions precedent to the execution and delivery of this Lease, as set forth in the LDDA, have been satisfied, deferred, or waived by the Parties in accordance with the LDDA.

L. This Lease is being made in conformance with, and pursuant to, the authority conferred upon the City by the City Charter. The conveyance by ground lease of the Property to the Tenant was authorized by Ordinance No. 13707 C.M.S. adopted November 9, 2022.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and mutual obligations contained in this Lease, and in reliance on Tenant’s representations and warranties set forth herein, Landlord and Tenant hereby agree as follows:

ARTICLE 1.

PREMISES; TERM

1.1 Definitions; Incorporation of Recitals and Exhibits. Initially capitalized terms used in this Lease are defined in Article 38. Additional terms are defined in the text of this Lease. The Recitals set forth above and Exhibits A through G are hereby incorporated into this Lease.

1.2 Premises.

1.2.1 Lease of Premises; Ownership of Improvements. Subject to, and upon the terms and conditions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Property. The Property and any and all Improvements hereafter located on the Property at any time during the Term are collectively referred to in this Lease as the “**Premises**”. Notwithstanding anything to the contrary set forth herein, at all times during the Term of this Lease, Tenant shall own the Improvements, subject to Landlord’s reversionary interests set forth in this Lease.

1.2.2 Permitted Title Exceptions. The leasehold interest granted by Landlord to Tenant pursuant to this Lease is subject to (a) the exceptions listed in Exhibit C (the “**Permitted Title Exceptions**”), and (b) other matters as Tenant shall cause or permit to arise during the Term subject to the terms and conditions of this Lease.

1.2.3 Delivery of Possession. This Lease shall be effective upon the Lease Commencement Date and Landlord shall not deliver possession of the Premises to Tenant until the occurrence of the Rent Commencement Date. Prior to the Rent Commencement Date, Landlord shall retain possession of the Premises and Tenant shall have no possessory or other rights to the Premises, except as otherwise set forth in the right of entry provided to Tenant pursuant to Section 4.1 of LDDA. If the Rent Commencement Date does not occur by February 6, 2024 (as such date may be extended as provided in the LDDA), Tenant shall, at the request of Landlord, execute and record a termination of the Lease and quitclaim deed and release of the Memorandum of Lease, substantially in the form attached hereto as Exhibit D (the “**Termination and Quitclaim Deed**”).

1.3 Term. The Term of this Lease shall commence on November ____, 2022, which is the date that the Memorandum of Lease is recorded in the Official Records (the “**Commencement Date**”). The Lease shall expire on the ninety-ninth (99th) anniversary of the Commencement Date, or earlier terminated in accordance with this Lease (the “**Termination Date**”). The period from the Commencement Date until the expiration, or any such earlier termination, of this Lease is referred to herein as the “**Term**”.

1.4 Relationship of Lease to LDDA. This Lease establishes the rights and obligations of Tenant and Landlord during the Term, which rights are also subject to the provisions of the LDDA. This Lease and the LDDA will both govern the rights and obligations of the Parties until a Certificate of Completion is issued for the Improvements to be constructed by Tenant on the Premises in accordance with the LDDA. In the event of any inconsistency between this Lease and the LDDA before issuance of the Certificate of Completion, the LDDA will control as to issues of development and construction, and this Lease will control as to all other issues, including payment of Rent and Landlord’s and Tenant’s rights and obligations as landlord and tenant under this Lease with respect to the Premises or any portion thereof. From and after the issuance of the Certificate of Completion, this Lease shall exclusively govern the rights and obligations of the Parties with respect to the Premises except with respect to those provisions of the LDDA that expressly survive termination of the LDDA.

ARTICLE 2.

RENT

2.1 Tenant’s Covenant to Pay Rent. During the Term of this Lease, Tenant shall pay Rent for the Premises to Landlord in the amounts, at the times and in the manner provided in this Article 2 and elsewhere in this Lease.

2.2 Rent.

2.2.1 Tenant’s Covenant to Pay Rent. During the Term, Tenant will pay Rent for the Premises to Landlord at the times and in the manner provided in this Article 2 and elsewhere

in this Lease. “**Rent**” means Base Rent, Construction Rent, Minimum Rent, Additional Rent, and all other sums payable by Tenant to Landlord hereunder, including any Late Charges and interest assessed at the Default Rate.

2.2.2 Base Rent. Tenant shall pay to Landlord on the Commencement Date of this Lease rent for the Term in the amount of Ninety-Nine Dollars (\$99), which shall be equivalent to One Dollar (\$1) per year (“**Base Rent**”).

2.2.3 Construction Rent. “**Construction Rent**” shall be fifty percent (50%) of the Minimum Rent, paid in monthly installments commencing on the Rent Commencement Date and thereafter until the earlier of: (a) the City, in its regulatory capacity, issues a temporary certificate of occupancy for the Project, or (b) the date which is thirty-six (36) months after commencement of construction (subject to written extension for Force Majeure) as evidenced by the issuance by the City, in its regulatory capacity, of the first building permit for construction of the Project (the “**Construction Period**”). “**Rent Commencement Date**” (“**Financial Closing**” pursuant to the LDDA) means the date of either: (a) the close of escrow of the Project Financing if such financing will be secured by a Mortgage; or (b) written evidence of the procurement by Tenant of the Project Financing (as defined below) if such financing will be unsecured, which Tenant shall promptly provide to the City following such procurement. “**Project Financing**” means all financing required by the Financial Plan (as defined in the LDDA) approved by the City pursuant to Section 2.1.2 of the LDDA.

2.2.4 Minimum Rent. Tenant will pay to Landlord annually, without further notice or demand, minimum rent (the “**Minimum Rent**”) in the initial amount of Two Hundred Thirty-Six Thousand Four Hundred Dollars (\$236,400), commencing on the next Business Day after the date of the end of the Construction Period and thereafter on each anniversary of the Rent Commencement Date occurring during the Term, with a proration of the first such payment if necessary depending on the date of the end of the Construction Period in relation to the anniversary of the Rent Commencement Date.

2.3 Adjustments to Minimum Rent.

2.3.1 Annual Adjustment. Minimum Rent shall increase annually by the product of the then-current CPI multiplied by the preceding year’s Minimum Rent (“**Annual Rent Adjustment**”).

2.3.2 Transfer Adjustment. In the event of a Transfer (including a Sublease of the entire, or substantially the entire Premises) to a Person that is not a nonprofit or tax-exempt entity and thereafter on each twentieth (20th) anniversary of such Transfer (each a “**Transfer Adjustment**”), the annual Minimum Rent shall not apply for that year; instead the Minimum Rent shall be adjusted as follows:

(a) Prior to a Transfer Adjustment, the Parties shall engage in good faith negotiations to reach agreement on the Minimum Rent adjustment increase based on then-current market conditions.

(b) If the Parties cannot reach agreement on the adjustment prior to the Transfer Adjustment, then Landlord shall engage an appraiser (the “**Appraiser**”), which is a

Qualified Appraiser (as defined below), to determine the Fair Market Value (as defined below) of the land, multiplied by the then-current market ground lease conversion rate on land as improved by a ten (10)-story academic and administrative office building and taking into account the remaining Term of the Lease. The resulting ground rent ("**Fair Market Rental Value**") shall reflect the rental income that a real property would most likely command on the open market. Said rent shall be supported by a review of current rents paid, and asked, for comparable property and/or space. (Oakland Municipal Code Section 2.42.010) "**Fair Market Value**" shall mean the amount that a willing seller for the real property, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts, in an open and competitive market under all conditions requisite to the sale, and considering the property's highest and most profitable use. (Oakland Municipal Code Section 2.42.010)

(c) The Appraiser will make a determination of the Fair Market Rental Value based upon definitions in this Section 2.3.2 and Article 38 below and instructions prepared jointly by the Landlord and Tenant. ("**Appraisal Instructions**"). Landlord and Tenant will review the written appraisal in draft form. All communications with the Appraiser relating to the appraisal work to be performed shall be held at joint meetings where both Landlord and Tenant representatives are present. The Appraiser shall be required to complete, sign and submit the final written appraisal ("**Appraisal Report**"), which provides a determination of the Fair Market Rental Value of the Premises to the Parties within ninety (90) days after accepting the contract. The Appraiser shall be required to include in the Appraisal Report the methodology employed; justification for excluding any standard methodology; assumptions, factual information, market data, reasoning, conclusions, and bases therefor of the Appraiser's determination of Fair Market Rental Value.

(d) Landlord shall provide written notice to Tenant of the adjustment to the Minimum Rent based on the Appraiser's determination of Fair Market Rental Value provided in the Appraisal Report ("**Landlord's Notice**").

(e) Within fifteen (15) days of delivery of Landlord's Notice, Tenant shall provide written notice to Landlord of its acceptance of, or objection to, the Fair Market Rental Value provided in Landlord's Notice. If Tenant does not object the adjusted Minimum Rent shall be the Fair Market Rental Value provided in the Landlord's Notice. If Tenant objects to the Fair Market Rental Value provided in the Landlord's Notice, then Tenant shall engage a different Qualified Appraiser of its choosing (the "**Second Appraiser**") and follow the same procedure provided above in Section 2.3.2(c) above to produce a second appraisal report (the "**Second Appraisal Report**") within seventy-five (75) days after receipt of City's Notice.

(f) If the difference between the Fair Market Rental Value provided in the Appraisal Report and the Second Appraisal Report is fifteen percent (15%) or less of the highest Fair Market Rental Value, the Fair Market Rental Values from each of the appraisal reports will be averaged to determine the increase of the Minimum Rent. If the difference between the Fair Market Rental Value provided in the Appraisal Report and the Second Appraisal Report is greater than fifteen percent (15%) of the highest Fair Market Rental Value, the Parties shall contract with a third Qualified Appraiser (the "**Third Appraiser**") to evaluate the Appraisal Report and the Second Appraisal Report. Landlord and Tenant shall each share in half the cost of the Third Appraiser. The Third Appraiser will be required to make a determination of Fair Market

Rental Value of the Premises based on his or her evaluation that is within the difference in values of the two Fair Market Rental Values within sixty (60) days after delivery of the Second Appraisal Report. Landlord and Tenant will accept the Third Appraiser's determination of the Fair Market Rental Value, which shall become the adjusted Minimum Rent.

(g) In no event shall the amount of the adjusted Minimum Rent be lower than the Minimum Rent, as increased annually, payable prior and up to the Transfer Adjustment. To the extent the Fair Market Value Rent determined by the applicable appraiser exceeds the Minimum Rent in the year prior to the Transfer Adjustment, then the Minimum Rent adjustment shall not exceed the then-current Minimum Rent payable prior and up to the Transfer Adjustment by more than a cumulative compounded increase of five percent (5%) per year.

(h) If a Fair Market Rental Value has not been determined on the effective date of Transfer Adjustment, Minimum Rent will be adjusted retroactively to such date once the determination has been made.

2.3.3 Remediation Rent Credit. Minimum Rent shall be reduced up to the amount of Remediation Rent Credit (as defined in the LDDA), which will be determined in accordance with Section 5.5 of the LDDA. The Remediation Rent Credit will be applied to future Minimum Rent due under this Lease until the earlier of: (a) the Remediation Rent Credit amount is exhausted; or (b) the tenth (10th) anniversary of the Rent Commencement Date.

2.3.4 Good Faith Deposit. The Good Faith Deposit (as defined in the LDDA) currently held by the City pursuant to Section 3.2.1 of the LDDA shall be credited against Construction Rent and/or Minimum Rent, as applicable, first coming due after the Rent Commencement Date.

2.4 Manner of Payment. Tenant shall pay all Rent to Landlord, in lawful money of the United States of America, to the Treasurer of the City or his or her designee as provided herein at the address for notices to Landlord specified in this Lease, or to such other person or at such other place as Landlord may from time to time designate by notice to Tenant. Rent shall be payable at the times specified in this Lease without prior notice or demand; provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand," "promptly following notice," "upon receipt of invoice," or the like, then such Rent shall be due thirty (30) Business Days following the giving by Landlord of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable. If this Lease terminates as a result of an Event of Default by Tenant, any Rent or other amounts due hereunder shall be immediately due and payable upon termination.

2.5 No Abatement or Setoff. Tenant shall pay all Rent at the times and in the manner provided in this Lease without any abatement, offset, rebate, deduction, or counterclaim except as provided in Section 22.1.2, Section 2.3.3, Section 9.7 and Section 10.4.4 of this Lease.

2.6 Interest on Delinquent Rent. If any Construction Rent or Minimum Rent is not paid within ten (10) days following the date it is due, or if any Additional Rent is not paid within thirty (30) days following written demand for payment of such Additional Rent, such unpaid amount shall bear interest from the date due until paid at an annual interest rate (the "Default

Rate”) equal to five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the date payment is due, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act or any successor or replacement statutes thereto; provided, however, that the Default Rate shall not apply to the first occurrence of failure to pay Construction Rent or Minimum Rent in any Lease Year unless such Rent remains unpaid ten (10) days following written demand for payment of such Construction Rent or Minimum Rent from Landlord. However, interest shall not be payable to the extent such payment would violate any applicable usury or similar law. Payment of interest shall not excuse or cure any default by Tenant.

2.7 Late Charges. Tenant acknowledges and agrees that Tenant’s late payment of Rent will cause Landlord increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, without limiting any of Landlord’s rights or remedies hereunder and regardless of whether such late payment results in an Event of Default, Tenant shall pay a late charge (the “**Late Charge**”) equal to one and one-half percent (1-1/2%) of all Rent or any portion thereof which remains unpaid more than ten (10) days after Landlord’s written notice to Tenant of such failure to pay Rent when due, provided, however, that if Tenant fails to pay Rent when due on more than two (2) occurrences in any Lease Year, the Late Charge will be assessed as to any subsequent payments in such Lease Year remaining unpaid more than ten (10) days after they are due, without the requirement that Landlord give any notice of such payment failure. Tenant shall also pay reasonable Attorneys’ Fees and Costs incurred by Landlord by reason of Tenant’s failure to pay any Rent within the time periods described above. The Parties agree that such Late Charge represents a fair and reasonable estimate of the cost which Landlord will incur by reason of a late payment by Tenant.

2.8 Additional Rent. Except as otherwise expressly provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements and Tenant’s obligations of every kind and nature relating to the Premises that may arise or become due under this Lease, whether foreseen or unforeseen, which are payable by Tenant to Landlord pursuant to this Lease, shall be deemed Additional Rent. Landlord shall have the same rights, powers and remedies, whether provided by law or in this Lease, in the case of non-payment of Additional Rent as in the case of non-payment of Rent.

2.9 Net Lease.

2.9.1 It is the purpose of this Lease and the intent of Landlord and Tenant that all Rent shall be absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the Rent at all times during the Term, without deduction, abatement or offset, except as provided in Section 22.1.2, Section 2.3.3, Section 9.7 and Section 10.4.4 of this Lease. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, except as may be otherwise expressly provided in this Lease, Landlord shall not be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant’s use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, except as otherwise expressly provided herein, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Landlord would otherwise be or become liable by reason of

Landlord's estate or interests in the Premises and any Improvements, any rights or interests of Landlord in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof.

2.9.2 Except as may be specifically and expressly stated to the contrary herein, (a) no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part; and (b) Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

ARTICLE 3.

USE

3.1 Permitted Use of Premises. Tenant shall use and operate the Premises in accordance with the LDDA and the Regulatory Approvals for the construction, development and operation of the Project, and this Lease for purposes of (a) university use, which may include, without limitation, offices, classrooms, teaching labs, common spaces, parking, and possible health services facilities, and related uses, and/or (b) any other legally permitted and entitled use except Prohibited Uses (the "**Permitted Use**"). Tenant shall not make any use of the Premises other than the Permitted Use without the prior execution by Tenant and Landlord, in Landlord's sole and absolute discretion, of a written amendment to this Lease in form and substance satisfactory to Landlord.

3.2 Limitations on Uses by Tenant.

3.2.1 Prohibited Uses. Tenant shall not conduct or permit on the Premises any of the following prohibited uses, or any uses similar to the following prohibited uses (collectively, "**Prohibited Uses**"):

(a) any activity which constitutes nuisance, waste of the Premises, or unlawful purposes;

(b) undue accumulation of refuse or, excluding construction activities conducted in compliance with applicable Laws, storage of any and all excavated materials, including dirt, concrete, sand, asphalt, pipes, any and all aggregate material, or bulk storage, such as wood or other loose materials;

(c) any activity, or the maintaining of any object, which will cause a cancellation of any fire or other insurance policy covering the Premises, any part thereof or any of its contents and such activity or maintenance of such object is not insured by Tenant, or similar hazards;

(d) any auction, distress, fire, bankruptcy or going out of business sales;
(e) drug/drug paraphernalia sales; "adults only" entertainment or material sales;

(f) drug/drug paraphernalia sales;

(g) "adults only" entertainment or material sales;

(h) gasoline station or motor vehicle service/repair shop or excluding construction activities in compliance with applicable Laws, vehicle and equipment maintenance, including fueling, changing oil, transmission or other automotive fluids, or washing or rinsing of any vehicle or equipment;

(i) weapons or ammunition sales;

(j) any use of the Premises for residential, sleeping, personal living quarters, or live/work space;

(k) any activity, or the maintaining of any object, which would unreasonably interfere with or impede pedestrian flow on adjacent sidewalks or open space areas, or vehicular flow through rights-of-way, alleyways, or other areas within or adjacent to the Premises that are generally used by vehicles, or otherwise unreasonably interfere or impede use of such areas by the public or Landlord;

(l) any activity which will in any way injure, obstruct or interfere with the rights of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;

(m) the operation of any private membership clubs or private eating or drinking establishments where there is any exclusive motive to the membership, including, but not limited to, membership requiring nominations or recommendations in violation of the nondiscrimination provision of the Ground Lease or prohibited by law, but shall not include commercial operations such as health clubs which are available to the general public upon the payment of the applicable membership fee, or licensing space within the Premises to any such private clubs or organizations for private events, subject to applicable law and the nondiscrimination provision of this Lease;

(n) bingo or gambling establishments; massage or spa establishments;

(o) pawn shop; payday loan or check cashing centers;

(p) the preparation, manufacture or mixing of anything that would emit any objectionable odors, other than ordinary cooking odors;

(q) the projection of noises or lights onto adjacent properties; or the use of amplified music, sound or light apparatus; in each case with such intensity as to constitute a nuisance.

3.2.2 Land Use Restrictions. Except as may be contemplated or permitted under the LDDA, Tenant may not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on Landlord's reversionary interest in the Premises, nor may Tenant obtain changes in applicable land use Laws or conditional use authorizations or other permits for any uses that are not Permitted Uses, in each instance without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion.

3.2.3 Signage. Tenant may not install or place signage on any existing City street outside the Premises. Tenant may install and place signage on the Premises in compliance with City codes or other applicable codes and regulations.

ARTICLE 4.

TAXES AND OTHER IMPOSITIONS

4.1 Payment of Possessory Interest, Taxes, and Other Impositions.

4.1.1 Possessory Interest Taxes.

(a) Tenant shall pay or cause to be paid, prior to delinquency, all Impositions, including without limitation, possessory interest and property taxes assessed, levied or imposed on the Premises or any of the Improvements or Personal Property (excluding the personal property of any Subtenant) located on the Premises or Tenant's leasehold estate, to the full extent of installments or amounts payable or arising after the Rent Commencement Date and during the remaining Term. Subject to the provisions of Section 4.3, all such taxes shall be paid directly to the City's or County's Tax Collector, as applicable, or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 4.4.

(b) Tenant specifically recognizes and agrees that this Lease creates a possessory interest which may be subject to taxation, and that, subject to Tenant's rights under Section 4.4 below, this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the applicable governmental assessor. Tenant further acknowledges that any Sublease or Transfer permitted under this Lease may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefore may result in a transfer tax and reassessment of any possessory interest created hereunder in accordance with applicable Law.

4.1.2 Other Impositions. Without limiting the provisions of Section 4.1.1, Tenant shall pay or cause to be paid all other Impositions, to the full extent of installments or amounts payable or arising during the Term, which may be assessed, levied, confirmed or imposed on, or in respect of, or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant), the leasehold estate created hereby, or any subleasehold

estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or any other Person may have acquired pursuant to this Lease. Subject to the provisions of Article 5, Tenant shall pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition.

4.1.3 Prorations. All Impositions imposed for the year in which the Rent Commencement Date occurs or during the year in which the Termination Date occurs shall be apportioned and prorated between Tenant and Landlord on a daily basis.

4.1.4 Proof of Compliance. Within a reasonable time following Landlord's written request which Landlord may give at any time and from time to time, Tenant shall deliver to Landlord copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Landlord, evidencing the timely payment of Impositions.

4.2 Special Districts. During the Term, Tenant shall be allowed a reasonable opportunity to meet and confer with the Landlord prior to the Landlord voting the property owner's interest with respect to the formation or amendment of any special taxes or districts (including any Community Facilities District or Business Improvement District) that would affect the Property or impose a tax on Tenant's possessory interest; provided, however, that the Landlord shall cast any such vote in its sole and absolute discretion and shall have no liability to the Tenant arising from any such vote or otherwise under this Section 4.2.

4.3 Landlord's Right to Pay. Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 4.4, if Tenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency, Landlord, at its sole and absolute option, may (but is not obligated to) pay or discharge the same, provided that prior to paying any such delinquent Imposition, Landlord shall give Tenant written notice specifying a date at least ten (10) Business Days following the date such notice is given after which Landlord intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify Landlord that it is contesting such Imposition pursuant to Section 4.4, then Landlord may thereafter pay such Imposition, and the amount so paid by Landlord (including any interest and penalties thereon paid by Landlord), together with interest at the Default Rate computed from the date Landlord makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to Landlord within thirty (30) Business Days following demand.

4.4 Right of Tenant to Contest Impositions and Liens.

4.4.1 Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other Person to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Landlord. Tenant shall give notice to Landlord within a reasonable period of time of the commencement of any such contest and of

the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment.

4.4.2 If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest; and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to Landlord in any instance where Landlord's interest in the Premises may be subjected to such lien or claim. Tenant shall be responsible for the payment of any interest, penalties or other charges which may accrue as a result of any contest. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. Landlord, at its sole and absolute option, may elect to join in any such proceeding.

4.4.3 If Landlord is a necessary party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by or in the name of Landlord or any owner of the Premises, Landlord, at the request of Tenant and at no cost to Landlord, with counsel selected and engaged by Tenant, subject to Landlord's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Landlord shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding, and without limiting Article 13 hereof, Tenant shall Indemnify Landlord for any such fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, which Landlord may be legally obligated to pay.

4.5 Landlord's Right to Contest Impositions. At its own cost and after notice to Tenant of its intention to do so, Landlord may, but in no event shall be obligated to, contest the validity, applicability or the amount of any Impositions that are not payable by Tenant under this Lease, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section 4.5 shall require Landlord to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. Landlord shall give notice to Tenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest.

ARTICLE 5.

COMPLIANCE WITH LAWS

5.1 Compliance with Laws and Other Requirements.

5.1.1 During the Term, Tenant and its use and operation of the Premises shall comply, at no cost to Landlord, (a) with all applicable Laws (including Regulatory Approvals), and (b) with the requirements of all policies of insurance required to be maintained pursuant to Article 14 of this Lease. The foregoing sentence shall not be deemed to limit Landlord's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. It is

understood and agreed that Tenant's obligation to comply with Laws shall include the obligation to make, at no cost to Landlord, all additions to, modifications of, and installations on the Premises that may be required by any Laws regulating the Premises.

5.1.2 Notwithstanding anything to the contrary herein, Tenant shall not be in default hereunder for failure to comply with any Laws if Tenant is contesting the applicability of such Laws (including Regulatory Approvals) to Tenant, Tenant's interest in the Premises, or this Lease, diligently and in good faith by appropriate proceedings and at no cost to Landlord, provided that (a) any such contest shall not relieve or release Tenant from its obligation to pay all or any portion of Rent hereunder, (b) Tenant shall Indemnify Landlord against and hold Landlord harmless from any Losses resulting from such contest, and (c) such contest shall not result in the loss or suspension of the insurance coverage required to be maintained by Tenant hereunder.

5.1.3 Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Landlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

5.1.4 Upon request by Landlord, Tenant shall promptly provide Landlord with evidence of its compliance with any of the obligations required under this Section 5.1.

5.2 Regulatory Approvals.

5.2.1 City Approvals.

(a) Tenant acknowledges and agrees that Landlord is entering into this Lease in its proprietary capacity as the holder of fee title to the Property, and not in its capacity as a governmental regulatory agency, and that the status, rights and obligations of Landlord, in such proprietary capacity, are separate and independent from the status, functions, powers, rights and obligations of the City in such governmental regulatory capacity, and that nothing in this Lease shall be deemed to limit or restrict City in the exercise of its governmental regulatory powers and authority with respect to Tenant, the Premises or otherwise, or to render Landlord obligated or liable under this Lease for any acts of omissions of the City in connection with the exercise of its independent governmental regulatory powers and authority.

(b) Without limiting Section 5.2.1(a), Tenant acknowledges that the Permitted Use under Section 3.1 do not limit Tenant's responsibility to obtain all Regulatory Approvals (and pay all related processing and development fees and satisfy all related conditions of approval) for such uses, including but not limited to, building permits, nor do such uses limit Landlord's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws, including CEQA.

(c) Tenant understands that the entry by the Landlord into this Lease shall not be deemed to imply that Tenant will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including the Landlord itself in its regulatory capacity. By entering into this Lease, the Landlord is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein.

5.2.2 Approval of Other Agencies; Conditions.

(a) The Parties acknowledge that the Project and Tenant's contemplated uses and activities on the Premises, any subsequent changes in Permitted Uses, and any construction or alterations of Improvements, may require that Regulatory Approvals be obtained from City and other Regulatory Agencies. Tenant shall be solely responsible for obtaining all such Regulatory Approvals as further provided in this Section. The Parties shall cooperate in such efforts.

(b) In any instance where Landlord will be required to act as a co-permittee, or where Tenant proposes the construction of any Additional Improvements that require Landlord's approval under Article 6, Tenant shall not apply for any Regulatory Approvals (other than a building permit from City) without first obtaining the approval of Landlord, which approval (except as otherwise expressly provided therein) will not be unreasonably withheld, conditioned or delayed. Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a Regulatory Approval from any Regulatory Agency other than City if Landlord is required to be a co-permittee under such Regulatory Approval or the conditions or restrictions could create any obligations on the part of Landlord whether on or off the Premises, unless in each instance Landlord has previously approved such conditions in writing in Landlord's sole and absolute discretion. No such approval by Landlord shall limit Tenant's obligation to pay all the costs of complying with such conditions under this Section.

(c) All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be responsible for complying during the Term of this Lease, at no cost to Landlord, with any and all conditions imposed by any Regulatory Agency as part of a Regulatory Approval.

(d) With the consent of Landlord (which shall not be unreasonably withheld or delayed), Tenant shall have the right to appeal or contest in any manner permitted by law any condition imposed upon any such Regulatory Approval.

(e) Tenant shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval, and Landlord shall have no liability for such fines and penalties. Without limiting the indemnification provisions of Article 13, Tenant shall Indemnify the Indemnified Parties from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which Landlord may be liable in connection with Tenant's failure to comply with any Regulatory Approval except to the extent Tenant's failure to comply results from the sole negligence or willful misconduct of the Indemnified Parties.

ARTICLE 6. IMPROVEMENTS

6.1 Tenant's Obligation to Construct the Improvements.

6.1.1 Construction Requirements. Tenant shall construct the Project in accordance with, and subject to all of the terms, covenants, conditions and restrictions in, this Lease and the LDDA, including without limitation:

(a) Tenant shall comply with the LDDA, including without limitation, Tenant's obligation to: (i) obtain all Governmental Approvals (as defined in the LDDA), (ii) comply with the LDDA pertaining to approval of Material Changes (as defined in the LDDA) to Final Construction Plans (as defined in the LDDA), (iii) comply with the LDDA pertaining to the Construction Contract (as defined in the LDDA), (iv) if applicable, provide payment and performance bonds in accordance with Section 2.1.7 of the LDDA, and (v) provide a Completion Guaranty pursuant to Section 2.1.6 of the LDDA;

(b) Tenant shall comply with Article 5 of the LDDA pertaining to Hazardous Materials;

(c) Tenant shall comply with Article 6 of the LDDA pertaining to construction requirements; and

(d) Tenant shall comply with all City Employment and Contracting Requirements identified in Section 36.6 below.

6.1.2 Certificate of Completion. Landlord's issuance and recordation of a Certificate of Completion in accordance with Section 6.10 of the LDDA, shall conclusively establish Tenant's satisfactory completion of construction of the Project. Any subsequent construction shall be performed in accordance with Section 6.3 of this Lease.

6.1.3 As-Built Plans. Tenant shall furnish to Landlord one set of as-built plans and specifications with respect to the Project within [one hundred twenty (120) days] following completion. If Tenant fails to provide such as-built plans and specifications to Landlord within the time period specified herein, and such failure continues for an additional ninety (90) days following written request from Landlord, Landlord will thereafter have the right to cause an architect or surveyor selected by Landlord to prepare as-built plans and specifications, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to Landlord as Additional Rent. Nothing in this Section 6.1.3 shall limit Tenant's obligations, if any, to provide plans and specifications in connection with the Project under applicable regulations adopted by Landlord in its regulatory capacity.

6.1.4 Compliance with Laws.

(a) Tenant shall carry out, and shall cause its contractors and subcontractors to carry out, the construction of the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations, including without limitation, all applicable federal and state labor laws and standards, the City's zoning and development standards,

building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

(b) Tenant shall Indemnify, defend (with counsel selected by Tenant, and approved by such Indemnified Party, which approval shall not be unreasonably withheld, conditioned, or delayed) and hold harmless the Indemnified Parties from and against any and all Claims arising in connection with the breach of Tenant's obligations set forth in this Section 6.1.4 whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Tenant which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Tenant's deposit with City of any of the insurance policies described in this Lease. Tenant's indemnification obligations set forth in this Section 6.1.4 shall not apply to Claims to the extent arising from the sole negligence or willful misconduct of the Indemnified Parties. Tenant's defense and indemnification obligations set forth in this Section 6.1.4 shall survive the expiration or earlier termination of this Lease and the issuance of a Certificate of Completion for the Project.

6.2 Title to Improvements. During the Term of this Lease, Tenant shall own all of the Improvements, including all Additional Improvements and all appurtenant fixtures, and machinery equipment installed therein (except for personal property of Subtenants). During the Term, for federal income tax purposes, Tenant shall be the "tax owner" of the Improvements, including all Additional Improvements, and all appurtenant fixtures, machinery and equipment installed therein (except for personal property of Subtenants) and shall be entitled to depreciation deductions and any tax credits with respect to the Improvements, including all Additional Improvements and all appurtenant fixtures, machinery and equipment installed therein (except for personal property of Subtenants). At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but excluding personal property of Tenant and its Subtenants) and Additional Improvements, will vest in Landlord without further action of any Party, and without compensation or payment to Tenant. Tenant and its Subtenants shall have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease, to remove Personal Property from the Premises; provided, however, that if the removal of Personal Property causes damage to the Premises, Tenant shall promptly cause the repair of such damage at no cost to Landlord.

6.3 Landlord's Right to Approve Subsequent Construction.

6.3.1 Construction Requiring Approval. Tenant shall have the right, from time to time during the Term, to perform construction subsequent to the initial Improvements in accordance with the provisions of this Section 6.3, provided that Tenant shall not, without Landlord's prior written approval (which approval shall not be unreasonably withheld, delayed or conditioned) do any of the following (collectively, "**Major Alterations**"):

(a) Construct additional buildings or other additional permanent structures, including Restoration, other than to replace or restore those previously existing;

(b) Increase the bulk or height of any Improvements beyond the bulk or height approved for the then-existing Improvement; or

(c) Materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law). In connection with any such alteration that results from replacement or restoration, including Restoration, Tenant shall use materials of at least substantially equal quality, durability, and appearance to the materials originally installed, as reasonably determined by Landlord.

Under no circumstances shall the foregoing constitute a Minor Alteration (as defined below).

6.3.2 Notice by Tenant. At least thirty (30) days before commencing any Major Alteration, Tenant shall notify Landlord of such proposed Major Alteration. Within twenty (20) days after receipt of such notice from Tenant, Landlord shall have the right to object to any such Major Alterations by providing Tenant with written notice of such objection within such twenty-(20) day period. If Landlord does not object to any such Major Alteration within twenty (20) days after receipt of such notice from Tenant, Landlord shall be deemed to have approved Tenant's proposed Major Alteration, subject to Tenant's compliance with the requirements of Sections 6.3.3 through 6.3.6.

6.3.3 Permits. Tenant acknowledges that Landlord's approval of Major Alterations does not alter Tenant's obligation to obtain all Regulatory Approvals and all permits, consents or approvals required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable from the Landlord itself in its regulatory capacity, including, without limitation building permits.

6.3.4 Other Requirements for Major Alterations. The following requirements shall apply to any and all Major Alterations (but not to Minor Alterations):

(a) **Construction Schedule.** All Major Alterations shall be accomplished expeditiously and diligently, subject to Force Majeure.

(b) **Submission of Construction Documents.** Tenant shall prepare and submit to Landlord, for review and written approval hereunder, reasonably detailed Schematic Drawings, and following Landlord's approval of such Schematic Drawings, Preliminary and Final Construction Documents, which are consistent with the approved Schematic Drawings (collectively, Schematic Drawings, Preliminary and Final Construction Documents are referred to as "**Construction Documents**"). Landlord may waive the submittal requirement of Schematic Drawings if it determines in its reasonable discretion that the scope of the Major Alteration does not warrant such initial review. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California.

(i) Landlord shall reasonably approve or disapprove Construction Documents submitted to it for approval within thirty (30) days after submission. Any disapproval shall state in writing the reasons for disapproval. If Landlord deems the Construction Documents incomplete, Landlord shall notify Tenant of such fact within twenty-one (21) days after submission and shall indicate which portions of the Construction Documents it deems to be

incomplete. If Landlord notifies Tenant that the Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents.

(ii) If Landlord disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents in accordance with the provisions of this Section 6.3.4(b), Landlord shall review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in Landlord's previous notice of rejection, and Landlord shall approve or disapprove the revisions to the Construction Documents within fifteen (15) days after resubmission.

(c) Progress Meetings; Coordination. From time to time at the request of either Party during the preparation of Construction Documents, Landlord and Tenant shall hold regular progress meetings to coordinate the preparation, review and approval of the Construction Documents. Landlord and Tenant shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any Construction Documents to Landlord can receive prompt and speedy consideration. If requested by Landlord, Tenant shall submit to Landlord written progress reports.

(d) Landlord Approval of Construction Documents. Upon receipt by Tenant of a disapproval of Construction Documents from Landlord, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses Landlord's written objections. Tenant shall resubmit such revised portions to Landlord as soon as possible after receipt of the notice of disapproval. Landlord shall approve or disapprove such revised portions in the same manner as provided in Section 6.3.4(b) for approval of Construction Documents (and any proposed changes therein) initially submitted to Landlord. If Tenant desires to make any substantial change in the Final Construction Documents after Landlord has approved them, then Tenant shall submit the proposed change to Landlord for its reasonable approval. Landlord shall notify Tenant in writing of its approval or disapproval within fifteen (15) days after submission to Landlord. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such fifteen (15) day period.

(e) Commencement of Construction. Tenant shall not commence any Major Alterations until the following conditions have been satisfied or waived in writing by Landlord:

(i) Landlord shall have approved the Final Construction Documents, if applicable; and

(ii) Tenant shall have obtained all permits and other Regulatory Approvals necessary to commence such construction in accordance with Article 5.

(iii) Tenant shall have submitted to Landlord in writing its good faith estimate of the anticipated total construction costs of the Major Alterations. If such good faith estimate exceeds Five Hundred Thousand Dollars (\$500,000), as Indexed, Tenant shall also submit evidence reasonably satisfactory to Landlord of Tenant's ability to pay such costs as and when due; and

(iv) For Major Alterations that fall within Section 6.3.4(e)(iii) above, Landlord may require that Tenant obtain and provide copies of payment and performance bonds, in a form and with a bond or surety company satisfactory to Landlord.

(f) Rights of Access. During any period of construction of Major Alterations, Landlord and its Agents shall have the right to enter areas in which Major Alterations are being performed, on reasonable prior written notice during customary construction hours, subject to the rights of any Subtenants, and provided such entry does not interfere with Tenant's Permitted Use of the Premises, to inspect the progress of the work. Nothing in this Lease, however, shall be interpreted to impose an obligation upon Landlord to conduct such inspections or any liability in connection therewith.

(g) As-Built Plans and Specifications. Tenant shall be required to furnish to Landlord as-built plans and specifications with respect to any Major Alteration costing One Hundred Thousand Dollars (\$100,000), as Indexed, or more; provided, however, that nothing in this Section 6.3.4(g) shall limit Tenant's obligations, if any, to provide plans and specifications in connection with the Major Alterations under applicable regulations adopted by the City in its regulatory capacity.

6.3.5 Other Requirements for all Major Alterations and Minor Alterations. The following requirements shall apply to any and all Major Alterations and Minor Alterations:

(a) Construction Standards. All Major Alterations and Minor Alterations shall be accomplished in accordance with good construction and engineering practices and applicable Laws and Regulatory Approvals. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work.

(b) Costs of Construction. Landlord shall have no responsibility for costs of any Major Alterations and Minor Alterations. Tenant shall pay (or cause to be paid) all such costs.

(c) Prevailing Wages; City Employment and Contracting Requirements. Tenant shall comply with Prevailing Wage Laws, if applicable, and all applicable City Employment and Contracting Requirements, including without limitation, those identified in Section 36.6 below.

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

6.3.6 Cooperation. The Parties agree to communicate regularly and to cooperate in good faith regarding Tenant's efforts to obtain Regulatory Approvals for Major Alterations from any Regulatory Agency other than City. The Parties' obligation to cooperate in good faith shall include, but not be limited to, meeting and conferring as necessary, joint invitations

to and attendance at meetings, and execution of mutually acceptable applications as owner and applicant where necessary and appropriate to implement the Major Alterations; provided, however, that Landlord shall have no obligation to make any expenditures or incur any expenses in connection therewith other than reasonable administrative expenses.

6.4 Minor Alterations. Landlord's approval hereunder shall not be required for (a) the installation, repair or replacement of such improvements to the interior of any building commonly encompassed, and generally commercially understood to be included, within "tenant improvements," furnishings, fixtures, equipment or decorative Improvements, or repair or replacement of worn out or obsolete components of the Improvements, which do not materially affect the structural integrity of the Improvements; (b) re-carpeting, repainting the interior or exterior of the Premises, grounds keeping, or similar alterations; (c) any other construction or Improvements that does not require a building permit; or (d) any other construction that does not constitute Major Alterations (any of the foregoing, "**Minor Alterations**").

ARTICLE 7.

MANAGEMENT; REPAIR AND MAINTENANCE

7.1 Management and Operating Covenants. Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated, in first-class condition, and in compliance with this Lease. Tenant shall be exclusively responsible, at no cost to Landlord, for the management and operation of the Improvements, including Major Alterations and Minor Alterations.

7.2 Tenant's Duty to Maintain. Throughout the Term of this Lease, Tenant shall maintain and repair, at no cost to Landlord, the Premises, in the condition and repair required under Section 7.1, and in compliance with all applicable Laws and the requirements of this Lease and shall ensure that the Premises and the Improvements do not violate the City's Blight Ordinance codified in Chapter 8.24 of the Oakland Municipal Code. Tenant shall promptly make (or cause others to make) all necessary repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen. Tenant shall make such repairs with materials, apparatus and facilities as originally installed and approved by Landlord under the LDDA or this Lease, or, if not originally subject to Landlord approval or not commercially available, with materials, apparatus and facilities at least equal in quality, appearance and durability to the materials, apparatus and facilities repaired, replaced or maintained. All such repairs and replacements shall be at least substantially equivalent in quality, appearance, public safety, and durability to, and in all respects consistent with, the Project.

7.3 Costs of Repairs.

7.3.1 No Obligation of Landlord; Waiver of Rights. As between Landlord and Tenant: (a) Tenant shall be responsible for the condition, operation, repair, maintenance and management of the Premises, including any and all Improvements, from and after the Commencement Date related to its access pursuant to any rights of entry or permit(s); (b) Landlord shall have no obligation to make repairs or replacements of any kind or maintain the Premises, any Improvements or any portion thereof from and after the Commencement Date, and (c) Tenant waives the benefit of any existing or future law that would permit Tenant to make repairs or

replacements at Landlord's expense, or abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at Landlord's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced, or restated.

7.3.2 Notice. Tenant shall deliver to Landlord, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (a) from any governmental authority (other than Landlord) having responsibility for the enforcement of any applicable Laws (including Disabled Access Laws or Hazardous Materials Laws), asserting that the Project is in violation of such Laws; or (b) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under Article 14, asserting that the requirements of such insurance policy or policies are not being met.

ARTICLE 8.

UTILITY SERVICES

8.1 Utility Services.

8.1.1 Landlord, in its proprietary capacity as owner of the Property and landlord under this Lease, shall not be required to provide any utility services to the Premises or any portion of the Premises. Tenant shall be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which the Premises are put (it being acknowledged that City is the sole and exclusive provider to the Premises of certain public utility services).

8.1.2 Tenant will pay, or cause to be paid, as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will take commercially reasonable steps to cause the maintenance and continuance of all such services that are necessary or appropriate for the use and occupancy of the Premises.

8.1.3 Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Landlord under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Landlord relating to this Lease, any Losses arising from or in connection with City's provision of (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Tenant of any claim independent of this Lease that it may now or in the future have (or claim to have), in its capacity as a consumer of utility services and not as Tenant under this Lease, against any such public utility provider (including the City, if and to the extent it provides any public utilities to the Premises, in the City's capacity as utility provider and not as Landlord hereunder) relating to the provision of (or failure to provide) utilities to the Premises.

ARTICLE 9.
DAMAGE OR DESTRUCTION

9.1 Definitions. As used in this Article 9, the following capitalized terms shall have the meanings set forth below. Other capitalized terms used in this Article 9 shall have the meanings set forth elsewhere in this Article 9.

9.1.1 “Casualty Date” means the date of a Casualty Event.

9.1.2 “Casualty Event” means any damage to or destruction of the Premises or of the Improvements thereon or any part thereof by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen.

9.1.3 “Casualty Restoration Cost” means the reasonably estimated or actual (as applicable) hard costs of Restoration of all or any portion of the Premises or Improvements damaged or destroyed by a Casualty Event.

9.1.4 “Casualty Restoration Funds” as defined in Section 9.4.4.

9.1.5 “Late-Term Casualty” means any Casualty Event at any time during the last five (5) Lease Years of the Term.

9.1.6 “Major Damage” or “Destruction” means, with respect to any Improvements on the Premises comprised of a completed building, damage to, or destruction of, such Improvements to the extent that the Casualty Restoration Cost will exceed sixty percent (60%) of the hard costs to replace such Improvements in their entirety. The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws (including but not limited to code upgrades) in effect as of the date of the event causing such Major Damage or Destruction.

9.1.7 “Uninsured Casualty” means a Casualty Event for which the Casualty Restoration Cost exceeds the sum of (i) Five Million Dollars (\$5,000,000), as Indexed, plus the amount of any applicable policy deductible (except in the case of damage or destruction caused by earthquake, if Tenant is obligated to carry earthquake insurance pursuant to Article 14, the amount of the policy deductible shall be deemed to be the lesser of the amount of the policy deductible for non-earthquake damage under Tenant’s property insurance policy maintained under Article 14 as of the date of the Casualty Event, or the actual amount of the policy deductible) and which is not covered by available insurance proceeds payable under the policies of insurance that Tenant is required to carry under Article 14 hereof (or those insurance proceeds which would have been payable but for Tenant’s default in its obligation to maintain insurance required to be maintained hereunder). Proceeds of insurance shall not be deemed “available” hereunder to the extent that a Mortgagee, pursuant to the terms of its Mortgage permitted in accordance with Article 33, retains or requires the application of such proceeds for purposes other than Restoration.

9.2 General; Notice; Waiver.

9.2.1 General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage and Destruction, the rights and obligations of the Parties shall be as set forth in this Article 9.

9.2.2 Notice. In the event of a Casualty Event that (a) would materially impair use or operation of any material portion of the Improvements for their intended purposes for a period of thirty (30) days or longer, or (b) exceeds in an individual instance the amount of Two Hundred Fifty Thousand Dollars (\$250,000) or aggregate amount, together with any other Casualty Event occurring during the preceding five (5)-Year Period, of One Million Dollars (\$1,000,000), then Tenant shall promptly, but not more than ten (10) Business Days after the occurrence of the Casualty Event, give written notice thereof to Landlord describing with as much specificity as is reasonable, given the ten (10)-Business Day time constraint, the nature and extent of such damage or destruction; provided, however, that Tenant shall provide Landlord with a supplemental and more detailed written report describing such matters with specificity within ninety (90) days after the occurrence of the damage or destruction.

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

9.3 Rent after Damage or Destruction. If there is any damage to, or destruction of, the Premises, including the Improvements thereon, this Lease shall not terminate except as otherwise expressly provided in this Article 9. In the event of any damage or destruction to the Improvements that does not result in a termination of this Lease, and at all times before completion of Restoration, Tenant shall pay to Landlord all Rent at the times and in the manner described in this Lease.

9.4 Tenant's Obligation to Restore.

9.4.1 Generally. Except as otherwise expressly provided in this Article 9, if all or any portion of the Improvements are damaged or destroyed, then Tenant shall, at its sole cost and expense and subject to Section 9.5, within a reasonable period of time following the Casualty Event (allowing for securing necessary Regulatory Approvals), commence and diligently (subject to Force Majeure) Restore the Improvements to the extent commercially feasible to the condition they were in immediately before such damage or destruction, in accordance with then applicable Laws (including, but not limited to, any required code upgrades), and subject to the amount of insurance proceeds made available by the Mortgagees. All Restoration to be performed by or on behalf of Tenant shall be in accordance with and subject to Landlord's prior approval rights (if applicable) and the terms and conditions set forth in Section 6.3.

9.4.2 Cooperation. Landlord shall cooperate with Tenant and act in a reasonable and expedited manner in connection with any Restoration by Tenant in connection with a Casualty Event, including, without limitation, an expedited review and response to all documents

and requests submitted by Tenant in connection with the Restoration. The Parties agree to cooperate and coordinate so as to minimize any interference or delay with respect to Tenant's Restoration.

9.4.3 Insurance Proceeds. Except as otherwise expressly provided in this Article 9, all all-risk coverage insurance proceeds, earthquake and flood proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds, if any (other than business or rental interruption insurance), paid to Landlord or Tenant under any policy of insurance carried by Tenant hereunder, by reason of damage to or destruction of any Improvements, shall be used by Tenant for the repair or rebuilding of the Improvements, subject to the rights of any Mortgagee under any Mortgage permitted in accordance with Article 33 (as and to the extent provided in such Mortgage). Subject to the preceding sentence, in the event of a Casualty Event that does not constitute Major Damage or Destruction and for which the Casualty Restoration Cost does not exceed One Million Dollars (\$1,000,000), Tenant shall have the right to negotiate an insurance settlement with its insurer for claims made under its insurance for such Casualty Event; provided, however, that any such negotiations or settlement shall not relieve or release Tenant from any of its Rent or Restoration obligations or other obligations under this Lease.

9.4.4 Deposit of Casualty Restoration Funds in Certain Circumstances. Except in the case of any Casualty Event (a) that constitutes Major Damage or Destruction, or (b) for which the Casualty Cost equals or exceeds One Million Dollars (\$1,000,000), and subject to the rights of the Mortgagees, Tenant shall deposit all insurance proceeds received by Tenant in connection with such Casualty Event with a Depositary to Restore the Premises, which Depositary shall be authorized to make disbursement therefrom in accordance with Section 9.4.6; provided, however, that if at any time the Casualty Restoration Cost exceeds the net insurance proceeds actually deposited with the Depositary, then Tenant shall either also deposit with the Depositary such cash as is sufficient to cover the difference between the Casualty Restoration Cost and the net insurance proceeds ("**Additional Casualty Cash**"), or obtain payment or performance bonds, or a letter of credit, in the full amount of the Additional Casualty Cash to cover the payment and performance of the Restoration and naming Landlord, Tenant and the Mortgagees, as their interests may appear, as additional obligees and in form reasonably satisfactory to Landlord (such bonds, together with such net insurance proceeds and any interest earned thereon, and the Additional Casualty Cash, the "**Casualty Restoration Funds**"). Landlord hereby approves U.S. Bank Trust Company, a National Association, to act as the Depositary if (a) it is currently the bond trustee of bond financing of the Improvements and (b) is designated by Tenant.

9.4.5 Release of Casualty Restoration Funds.

(a) **Use by Tenant.** Subject to this Section 9.4.5 and the satisfaction by Tenant of all of the terms and conditions of this Article 9 and the rights of the Mortgagees, the Depositary shall pay to Tenant from time-to-time any Casualty Restoration Funds it holds, together with any interest earned thereon, after reimbursement of the Depositary for reasonable expenses paid or incurred by the Depositary in the collection and disbursement of such monies, to be utilized by Tenant solely for the Restoration, such payments to be made as follows (provided, however, that if a Mortgagee acts as the Depositary, then the provisions of the Mortgage regarding the holding and disbursement of insurance proceeds shall apply and shall supersede anything to the contrary in this Article 9):

(i) Prior to commencing any Restoration, Tenant shall have provided and Landlord shall have approved all items required pursuant to Section 9.4.1;

(ii) Subject to the rights of the Mortgagees, the Casualty Restoration Funds held by the Depositary shall be paid to Tenant in installments as the Restoration progresses, subject to Sections 9.4.5(a)(iii) and 9.4.5(b), based upon requisitions to be submitted by Tenant to the Depositary and Landlord in compliance with Section 9.4.5(a)(iii), showing the cost of labor and materials purchased for the Restoration, and due and payable or paid by Tenant provided, however, that if any Encumbrance is filed against the Premises or any part thereof in connection with the Restoration, Tenant shall not be entitled to receive any further installment until such Encumbrance is satisfied or discharged in accordance with this Lease; provided further that notwithstanding the foregoing, but subject to the provisions of Sections 9.4.5(a)(iii) and 9.4.5(b), the existence of any such Encumbrance shall not preclude Tenant from receiving any installment of Casualty Restoration Funds held by the Depositary so long as (A) such Encumbrance will be discharged with funds from such installment and at the time Tenant receives such installment Tenant delivers to Landlord and the Depositary a release of such Encumbrance executed by the lienor and in recordable form, or (B) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord;

(iii) The amount of each installment to be paid to Tenant shall be the amount specified in Tenant's requisition; provided, however, all disbursements to Tenant shall be made based upon an architect's, engineer's, or contractor's application and certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and contractors to the extent that such disbursements are customary in the industry and provided that the unapplied portion of the funds held by the Depositary is sufficient to complete the Restoration; and

(iv) Upon completion of, and payment for, the Restoration, subject to the rights of any Mortgagee, the Depositary shall pay the balance of the Casualty Restoration Funds it holds, if any, to Tenant; provided, however, if the insurance proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), Tenant shall nevertheless be required to make the Restoration and provide the Additional Casualty Cash necessary to complete the Restoration as provided in Section 9.4.4.

(b) Conditions of Payment. Subject to the rights of the Mortgagees, the following shall be conditions precedent to each payment made to Tenant as provided in Section 9.4.5(a):

(i) Tenant shall have provided and Landlord shall have approved all items required pursuant to Section 9.4.1;

(ii) At the time of making such payment, no Event of Default exists; and

(iii) The Restoration shall be carried out in accordance with this Article 9, and there shall be submitted to the Depositary and Landlord the application and certificate of payment of the architect, engineer, or contractor stating that (A) the materials and

other items which are the subject of the requisition have been delivered to the Premises (except with respect to requisitions for advance deposits permitted under Section 9.4.5(a)(iii)), (B) the sum then requested to be withdrawn from the Casualty Restoration Funds either has been paid by Tenant or is due and payable to contractors, engineers, architects or other Persons, who have rendered or furnished services or materials for the work, (C) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Casualty Restoration Funds or has been made out of the Casualty Restoration Funds received by Tenant, (D) the work relating to such requisition has been performed in accordance with this Lease, and (E) in the case of the final payment to Tenant, the Restoration has been substantially completed, or designated portion thereof. The making of the final payment shall constitute a waiver of claims by Tenant against Landlord, consistent with Section 9.4.5(a)(ii).

9.4.6 Razing Damaged Improvements. Without limiting any of Tenant's obligations under this Article 9, and notwithstanding any provision herein to the contrary, in the event of any Casualty Event for which Restoration is not required to be completed pursuant to this Article 9, Tenant, at its sole cost and expense, shall promptly raze or remove, to the greatest feasible extent, any and all damaged or destroyed Improvements as may be designated by Landlord, without regard to the amount or availability of any insurance proceeds (although Tenant may use any available insurance proceeds to do so).

9.5 Rights of Landlord. In addition to the other rights and remedies available to Landlord that are set forth elsewhere in this Lease, but subject to the rights of the Mortgagees, the following rights and remedies shall be available to Landlord in the event of a Casualty Event:

9.5.1 Expiration or Termination of Lease Prior to Completion of Restoration. In any case where this Lease shall expire or be terminated with respect to all or any portion of the Premises prior to the completion of any Restoration required under this Lease, Tenant shall: (a) promptly raze or remove any and all damaged or destroyed Improvements as may be designated by Landlord (and Tenant may use any available insurance proceeds to do so); (b) promptly account to Landlord for all amounts spent in connection with any Restoration which was undertaken; (c) immediately pay over, or cause the Depositary to pay over, to Landlord the remaining balance of the Casualty Restoration Funds held by the Depositary or received by Tenant prior to such termination except those Casualty Restoration Funds that will be used to restore Improvements on any portion of the Premises that remains subject to this Lease; (d) pay over, or cause the Depositary to pay over, to Landlord, within five (5) Business Days after receipt thereof, any Casualty Restoration Funds received by Tenant or the Depositary subsequent to such termination or cancellation except those Casualty Restoration Funds that will be used to restore Improvements on any portion of the Premises that remains subject to this Lease; (e) immediately pay over to Landlord any outstanding Additional Casualty Cash that Tenant should have deposited with the Depositary pursuant to Section 9.4.4 except those Additional Casualty Restoration Funds that will be used to restore Improvements on any portion of the Premises that remains subject to this Lease; and (f) immediately pay to Landlord all accrued and unpaid Rent attributable to the portion of the Premises that is no longer subject to this Lease through the date of such expiration or termination on a pro rata basis; provided that any amounts paid to Landlord pursuant to preceding clauses (c), (d) or (e) are subject to the rights in any such sums of any Mortgagee under a Mortgage permitted in accordance with Article 33 (as and to the extent provided in such Mortgage). The obligations set forth in this Section 9.5.1 shall survive the expiration or termination, or partial termination, of

the Lease. Without limiting the generality of the foregoing, Tenant's obligation to raze and remove damaged or destroyed Improvements designated by Landlord shall apply to both the portion of the Premises that remains subject to the Lease and to any portion of the Premises for which the Lease is terminated.

9.5.2 Failure to Restore Following a Casualty Event. If, in the event of a Casualty Event, subject to the rights of the Mortgagees pursuant to Article 33 and the provisions set forth in Article 29, (i) Tenant fails or neglects to commence the diligent Restoration of the Premises or the portion thereof so damaged or destroyed as required by this Article 9, or having so commenced such Restoration, Tenant fails to complete the same as and when required by Article 9 and otherwise in accordance with the terms of this Lease, and in each such case if Tenant does not cure such failure within the cure period provided in Section 18.1.7 such that it becomes an Event of Default hereunder, or (ii) prior to the completion of any such Restoration by Tenant, this Lease shall expire or be terminated in accordance with the terms of this Lease, then:

(a) Landlord may, by giving sixty (60) calendar days' prior notice to Tenant, subject to the rights of the Mortgagee pursuant to Article 33 and the provisions set forth in Article 29, terminate this Lease and Landlord and Tenant shall have no further obligations hereunder except for such obligations that expressly survive termination; or

(b) Landlord may, but shall not be required to, complete such Restoration at Tenant's expense and shall be entitled to be paid out of the Casualty Restoration Funds for the relevant Restoration costs incurred by Landlord;

Landlord's rights and Tenant's obligations under this Section 9.5 shall survive the expiration or termination of this Lease.

9.6 Tenant's Election to Restore or Partially Terminate Lease Under Certain Circumstances.

9.6.1 Late-Term Casualty, Uninsured Casualty or Major Damage or Destruction. In the event of any (a) Late-Term Casualty, (b) any Major Damage or Destruction during the last ten (10) Lease Years of the Term, or (c) Uninsured Casualty at any time during the Term, then at the time Tenant provides Landlord with the ninety (90)-day report described in Section 9.2.2 above, Tenant shall also provide Landlord with written notice (the "**Casualty Notice**") either (i) electing to commence and complete Restoration of the Improvements, or (ii) electing to terminate this Lease with respect to the portion of the Premises containing the Improvements damaged or destroyed by such Casualty Event (subject to the provisions of Section 9.5). Tenant shall provide Landlord with the Casualty Notice no later than ninety (90) days following the occurrence of such Late-Term Casualty, Major Damage or Destruction or Uninsured Casualty. If Tenant elects to Restore the Improvements, such Restoration shall be completed in accordance with Section 9.4.

9.6.2 Other Circumstances Allowing Partial Termination. Notwithstanding the foregoing or subsequent provisions of this Article 9, Tenant shall not be required to Restore the Improvements and may elect to terminate this Lease in accordance with this Article 9 with respect to the portion of the Premises containing the Improvements damaged or destroyed by a Casualty

Event (subject to the provisions of Section 9.5) if: (a) the Laws then existing would not allow Tenant to Restore the Improvements; or (b) all necessary governmental approvals required for the Restoration of the Improvements cannot be obtained within eighteen (18) months from the date of the Casualty Event; provided that Tenant is proceeding as promptly as reasonably practicable and is using all commercially reasonable efforts to obtain such approvals within such time.

9.6.3 Conditions to Partial Termination. As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of an event set forth in Section 9.6.1 or Section 9.6.2, Tenant shall do all of the following:

(a) In the event of Major Damage or Destruction during the last ten (10) Lease Years of the Term, or any Uninsured Casualty, Tenant in its election to terminate described in Section 9.6.1 shall provide Landlord with a statement of the Casualty Restoration Cost, and the amount by which the Casualty Cost plus the amount of any applicable policy deductible (subject to the limitations on the policy deductible for damage or destruction caused by earthquake or flood as set forth in Section 9.1.7 above) exceeds insurance proceeds payable (or those insurance proceeds which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder), accompanied by supporting evidence reasonably acceptable to Landlord; and

(b) Tenant shall pay or cause to be paid the following amounts from casualty insurance proceeds upon the later of making the election to terminate or promptly following receipt of such proceeds in the following order of priority:

(i) First, to Landlord (or Tenant, if such work is performed by, or on account of, Tenant at its cost) for the Casualty Restoration Cost incurred for any work required to alleviate any threat to the public safety and welfare or damage to the environment, including without limitation, any demolition or hauling of rubble or debris;

(ii) Second, to each Mortgagee under any Mortgage permitted in accordance with Article 33 (as and to the extent provided in such Mortgage) demanding payment thereof in accordance with its Mortgage and applicable Law (in order of lien priority and not pro rata), that portion of the remaining casualty insurance proceeds arising out of or in connection with such Casualty Event in an amount not to exceed the aggregate amounts then owed to the Non-Affiliate Mortgagee and secured by all Non-Affiliate Mortgages under the loan documents therefor; and

(iii) All remaining insurance proceeds to Landlord.

9.6.4 Possession and Quitclaim Upon Partial Termination. Without limiting any other obligations of Tenant hereunder, upon any termination of this Lease under this Article 9 with respect to all or any portion of the Premises damaged or destroyed by a Casualty Event, Tenant shall deliver to Landlord possession of that portion of the Premises subsumed within such termination and shall quitclaim to Landlord all right, title and interest in such portion of the Premises and any remaining Improvements located thereon.

9.6.5 Landlord's Election Upon Notice of Partial Termination. Notwithstanding the foregoing, if Tenant, with the written consent of all Mortgagees whose

consent is required, elects to terminate this Lease with respect to a portion of the Premises pursuant to Section 9.6.1 or Section 9.6.2, solely due to an Uninsured Casualty, then Landlord, subject to the rights of Mortgagees, may, by written notice to Tenant within sixty (60) days after Landlord's receipt of Tenant's Casualty Notice, elect any of the following: (a) terminate the Lease and accept the surrender of such portion of the Premises in their then-existing condition (subject to Tenant's compliance with Section 9.5); or (b) continue this Lease in full force and effect, and pay the amount to Tenant by which the Casualty Restoration Cost will exceed net available proceeds of any insurance payable under the policies of insurance that Tenant is required to carry under Article 14 hereof (or which would have been payable but for Tenant's default in its obligation to maintain such insurance) by more than One Million Dollars (\$1,000,000), as Indexed. If Landlord elects to continue this Lease as set forth in this Section 9.6.5(b), then notwithstanding Tenant's election to terminate this Lease, this Lease shall not be terminated and Tenant shall be required to Restore the Premises in accordance with Section 9.4. During the last ten (10) Lease Years of the Term, Landlord shall not have the right to elect to pay the incremental cost and cause Tenant to Restore unless Tenant agrees in writing to do so, in its sole discretion.

9.7 Effect of Partial Termination.

9.7.1 If Tenant elects to terminate the Lease under Section 9.6.1 or 9.6.2, and Landlord elects not to continue the Lease in effect as provided under Section 9.6.5, then, on the date that Tenant shall have fully complied with all provisions of Sections 9.5 and 9.6 to the satisfaction of Landlord, this Lease shall terminate with respect to such portion of the Premises set forth in Tenant's election to terminate thereunder (except that, for purposes of payment or adjustment of Rent, the effective date of termination shall be the Casualty Date).

9.7.2 Upon such termination, Tenant (subject to Tenant's compliance with all provisions of Sections 9.5 and 9.6) and Landlord shall be released from any future obligations under this Lease with respect to the portion of the Premises subsumed within such termination, provided, however, that the indemnification provisions hereof and all other obligations under this Lease that are expressly provided herein to survive any termination of this Lease shall survive any such termination. Without limiting the foregoing, Landlord and Tenant shall meet and confer in good faith to adjust the Rent payable hereunder following the Casualty Date in an equitable manner, based on the proportionate reduction in Tenant's Permitted Use of the remaining Premises, as mutually agreed by Landlord and Tenant, each acting in good faith. The rights of any Mortgagee hereunder, and any rights of Tenant or Landlord to receive insurance proceeds in accordance with the provisions of this Lease shall survive the termination of this Lease.

9.7.3 At Landlord's request following any termination, Tenant shall deliver to Landlord a duly executed and acknowledged quitclaim deed suitable for recordation and in form and content satisfactory to Landlord.

9.8 No Release of Tenant's Obligations. No Casualty Event shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including, but not limited to, the obligation to pay Rent, except as otherwise expressly provided herein.

9.9 Benefit of Landlord. Except as otherwise expressly provided herein, the requirements of this Article 9 are for the benefit only of Landlord, and no other Person shall have

or acquire any claim against Landlord as a result of any failure of Landlord to actually undertake or complete any Restoration as provided in this Article 9 or to obtain the evidence, certifications and other documentation provided for herein.

ARTICLE 10. CONDEMNATION

10.1 Termination of Lease. Landlord and Tenant agree that, in the event of a Taking such that Tenant reasonably determines that the Premises cannot continue to be operated, at reasonable cost, for its then-current use, then, subject to the rights and consent of Mortgagees, this Lease shall, at Tenant's sole option, terminate as of the date of the Taking.

10.2 Continuation of Lease and Presumption of Restoration. Landlord and Tenant agree that, in the event of Taking that does not result in the termination of this Lease pursuant to Section 10.1 above, this Lease shall continue in effect as to the remainder of the Premises, and the Net Condemnation Award will be disbursed in accordance with Section 10.4 below to Landlord and Tenant and/or any Mortgagee, if the terms of the applicable Mortgage so require, and shall be used so as to make the same as complete, unified and efficient operating unit as nearly as reasonably possible to the condition existing prior to the Taking, subject to any applicable requirements of the Mortgagees.

10.3 Temporary Taking. If there shall be a temporary Taking with respect to all or any part of the Premises or of Tenant's interest in this Lease, then the Term shall not be reduced and Tenant shall continue to pay in full all Rent, Impositions and other charges required herein, without reduction or abatement thereof at the times herein specified; provided, however, that Tenant shall not be required to perform such obligations that Tenant is prevented from performing by reason of such temporary Taking.

10.4 Apportionment of Award. If there is a Taking, whether whole or partial, Landlord and Tenant shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, or as may be otherwise agreed, taking into consideration Landlord's fee interest in the Land (as encumbered by this Lease) and reversionary interest in the Improvements upon the expiration of the Term or termination of this Lease. If the Improvements are restored as is contemplated in Section 10.2 above, Tenant shall be entitled to recover the costs and expenses reasonably incurred in such restoration out of any Net Condemnation Award payable to Tenant. Thereafter, if the condemning authority does not make separate awards, the Parties agree that any Net Condemnation Award will be allocated as follows on a proportionate basis reflecting the Parties' respective interests in the Land and Improvements and the remaining duration of the Term as follows:

10.4.1 Award on Total or Substantial Taking. In the event of a total or substantial taking, the award shall be apportioned as follows, in the following order:

(a) To the Mortgagees in an amount equal to the amounts owing on the Mortgages.

(b) To Landlord that portion of the award equal to the fair market value of the Property (as encumbered by the Lease).

(c) To Tenant, that portion of the award equal to the fair market value of the Improvements (subject to Landlord's reversionary interest), less the amount paid to the Mortgagees pursuant to Section 10.4.1(a) above.

(d) Any "bonus value" (i.e., any portion of the award attributable to the fact that the rent payable by Tenant under this Lease is at a below market rate (if applicable)) shall be paid to Landlord; provided however, if the condemning agency is Landlord, any such "bonus value" shall be equally divided between Landlord and Tenant.

(e) The balance, if any, shall be allocated between Landlord and Tenant respectively in that proportion in which (i) the fair market value of the Land bears to (ii) the fair market value of the Improvements, exclusive of Landlord's reversionary interest.

10.4.2 Award on Partial Taking. In the event of a partial taking, after application of the Award for restoration, any remaining portion of such award shall be apportioned as follows, in the following order:

(a) To the Mortgagees in an amount equal to the amounts owing on the Leasehold Mortgages.

(b) To Landlord, that portion of the award attributable to the fair market value of the portion of the Property taken, if any (as encumbered by the Lease).

(c) To Tenant, that portion of the award equal to the fair market value of the portion of the Improvements taken (subject to Landlord's reversionary interest), less the amount paid to the Mortgagees pursuant to Section 10.4.2(a) above, but only to the extent that the proceeds of the award are not used for restoration of the Improvements.

(d) Any "bonus value" (i.e., any portion of the award attributable to the fact that the rent payable by Tenant under this Lease is at a below market rate) shall be paid to Landlord; provided however, if the condemning agency is Landlord, any such "bonus value" shall be equally divided between Landlord and Tenant.

(e) The balance, if any, shall be allocated between Landlord and Tenant respectively in that proportion in which (i) the fair market value of the Land bears to (ii) the fair market value of the Improvements exclusive of the reversionary interest of Landlord.

(f) Any severance damages awarded or payable because only a portion of the Land and Improvements are taken by eminent domain shall be (i) paid to Tenant during the first thirty-three (33) years of this Lease and (ii) equally divided between Tenant and Landlord during the balance of the Term (except to the extent needed to replace any Improvements taken by eminent domain with equivalent Improvements on the remainder of the Land).

10.4.3 Award for Temporary Taking. Any award for a temporary taking shall, subject to the rights of any Mortgagees, be awarded and retained by Tenant.

10.4.4 Rent Abatement for Partial Taking. In the event of any partial taking of the Improvements, commencing upon the date of the final order of condemnation, Rent payable under this Lease shall be reduced by the percentage equal to the square footage of the condemned portion of the Improvements divided by the total square footage of the Improvements prior to the taking.

10.5 Joinder. The Mortgagees, to the extent permitted by law, shall be made a party to any Taking proceeding.

10.6 City Reservation of Rights. Notwithstanding any provisions in this Lease to the contrary, nothing herein does or shall be construed to limit or require the City to exercise its ability to condemn any property, including the Premises, in accordance with applicable Law. Nothing in this Lease does, or shall be construed as, requiring the City to pay to Tenant, any Mortgagee, or any other third party with an interest in the Premises, any amount of money, as compensation for alleged condemnation or otherwise, if City (or its successor) seeks to enforce any of the rights and obligations under this Lease. Except when City exercises its ability to condemn the Premises by adoption of a resolution of necessity and pursuant to other provisions of applicable law, City shall not be construed as pursuing or effectuating a Taking or acting as a "condemning authority" under this Lease.

ARTICLE 11.

LIENS

11.1 Liens. Tenant shall not create or permit the attachment of, and shall promptly following notice, discharge (or cause to be removed of record by the posting of a bond in the amount required by Law) at no cost to Landlord, any lien, security interest, or encumbrance on the Premises or Tenant's leasehold estate, other than (a) this Lease and Permitted Title Exceptions, (b) liens for non-delinquent Impositions, except only for Impositions being contested as permitted by Section 4, (c) Mortgages permitted under Article 33, (d) liens created by or on behalf of Landlord during the Term, and (e) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Article 4. The provisions of this Section 11.1 do not apply to liens created by Tenant on its Personal Property.

11.2 Stop Notices. Tenant shall not allow to be placed on the Property or any part thereof any stop notice on account of materials supplied to or labor performed on behalf of Tenant. If a stop notice is given affecting the Project or the Property or any part thereof, Tenant shall within sixty (60) days of such service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) provide other assurance satisfactory to City that the stop notice will be paid or discharged.

11.3 Mechanics' Liens. Nothing in this Lease shall be deemed, or construed in any way, as constituting the request of Landlord, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of, or to, the Premises or the Improvements, or any part thereof. Tenant agrees that at all times when the same may be necessary or desirable, Tenant will take such action as may be required to prevent the enforcement of any mechanics' or similar liens against the Premises, Tenant's leasehold interest,

or Landlord's fee interest in the Premises for, or on the account of, labor, services or materials furnished to Tenant, or at Tenant's request. Tenant shall provide such advance written notice of any Major Alterations and Minor Alterations to allow Landlord, from time to time, to post a notice of non-responsibility on the Premises.

11.4 Right of City to Satisfy Liens on the Property.

(a) If Tenant fails to satisfy or discharge any lien or stop notice on the Property or any part thereof pursuant to and within the applicable time period set forth herein, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Tenant's expense and without further notice to Tenant. In such event Tenant shall be liable for and shall promptly reimburse City upon demand for such paid lien or stop notice. Alternatively, the City may require Tenant to promptly deposit with City the amount necessary to satisfy such lien or claim pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Tenant.

(b) Tenant shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Property for a continuous period of thirty (30) days or more and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property. The City may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Property.

ARTICLE 12. ASSIGNMENT AND SUBLETTING

12.1 Assignment and Transfer.

12.1.1 Consent of Landlord.

(a) Except as expressly provided in Sections 33.2.1 and 33.10.8, Tenant, its successors and permitted assigns shall not (i) suffer or permit any Significant Change to occur, or (ii) assign, sell, lien, encumber, Sublease all or substantially all of the Premises, or otherwise transfer all or any part of Tenant's interest in and to this Lease or leasehold or the Premises, either voluntarily, or by operation of law (either or both (i) and (ii) above, a "**Transfer**"), without the prior written consent of Landlord as set forth herein and the satisfaction, or written waiver thereof by Landlord, of all conditions precedent set forth in this Article 12.

(i) Prior to Completion of the Project pursuant to the LDDA: Except as permitted by the LDDA or this Lease, all Transfers shall require Landlord's consent, in its sole and absolute discretion, which shall not be unreasonably, withheld, conditioned, or delayed.

(ii) After Completion of the Project pursuant to the LDDA: Except as permitted by the LDDA or this Lease, all Transfers shall require Landlord's consent, in its reasonable discretion, which shall not be unreasonably withheld, conditioned or delayed.

(iii) Notwithstanding the foregoing, the following Transfers shall be permitted:

(A) The Transfer to, and assumption of, this Lease by an Affiliate, shall be a permitted Transfer and shall not require Landlord's consent.

(B) The granting of easements or permits to facilitate the development of the Project.

(C) any agreements granting licenses, easements, or access rights over the Premises to facilitate development of the Project.

(D) The granting of any security interest in the Premises, if such security interest is granted to secure financing for the Project and is approved by the Landlord in writing.

(E) Subject to the issuance of a temporary certificate of occupancy by the Landlord in its regulatory capacity, the leasing or subleasing of space in the Project that is less than all or substantially all of the Premises in the normal course of business.

(F) A Transfer to a university or other nonprofit educational institution that is accredited by the Western Association of Schools and Colleges or a successor accreditor.

(b) Without limiting the preceding provisions of this Section 12.1.1, it shall in any instance be reasonable for Landlord to withhold its consent to any Transfer proposed by Tenant (each, a "**Proposed Transfer**") to the extent that any such Proposed Transfer would serve to deprive or limit Landlord with respect to its rights under this Lease.

12.1.2 Delivery of Executed Assignment. Without limiting Section 12.1.1 above, no Transfer of any interest in this Lease made pursuant to Section 12.1.1(a)(i) or (ii), or pursuant to Section 12.1.1(a)(iii)(A), Section 12.1.1(a)(iii)(D) (if such security interest includes leases (such as a Master Lease in connection with New Markets Tax Credits), Section 12.1(a)(iii)(E) (with respect to a lease or sublease of the entire, or substantially the entire, Premises only), or Section 12.1(a)(iii)(F) above will be effective unless and until there has been delivered to Landlord, within thirty (30) days after Tenant entered into such assignment and assumption agreement, an executed counterpart of such assignment and assumption agreement, in recordable form, executed by Tenant and the transferee, wherein and whereby such transferee assumes, except as expressly provided in Section 33.2.1, but including an assignment pursuant to Section 33.7.2(a), performance of all of the obligations on the assignor's part to be performed under this Lease and the other assigned documents to, and including the end of the Term (provided, however, that the failure of any transferee to assume this Lease, or to assume one or more of Tenant's obligations under this Lease, will not relieve such transferee from such obligations or limit Landlord's rights or remedies under this Lease or under applicable Law). The form of such instrument of assignment and assumption shall be subject to Landlord's approval, which approval may not be unreasonably withheld, delayed, or conditioned provided that it satisfies the requirements of Section 12.1.1(a)(iii) and Section 12.1.2.

12.1.3 No Release of Tenant's Liability or Waiver by Virtue of Consent. Except as expressly provided in Article 33, the consent by Landlord to any Transfer and any Transfer hereunder shall not, nor shall such consent or Transfer in any way be construed to: (a) relieve or release Tenant from any liability or obligation arising at any time out of or with regard to the performance of any covenants or obligations to be performed by Tenant at any time hereunder, or (b) relieve any transferee of Tenant from its obligation to obtain the express consent in writing of Landlord to any further Transfer.

12.1.4 Notice of Significant Changes; Reports to Landlord. Tenant shall promptly notify Landlord of any and all proposed Significant Changes. At such time or times as Landlord may reasonably request, Tenant must furnish Landlord with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant and the extent of their respective interests in Tenant, and in the event any other Persons have a beneficial interest in Tenant, their names and the extent of such interest.

12.1.5 Mortgaging of Leasehold. Notwithstanding anything herein to the contrary, Tenant has the right, without Landlord's consent, to assign, encumber, hypothecate, pledge, or sell its interest in this Lease to Mortgagees expressly permitted by the LDDA or this Lease subject to compliance with Article 33 and other applicable terms of this Lease, or to other purchasers at a Foreclosure (as defined in Article 38) under the provisions of a permitted Mortgage in accordance with Article 33 and any such assignment, encumbrance, hypothecation, pledge or sale will not be deemed a Transfer so long as such assignment, encumbrance, hypothecation, pledge or sale is effected in accordance with and otherwise complies with the terms and conditions set forth in Article 33.

12.1.6 Prohibition on Involuntary Transfers.

(a) Neither this Lease, nor any interest therein, or right granted thereby, shall be assignable or transferable in proceedings in attachment, garnishment or execution against Tenant, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of Law, and possession of the whole or any part of the Premises shall not be divested from Tenant in such proceedings or by any process of Law, without the prior written consent of Landlord, which may be granted, withheld or conditioned in Landlord's sole and absolute discretion.

(b) Tenant hereby expressly agrees that the validity of Tenant's liabilities as a principal hereunder shall not be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Landlord against any transferee of any of the rights or remedies reserved to Landlord pursuant to this Lease or by relief of any Transferee from any of the Transferee's obligations under this Lease or otherwise by (i) the release or discharge of any Transferee in any creditors' proceedings, receivership, bankruptcy or other proceedings, (ii) the impairment, limitation or modification of the liability of any Transferee, or the estate of any Transferee, in bankruptcy, or of any remedy for the enforcement of any assignee's liability under this Lease, resulting from the operation of any present or future provision of the National Bankruptcy Act or other statute or from the decision in any court; or (iii) the rejection or disaffirmance of this Lease in any such proceedings.

12.1.7 Effect of Prohibited Transfer. Any Transfer made in violation of the provisions of this Article 12 shall be null and void *ab initio* and of no force and effect. Notwithstanding anything herein to the contrary, if a Transfer occurs without Landlord's consent, Landlord may collect from such assignee, subtenant, occupant or reconstituted Tenant, any Rent under this Lease and apply the amount collected to the Rent, but such collection by Landlord shall not be deemed a waiver of the provisions of this Lease, nor an acceptance of such assignee, subtenant, occupant or reconstituted Tenant, as Tenant of the Premises.

12.1.8 Landlord's Processing Fees. Landlord will not require any payment (beyond reimbursement of reasonable legal and other third-party fees and staff costs) as a condition of approving a Transfer.

12.1.9 Tenant as Party is Material Consideration to Lease. Tenant agrees that its personal expertise, business skills and philosophy were an important inducement to Landlord for entering into this Lease and Tenant and Landlord acknowledge and agree that the rights retained by, and granted to, Landlord pursuant to this Article 12 constitute a material part of the consideration for entering into this Lease and constitute a material and substantial inducement to Landlord to enter into this Lease at the rental, for the terms, and upon the other covenants and conditions contained in this Lease, and that the acceptability of Tenant, and of any transferee of any right or interest in this Lease, involves the exercise of broad discretion by Landlord in promoting the development, leasing, occupancy and operation of the Premises and other purposes of this Lease. Therefore, Tenant agrees that, subject to, and without limiting the other provisions of this Article 12, all conditions set forth herein to Landlord's consent to a Proposed Transfer are reasonable to protect the rights and interest of Landlord hereunder and to assure promotion of the purposes of this Lease.

ARTICLE 13.

INDEMNIFICATION OF LANDLORD

13.1 Indemnification of Landlord.

13.1.1 Tenant agrees to, and shall, Indemnify the Indemnified Parties from and against any and all Losses directly or indirectly imposed upon, or incurred by, or asserted against any such Indemnified Party, the Premises or Landlord's interest therein, in connection with the occurrence or existence during the Term of any of the following: (a) any accident, injury to or death of Persons or loss of or damage to property occurring on the Premises or any part thereof; (b) any accident, injury to or death of Persons or loss or damage to property occurring immediately adjacent to the Premises which is caused directly or indirectly by Tenant or its Agents; (c) any use, possession, occupation, operation, maintenance, or management of property immediately adjacent to the Premises by Tenant or any of its Agents, invitees, or subtenants; (d) any use, possession, occupation, operation, maintenance, management or condition of the Premises by Tenant or any of its Agents; (e) any design, construction or structural defect relating to the Project or any Additional Improvements, and any other matters relating to the condition of the Premises caused by Tenant or any of its Agents, invitees, or subtenants; (f) any failure on the part of Tenant or its Agents or Subtenants, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws, including but not limited to Article 15; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part

thereof by Tenant or any of its Agents, invitees or Subtenants or any other violation of Laws by Tenant or its Agents or Subtenants; and (h) any other legal actions or suits initiated by any user or occupant of the Premises that relates to, or arises from, directly or indirectly, such user or occupant's use or occupancy of the Premises.

13.1.2 If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, defend such action, suit or proceeding, or cause the same to be defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing, which approval shall not be unreasonably withheld, conditioned, or delayed.

13.1.3 Tenant shall not be obligated to Indemnify the Indemnified Parties, and nothing in this Article 13 shall relieve the Indemnified Parties from liability, to the extent that any of the matters described above is determined by a final non-appealable judgment of a court of competent jurisdiction to have arisen from any Indemnified Party's sole negligence or willful misconduct whether or not occurring prior to the Term.

13.2 Immediate Obligation to Defend. Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually, or potentially, within the scope of the indemnity provision of Section 13.1 or any other indemnity provision under this Lease, even if such allegation is, or may be, groundless, fraudulent, or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter; and provided further that, in the event it is later determined by a court of competent jurisdiction that the claim made falls outside the scope of the indemnity provisions of this Lease, Landlord shall promptly reimburse Tenant for Tenant's reasonable attorneys' fees and other costs incurred in defending such claim.

13.3 Not Limited by Insurance. The insurance requirements and other provisions of this Lease shall not limit Tenant's indemnification obligations under Section 13.1 or any other indemnification provision of this Lease.

13.4 Survival. Tenant's obligations under this Article 13 and any other indemnity in this Lease shall survive the expiration or sooner termination of this Lease with respect to Losses, Claims, and/or Hazardous Materials Claims arising during the Term.

13.5 Other Obligations. The agreements to Indemnify set forth in Article 13 and elsewhere in this Lease are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to Landlord in this Lease, at common law or otherwise.

13.6 Defense. Tenant shall be entitled to control the defense, compromise, or settlement of any such matter through counsel of Tenant's own choice; provided, however, in all cases in which any Indemnified Party has been named as a defendant, Landlord shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Tenant shall fail, however, in Landlord's reasonable judgment, within a reasonable time (but not less than thirty (30)

days following notice from Landlord alleging such failure) to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, Landlord shall have the right promptly to use the Oakland City Attorney or hire outside counsel, at Tenant's sole expense, to carry out such defense, compromise, or settlement, which reasonable expense shall be due and payable to Landlord ten (10) Business Days after receipt by Tenant of an invoice therefor.

13.7 Release of Claims Against Landlord. Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against the Indemnified Parties from any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by Persons in, upon, or about the Premises for any cause arising at any time, excluding any sole negligence or willful misconduct of the Indemnified Parties, whether or not occurring prior to the Term.

ARTICLE 14. INSURANCE

14.1 Tenant Insurance Requirements. Tenant shall, at no cost to Landlord, obtain, maintain, and cause to be in effect at all times from the Commencement Date to the later of: (a) the last day of the Term; (b) the last day Tenant (i) is in possession of the Premises, or (ii) has the right of possession of the Premises; or (c) such other date specified in Exhibit E attached to this Lease, the types and amounts of insurance specified in Exhibit E attached to this Lease.

14.2 Release and Waiver. Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the insurance policies required pursuant to Section (a)(i), (ii) or (v) of Exhibit E to the extent that such loss is reimbursed by an insurer. Notwithstanding anything to the contrary contained herein, to the extent of insurance proceeds received with respect to the loss, Tenant and Landlord each hereby waives any right of recovery against the other Party for any loss or damage to the Improvements, the Premises, the contents of same or any operation therein, whether or not such loss is caused by the fault or negligence of such other Party. With the exception of workers' compensation insurance, Landlord and Tenant shall each obtain from their respective insurers under all policies of fire, theft, commercial general liability, builder's risk and other insurance maintained by either of them at any time during the Term insuring or covering the Improvements, the Premises or any portion thereof or operations therein, a waiver of all rights of subrogation which the insurer of one Party might have against the other Party. Tenant acknowledges that Landlord is currently self-insured. To the extent that a Mortgagee, pursuant to the terms its Mortgage permitted in accordance with Article 33 retains or requires the application of insurance proceeds, such proceeds shall be applied in accordance with such terms and conditions in order of lien priority.

14.3 Landlord Entitled to Participate. Landlord shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any loss in excess of Five Hundred Thousand Dollars (\$500,000) covered by property insurance required to be carried by Tenant hereunder, subject to the rights of Mortgagees; provided however, that Landlord's consent shall not be unreasonably withheld or delayed, and no participation or consent of Landlord shall be required in connection with any such settlement, compromise or agreement (a) concerning property damage to all or any portion of the Improvements if Tenant shall have

agreed in writing to commence and complete Restoration, or (b) concerning property damage to Tenant's Personal Property.

ARTICLE 15.

HAZARDOUS MATERIALS

15.1 Environmental Disclosure.

15.1.1 Landlord has provided, or made available, the reports and other environmental information pertaining to the Premises as identified in Exhibit H to the LDDA. To the best of Landlord's knowledge that to the extent the Landlord has copies of other investigation reports concerning the Property, Landlord has provided, or made available, all such copies to Tenant prior to the Effective Date; but the Parties acknowledge that Landlord will not be conducting a public records search of any regulatory agency files, although the Landlord urges Tenant to do so to satisfy itself regarding the environmental condition of the Property.

15.1.2 By execution of this Lease, Tenant: (a) acknowledges its receipt of the foregoing notice respecting the environmental condition of the Property; (b) acknowledges that it will have an opportunity to conduct its own independent review and investigation of the Property prior to the Commencement Date; (c) agrees to rely solely on its own experts in assessing the environmental condition of the Property and its sufficiency for its intended use; and (d) waives any and all rights Tenant may have to assert that the Landlord failed to disclose information about the environmental condition of the Property.

15.2 Property Leased "AS IS".

15.2.1 Tenant specifically acknowledges that the Tenant is leasing the Property on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis and that except as expressly provided in this Lease, Tenant is not relying on any representations or warranties of any kind whatsoever, express or implied, from Landlord, its employees, board members, agents, or brokers as to any matters concerning the Property.

15.2.2 Except as expressly provided in Section 35.2.1 of this Lease, Landlord makes no representations or warranties as to any matters concerning the Property, including without limitation: (a) the quality, nature, adequacy and physical condition of the property, including, but not limited to appurtenance, access, landscaping, or parking facilities; (b) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater; (c) the existence, quality, nature, adequacy and physical condition of utilities serving the Property; (d) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose; (e) the zoning or other legal status of the property or any other public or private restrictions on use of the Property; (f) the compliance of the Property or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (g) the presence or removal of Hazardous Material, substances or wastes on, under or about the Property or the adjoining or neighboring property; (h) the quality of any labor and materials used in any improvements on the Property; or (i) the condition of title to the Property.

15.3 Release by Tenant. Effective as of the Effective Date, Tenant WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES the Landlord, the Indemnified Parties, and any person acting on behalf of the City, from any and all Claims, direct or indirect, known or unknown, foreseen or unforeseen, which Tenant now has or which may arise in the future on account of or in any way arising out of or in connection with the physical condition of the Property, the presence of Hazardous Material in, on, under or about the Property, or any law or regulation applicable thereto including, without limiting the generality of the foregoing, all Hazardous Materials Laws, except to the extent any such Claims arise from the sole negligence or willful misconduct of the Landlord or the Indemnified Parties.

TENANT ACKNOWLEDGES THAT TENANT IS FAMILIAR WITH SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

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

BY INITIALING BELOW, TENANT EXPRESSLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE WITH RESPECT TO THE FOREGOING RELEASE:

Tenant's initials: Cffw

15.4 Tenant's Obligations.

15.4.1 Tenant hereby covenants and agrees that:

(a) Tenant shall not knowingly permit the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Material or otherwise knowingly permit the presence or release of Hazardous Material in, on, under, about or from the Property with the exception of limited amounts of cleaning supplies and other materials customarily used in construction, use or maintenance of commercial properties similar in nature to the Project, and used, stored and disposed of in compliance with Environmental Laws.

(b) Tenant, during the Term of this Lease, shall keep and maintain the Property and each portion thereof in compliance with, and shall not cause or permit the Project or the Property or any portion of either to be in violation of, any Environmental Laws.

(c) Tenant shall comply with all requirements set forth in Article 5 of the LDDA.

(d) Upon receiving actual knowledge of the same, Tenant shall immediately advise Landlord in writing of any Hazardous Material Claims. Landlord shall have

the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Material Claim.

(e) Without Landlord's prior written consent, which shall not be unreasonably withheld or delayed, Tenant shall not take any remedial action in response to the presence of any Hazardous Material in, on, under, or about the Property (other than in emergency situations, or as required by governmental agencies having jurisdiction, in which case Landlord agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim. Landlord shall have the right to join and participate in, as a party, if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims, and to have its reasonable attorneys' fees in connection therewith paid by Tenant.

15.5 Environmental Indemnity.

15.5.1 To the greatest extent allowed by law, Tenant shall indemnify, defend (with counsel approved by Landlord) and hold Indemnified Parties harmless from and against all Claims resulting, arising, or based directly or indirectly in whole or in part, upon (a) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Material on, under, in or about the Property to the extent arising out of the acts of Tenant or its employees, agents, contractors, or subcontractors (all of the foregoing, the "**Tenant Parties**"), or the transportation of any such Hazardous Material to or from, the Property by Tenant or Tenant Parties, or (b) the failure of Tenant, or Tenant Parties, or any person acting on behalf of or as the invitee of any of the foregoing to comply with Environmental Laws, except to the extent caused by an Indemnitee's sole negligence or willful misconduct.

15.5.2 The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property to the extent arising out of the acts of Tenant or Tenant Parties, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Material by Tenant or Tenant Parties, and irrespective of whether any of such activities were or will be undertaken in accordance with Environmental Laws.

15.5.3 Notwithstanding any contrary provision of this Lease, Tenant's obligations to indemnify the Indemnified Parties shall not apply to Hazardous Materials existing on the Property prior to the Commencement Date unless the presence of such Hazardous Materials on the Property directly resulted from the actions of Tenant or Tenant Parties.

ARTICLE 16.

DELAY DUE TO FORCE MAJEURE

16.1 Delay Due to Force Majeure. For all purposes of this Lease, a Party whose performance of its obligations hereunder is hindered or affected by events of Force Majeure shall not be considered in breach of or in default in its obligations hereunder to the extent of any delay resulting from Force Majeure, provided, however, that the provisions of this Section 16.1 shall not apply to Tenant's obligation to pay Rent. A Party seeking an extension of time pursuant to the provisions of this Section 16.1 shall give written notice to the other Party describing with

reasonable particularity (to the extent known) the facts and circumstances constituting Force Majeure within (a) a reasonable time (but not more than thirty (30) days unless the other Party's rights are not prejudiced by such delinquent notice) after the date that the claiming party has actual knowledge of the scope and magnitude of the applicable Force Majeure event or (b) promptly after the other Party's demand for performance.

ARTICLE 17.

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

17.1 Landlord May Perform in Emergency. Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Landlord for any Event of Default on the part of Tenant under this Lease, if Tenant fails to perform any maintenance or repairs required to be performed by Tenant hereunder within the time provided for such performance, which failure gives rise to an emergency which creates an imminent danger to the general public health or safety outside the Premises, as reasonably determined by Landlord, Landlord may at its sole and absolute option, but shall not be obligated to, perform such obligation for and on behalf of Tenant, provided that, if there is time, Landlord first gives Tenant such notice and opportunity to take corrective action as is reasonable under the circumstances. Nothing in this Section 17.1 shall be deemed to limit Landlord's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of Landlord constitutes a condemnation or an impairment of Tenant's contract with Landlord. This Section 17.1 shall not, nor shall be construed to limit in any manner whatsoever the City's regulatory and police powers with respect to emergency entry of the Premises.

17.2 Landlord May Perform Following Tenant's Failure to Perform. Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Landlord for any default on the part of Tenant under this Lease, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Landlord (other than any Imposition, with respect to which the provisions of Section 4.3 shall apply), or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease and does not cure such failure within the applicable cure period provided in Section 18.1 such that it becomes an Event of Default, and is not the subject of a contest under Section 4.4, then, Landlord may, at its sole and absolute option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant. Notwithstanding the foregoing, however, if within such period Tenant gives notice to Landlord that such failure is due to delay caused by Force Majeure, or is the subject of a contest under Section 4.4, or that cure of such failure cannot reasonably be completed within such period, then Landlord will not pay such sum or perform such obligation during the continuation of such contest or such Force Majeure delay or extended cure period, as the case may be, for so long thereafter as Tenant continues diligently to prosecute such contest or cure or the resolution of such event of Force Majeure.

17.3 Tenant's Obligation to Reimburse Landlord. If pursuant to the provisions of Section 17.2, Landlord pays any sum or performs any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse Landlord within ten (10) Business Days following demand, as Additional Rent, the sum so paid, or the reasonable expense incurred by Landlord in performing such obligation, together with interest thereon at the Default Rate, if such payment is

not made within such period, computed from the date of Landlord's demand until payment is made. Landlord's rights under this Article 17 shall survive the expiration or termination of this Lease and shall be in addition to its rights under any other provision of this Lease or under applicable laws.

ARTICLE 18.
EVENTS OF DEFAULT; TERMINATION

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

18.1.1 Tenant fails to pay any Rent to Landlord when due, which failure continues for ten (10) days following written notice from Landlord (it being understood and agreed that the notice required to be given by Landlord under this Section 18.1.1 shall also constitute the notice required under Section 1161 of the California Code of Civil Procedures or its successor, and shall satisfy the requirements that notice be given pursuant to such Section);

18.1.2 Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within one hundred twenty (120) days;

18.1.3 A writ of execution is levied on the leasehold estate which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred twenty (120) days (other than a receiver or custodian appointed at the request of a Mortgagee in preparation for instituting Foreclosure proceedings; provided that such Mortgagee has notified Landlord of its intention to institute such proceedings pursuant to Section 33.10.2(a));

18.1.4 Tenant makes a general assignment for the benefit of its creditors;

18.1.5 Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2 (or its successor), which abandonment is not cured within fifteen (15) days after notice of belief of abandonment from Landlord;

18.1.6 Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease and such failure continues without cure for ten (10) Business Days after written notice from Landlord of such failure;

18.1.7 Tenant (a) violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease (including, but not limited to, any obligation to pay parking taxes, business license fees, or similar fees or taxes owed to Landlord, in its regulatory capacity) at the time such performance is due, or (b) does not Commence Construction (as defined in the LDDA), or cause Commencement of Construction (as defined in the LDDA) of the Project pursuant to the LDDA, and in either case such violation or failure continues without cure for more than thirty (30) days after written notice from Landlord specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (30)-day period commence such cure, or having so

commenced, does not prosecute such cure with diligence and dispatch to completion within ninety (90) days; or

18.1.8 Tenant suffers or permits a Transfer to occur in violation of this Lease.

ARTICLE 19. **REMEDIES**

19.1 Landlord's Remedies Generally. Upon the occurrence and during the continuance of an Event of Default under this Lease (but without obligation on the part of Landlord following the occurrence of an Event of Default to accept a cure of such Event of Default other than as required by law or the terms of this Lease), Landlord shall have all rights and remedies provided in this Lease or available at law or equity, subject to the express waivers in Sections 9.2.3, 14.2 and 23.1 of this Lease. All of Landlord's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others.

19.2 Right to Keep Lease in Effect.

19.2.1 Continuation of Lease. Upon the occurrence of an Event of Default hereunder, Landlord may continue this Lease in full force and effect, as permitted by California Civil Code Section 1951.4 (or any successor provisions). Specifically, Landlord has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations).

(a) In the event Landlord elects this remedy, Landlord shall have the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of Landlord's rights, including the right to collect Rent, including any and all Additional Rent, when and as such sums become due, even though Tenant has breached this Lease and is no longer in possession of the Premises or actively managing or operating the Premises.

(b) If Tenant abandons the Premises in violation of this Lease, Landlord may (i) enter the Premises and relet the Premises, or any part thereof, to third Persons for Tenant's account without notice to Tenant, Tenant hereby waives rights, if any, to any such notice under any applicable Law; and (ii) alter, install or modify the Improvements or any portion thereof. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of Restoration and of repairing, securing, servicing, maintaining and preserving the Premises or the Improvements, or any portion thereof. Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease, provided Tenant's obligations shall in no event extend beyond the Term.

19.2.2 No Termination. No act by Landlord allowed by this Section 19.2, nor any appointment of a receiver upon Landlord's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until Landlord notifies Tenant in writing that Landlord elects to terminate this Lease pursuant to Section 19.3.

19.2.3 Application of Proceeds of Reletting. If Landlord elects to relet the Premises as provided hereinabove in Section 19.2.1, the rent that Landlord receives from reletting shall be applied to the payment of:

(a) First, all costs incurred by Landlord in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of repairing, securing and maintaining the Premises or any portion thereof;

(b) Second, the satisfaction of all obligations of Tenant hereunder (other than the payment of Rent) including, without limitation, the payment of all Impositions or other items of Additional Rent owed from Tenant to Landlord, in addition to or other than Rent due from Tenant;

(c) Third, Rent, including any and all Additional Rent, due and unpaid under this Lease;

(d) Fourth, to Mortgagees in the order of lien priority for outstanding loan payments owed by Tenant pursuant to permitted Mortgages; and

(e) After deducting the payments referred to in this Section 19.2.3, any sum remaining from the rent Landlord receives from reletting shall be held by Landlord and applied to Rent as such amounts become due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on a date Rent or other amount is due under this Lease, the rent received as of such date from the reletting is less than the Rent or other amount due on that date, or if any costs, including those for maintenance which Landlord incurred in reletting, remain after applying the rent received from the reletting as provided in Section 19.2.3(b), Tenant shall pay to Landlord, upon demand, in addition to the remaining Rent or other amounts due, all such costs.

19.2.4 Payment of Rent. Tenant shall pay to Landlord the Rent due under this Lease on the dates the Rent is due, less the rent Landlord has received from any reletting which exceeds all costs and expenses of Landlord incurred in connection with Tenant's default and the reletting of all or any portion of the Premises.

19.3 Right to Terminate Lease.

19.3.1 Damages. Subject to the provisions of Article 33, Landlord may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of

Default by giving Tenant and each Mortgagee written notice of such termination. Termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon Landlord's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by Landlord other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, Landlord shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including, without limitation, the following:

(a) The worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease;

(b) The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(c) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(d) Any other amount necessary to compensate Landlord for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom; and

(e) "The worth at the time of the award", as used in Sections 19.3.1(a) and 19.3.1(b) shall be computed by allowing interest at a rate per annum equal to the Default Rate. "The worth at the time of the award", as used in Section 19.3.1(c), shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

19.3.2 Interest. Rent not paid when due shall bear interest from the date due until paid at the Default Rate.

19.3.3 Waiver of Rights to Recover Possession. In the event Landlord terminates Tenant's right to possession of the Premises pursuant to this Section 19.3, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

ARTICLE 20.

EQUITABLE RELIEF

20.1 Landlord's Equitable Relief. In addition to the other remedies provided in this Lease, Landlord shall be entitled at any time after an Event of Default or threatened Event of Default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default,

Landlord shall be entitled to any other equitable relief that may be appropriate to the circumstances of such Event of Default.

20.2 Tenant's Equitable Relief. In addition to the other remedies provided in this Lease, Tenant shall be entitled at any time after an Event of Default or threatened Event of Default by Landlord to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Tenant shall be entitled to any other equitable relief (excepting termination of this Lease) that may be appropriate to the circumstances of such Event of Default.

ARTICLE 21. NO WAIVER

21.1 No Waiver by Landlord or Tenant. No failure by Landlord or Tenant to insist upon the strict performance of any provision of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such provision unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of Landlord or Tenant with respect to any other then existing or subsequent breach.

21.2 No Accord or Satisfaction.

21.2.1 No submission by Tenant or acceptance by Landlord of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of Landlord's rights or remedies hereunder, or constitute an accord or satisfaction, whether or not Landlord had knowledge of any such failure.

21.2.2 No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by Landlord. Landlord may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity.

21.2.3 No payment by Tenant of any amount claimed by Landlord to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

ARTICLE 22.
DEFAULT BY LANDLORD; TENANT'S REMEDIES

22.1 Default by Landlord; Tenant's Exclusive Remedies.

22.1.1 Landlord shall be deemed to be in default hereunder only if Landlord shall fail to perform or comply with any obligation on its part hereunder and (a) such failure shall continue for more than the time of any cure period provided herein, or, (b) if no cure period is provided herein, for more than thirty (30) days after written notice thereof from Tenant, or, (c) if such default cannot reasonably be cured within such thirty (30)-day period, Landlord shall not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with diligence and dispatch the curing of such default (such Landlord default shall constitute an Event of Default as defined in Section 18.1).

22.1.2 Upon the occurrence of default by Landlord described above, which default substantially and materially interferes with Tenant's Permitted Use on the Premises or to exercise its rights hereunder, Tenant shall have the exclusive right, subject to the express waivers in this Lease, including, but not limited to, Sections 9.2.3, 14.2 and 23.1: (a) to offset or deduct only from the Rent becoming due hereunder, the amount of all actual damages incurred by Tenant as a direct result of Landlord's default, but only after obtaining a final, non-appealable judgment in a court of competent jurisdiction for such damages in accordance with appellate Law and the provisions of this Lease; and/or (b) to seek an order for specific performance. Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies set forth in this Section 22.1 and in Section 20.2 shall constitute Tenant's sole remedies for a default by Landlord hereunder.

22.2 No Personal Liability of Landlord. No council member, commissioner, officer or employee of Landlord will be personally liable to Tenant, or any successor in interest, for any Event of Default by Landlord, and Tenant agrees that it will have no recourse with respect to any obligation of Landlord under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such Person.

22.3 No Personal Liability of Tenant. No officer, director, shareholder, partner, member or employee of Tenant will be personally liable to Landlord, or any successor in interest, for any Event of Default by Tenant, and Landlord agrees that it will have no recourse with respect to any obligation of Tenant under this Lease, or for any amount which may become due Landlord or any successor or for any obligation or claim based upon this Lease, against any such Person.

ARTICLE 23.
LIMITATIONS ON LIABILITY

23.1 Waiver of Consequential, Incidental or Punitive Damages. As a material part of the consideration for this Lease, and notwithstanding any provision herein to the contrary, neither Party shall be liable for, and each Party hereby waives any claims against the other for, any consequential, incidental or punitive damages incurred by either Party and arising out of any default by the other Party hereunder.

23.2 No Landlord Liability for Personal Property. Except to the extent of the sole negligence or willful misconduct of Landlord, or Landlord's Representatives, and subject to Tenant's indemnification obligations, Landlord shall not be liable or responsible in any way for any loss or damage whatsoever to any Personal Property belonging to Tenant or to its representatives or to any other person who may be in or upon the Premises.

ARTICLE 24. ESTOPPEL CERTIFICATES BY TENANT

24.1 Estoppel Certificate by Tenant.

24.1.1 Tenant shall execute, acknowledge and deliver to Landlord (or at Landlord's request, to a prospective purchaser or mortgagee of Landlord's interest in the Property), within twenty (20) Business Days after a request, a certificate stating to the best of Tenant's knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, and (d) any other factual matter actually known to Tenant, directly related to this Lease and reasonably requested by Landlord.

24.1.2 In addition, if requested, Tenant shall attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto.

24.1.3 Any such certificate may be relied upon by any Landlord, any successor agency, and any prospective purchaser or mortgagee of the Premises or any part of Landlord's interest therein.

24.1.4 Tenant will also use commercially reasonable efforts (including inserting a provision similar to this Section 24.1 into each Sublease) to cause subtenants under Subleases to execute, acknowledge and deliver to Landlord, within twenty (20) Business Days after request, an estoppel certificate covering the matters described in Sections 24.1.1, 24.1.2, and 24.1.3 above with respect to such Sublease.

ARTICLE 25. ESTOPPEL CERTIFICATES BY LANDLORD

25.1 Estoppel Certificate by Landlord.

25.1.1 Landlord shall execute, acknowledge and deliver to Tenant (or at Tenant's request, to any prospective Mortgagee or other prospective transferee of Tenant's interest under this Lease), within twenty (20) Business Days after a request, a certificate stating (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable

hereunder have been paid, (c) whether or not, to the knowledge of Landlord, there are then existing any defaults under this Lease (and if so, specifying the same), and (d) any other factual matter actually known to Landlord, directly related to this Lease and reasonably requested by the requesting Party.

25.1.2 In addition, if requested, Landlord shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Landlord that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto.

25.1.3 Any such certificate may be relied upon by Tenant, any successor, and any prospective mortgagee or transferee of Tenant's interest in this Lease.

ARTICLE 26.

APPROVALS BY LANDLORD

26.1 Approvals by Landlord. Landlord represents to Tenant that the Landlord's City Administrator or his or her designee, is authorized to execute on behalf of Landlord any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local authorities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and do not materially increase the obligations of Landlord hereunder, if the City Administrator determines, after consultation with, and approval as to form and legality by, the City Attorney, that the document is necessary or proper and in Landlord's best interests. The City Administrator's signature of any such documents shall conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by Landlord of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of Landlord, the City Administrator or his or her designee, shall be authorized to execute such instrument on behalf of Landlord, except as otherwise provided by applicable Law, including the City's Charter, or the express language of this Lease.

26.2 Fees for Review. Within thirty (30) days after Landlord's written request, Tenant shall pay Landlord, as Additional Rent, Landlord's reasonable costs, including, without limitation, Attorneys' Fees and Costs (and including fees and reasonable costs of the City Attorney) incurred in connection with the review, investigation, processing, documentation and/or approval of any Mortgage, estoppel certificate, nondisturbance and attornment agreement and Major Alterations and, if applicable, Minor Alterations. Tenant shall pay such reasonable costs regardless of whether or not Landlord consents to such proposed items, except only in an instance where Landlord has wrongfully withheld, delayed, or conditioned its consent in violation of this Lease.

ARTICLE 27.

NO MERGER OF TITLE

27.1 No Merger of Title. There shall be no merger of the leasehold estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the leasehold estate or any interest in such leasehold estate, and (b) any interest in such fee estate. No such merger shall occur unless and until all Persons having any interest in the leasehold estate and the fee estate in the Premises shall join in and record a written instrument effecting such merger.

ARTICLE 28.
QUIET ENJOYMENT

28.1 Quiet Enjoyment. Subject to the Permitted Title Exceptions, the terms and conditions of this Lease, the LDDA and applicable Laws, Landlord agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease without hindrance or molestation of anyone claiming by, through or under Landlord. Notwithstanding the foregoing, Landlord shall have no liability to Tenant in the event any defect exists in the title of Landlord as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment (unless such defect is due to Landlord's sole negligence or willful misconduct) and no such defect shall be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing title defect shall be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant. For avoidance of doubt, as used in this Section 28.1, "defect in the title of Landlord" or "existing title defect" shall mean and include any matters of record in the Official Records.

ARTICLE 29.
SURRENDER OF PREMISES

29.1 End of Lease Term.

29.1.1 Condition of Premises. Upon the expiration or other termination of the Term of this Lease, Tenant shall quit and surrender to Landlord the Premises in good order and condition, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in the condition required hereunder and subject to Articles 7, 9 and 10. The Premises shall be surrendered with all Improvements, repairs, alterations, additions, substitutions and replacements thereto subject to Section 29.1.3 and in compliance with Section 29.1.4. Tenant hereby agrees to execute all documents as Landlord may deem necessary to evidence or confirm any such other termination.

29.1.2 Subleases. Upon any termination of this Lease, Landlord shall have the right to terminate all Subleases except for those Subleases with respect to which Landlord has entered into nondisturbance and attornment agreements.

29.1.3 Personal Property. Upon expiration or termination of this Lease, Tenant shall have the right to remove its trade fixtures and other Personal Property. At Landlord's request, Tenant shall remove, at no cost to Landlord, any Personal Property belonging to Tenant which then remains on the Premises. If the removal of such Personal Property causes damage to the Premises, Tenant shall repair such damage, at no cost to Landlord.

29.1.4 Compliance with Laws. Subject to Articles 9 and 10, Tenant shall surrender the Premises in compliance with all Laws, and free of all Encumbrances created, incurred, assumed or suffered to exist by Tenant or any Person claiming through it other than Permitted Title Exceptions and other Encumbrances approved by Landlord in writing, and in at

least a condition which is sufficient to support the following (collectively, the “**Minimum Condition**”):

(a) Operational capability to handle the same types of services which have been provided within the Premises for the prior five (5) Lease Years.

(b) The following criteria shall be taken into account and considered relevant in determining whether the Minimum Condition has been met at the time of the surrender: (i) the main civil and structural works shall not exhibit any excessive signs of damage, wear, stress, cracking, settlement, corrosion, or weather erosion, such that they cannot reasonably be expected to satisfy their full design life specification when originally installed, however, Landlord acknowledges that normal wear and tear of such improvements according to their age shall be permissible; (ii) limited life and “wear and tear” components of the Improvements have been replaced by Tenant prior to the surrender date in accordance with good industry practice as and when they failed, wore out, or reached their design life or customary replacement frequency, as part of ongoing maintenance activities, however, Landlord acknowledges that such Improvements, may otherwise be turned over with normal wear and tear; and (iii) major electrical and mechanical components or equipment shall be in good operating condition, normal wear and tear excepted.

ARTICLE 30.

HOLD OVER

30.1 No Right to Hold Over. Tenant shall have no right to remain in possession of all or any part of the Premises after the Termination Date of this Lease. Tenant shall have no right to holdover and no tenancy shall be created by implication or law. However, if Tenant fails to vacate and surrender possession of the Premises on or prior to the Termination Date, Tenant shall pay Landlord two hundred percent (200%) of the higher of Minimum Rent immediately theretofore payable plus other rents prevailing at the date of such holding over for each month after the Termination Date or then comparable monthly rents for similar projects from the date of hold-over, in any case, always subject to all rents being increased at the sole discretion of Landlord at any time during the holding over period, and upon no less than thirty (30) days prior written notice to Tenant. Landlord’s receipt and acceptance of such monthly Rent as adjusted in this Section 30.1 shall not be construed as Landlord’s consent to any holding over by Tenant. Tenant hereby agrees to indemnify and hold harmless Landlord from and against any and all Claims incurred by Landlord as a result of Tenant remaining in possession of all, or any part of the Premises, after the Termination Date. Tenant shall not interpose any counterclaim in any summary or other proceeding based on holding over by Tenant. Except as provided in this Section 30.1, all other terms and conditions of this Lease shall apply during any period of holding over by Tenant without Landlord’s express written consent, in its sole and absolute discretion.

30.2 No Right to Relocation Assistance. It is understood and agreed that nothing contained in this Lease shall give Tenant any right to relocation assistance or payment from Landlord upon expiration or termination of the Term or upon the termination of any holdover tenancy by any means whatsoever. Tenant acknowledges and agrees that upon such expiration or termination, it shall not be entitled to, and expressly hereby waives, any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of

the State of California (Sections 7260 et seq.) or any other applicable Law with respect to any relocation of its business or activities.

30.3 Transition. During the last Lease Year of the Term, Tenant shall, without compensation, reasonably cooperate with Landlord and any proposed subsequent tenant, assignee, licensee or the like to the Premises identified by Landlord to ensure the orderly transition of the Premises upon the Termination Date, including, without limitation, providing tours to, participating in transition meetings with, and providing relevant non-confidential information to Landlord or such subsequent party upon the reasonable request of Landlord.

ARTICLE 31. NOTICES

31.1 Notices. All notices, demands, consents, requests and other communications that may or are required to be given by any Party, including notices from Mortgagees to Landlord pursuant to Section 33.8, to the other Party and to Mortgagees under this Lease shall be in writing and shall be deemed duly given: (a) when delivered if personally delivered to the recipient; (b) on the first Business Day following delivery to a reputable overnight delivery service, provided actual delivery is confirmed on that day by the delivery service; and (c) on the day of actual receipt as evidenced by the return receipt following deposit in United States mail, as registered or certified mail, postage prepaid and return receipt requested, addressed to the other Party as set forth below and Mortgagees to the addresses provided to Landlord pursuant to Section 33.9:

To Landlord:	City of Oakland Economic and Workforce Development Department Public/Private Development Division 250 Frank H. Ogawa Plaza, 5 th Floor Oakland, CA 94612 Attention: Director
with a copy to:	City of Oakland Office of the City Attorney One Frank H. Ogawa Plaza, 6 th Floor Oakland, CA 94612 Attention: Supervising City Attorney for Real Estate
To Tenant:	Samuel Merritt University 3100 Telegraph Avenue Oakland, CA 94609 Attention: Executive Vice President and Treasurer

Either Party may change its address for notices by giving written notice to the other Party in the manner set forth above.

31.2 Form and Effect of Notice. Every notice given to a Party or other Person under this Section 31.1 must state (or shall be accompanied by a cover letter that provides):

31.2.1 the Section of this Lease pursuant to which the notice is given and the action or response required, if any;

31.2.2 if applicable, the period of time within which the recipient of the notice must respond thereto; and

31.2.3 if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

31.2.4 In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 31.2.

ARTICLE 32.

INSPECTION OF PREMISES BY LANDLORD

32.1 Entry.

32.1.1 Subject to the rights of any Subtenants, and provided such entry does not interfere with Tenant's Permitted Use within the Premises, Tenant shall permit Landlord and its Agents to enter the Premises during regular business hours upon reasonable prior written notice (and at any time in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of (a) inspecting the same for compliance with any of the provisions of this Lease, (b) performing any work therein that Landlord may have a right to perform under Article 17, and/or (c) inspecting, sampling, testing and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as Landlord reasonably deems necessary or appropriate for evaluation of Hazardous Materials or other environmental conditions.

32.1.2 Nothing herein shall imply any duty upon the part of Landlord to perform any work which under any provision of this Lease, Tenant may be required to perform, nor to place upon Landlord any obligation, or liability, for the care, supervision or repair of the Premises, provided, however, Landlord shall use reasonable efforts to minimize interference with the activities and tenancy of Tenant and its respective invitees.

32.1.3 If Landlord elects to perform work on the Premises pursuant to Article 17, Landlord shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into, or through, the Premises during the course thereof, except to the extent caused by the sole negligence or willful misconduct of Landlord, its Agents or employees, provided Landlord uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant and its invitees.

32.2 Exhibit for Lease. Subject to the rights of any Subtenants, and provided such entry does not interfere with the ability of Tenant to conduct its Permitted Use within of the Premises,

Tenant shall permit Landlord and its Agents to enter the Premises during regular business hours upon reasonable prior notice (a) to exhibit the same in a reasonable manner in connection with any sale, transfer or other conveyance of Landlord's interest in the Premises, and (b) during the last eighteen (18) months of the Term, for the purpose of leasing the Premises.

32.3 Notice, Right to Accompany. Landlord agrees to give Tenant reasonable prior notice of Landlord's entering on the Premises except in an emergency. Such notice shall be not less than twenty-four (24) hours oral notice. Tenant shall have the right to have a representative of Tenant accompany Landlord or its Agents on any entry into the Premises.

ARTICLE 33. **MORTGAGES**

33.1 No Mortgage Except as Set Forth Herein.

33.1.1 Restrictions on Financing. Except as expressly permitted pursuant to this Article 33, Tenant shall not engage in any financing or other transaction creating any Mortgage upon Tenant's leasehold estate in the Premises or Tenant's interest in the Improvements under this Lease, or place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements any lien or other encumbrances.

33.1.2 No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Property in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Premises, nor its right to receive Rent, to any Mortgagee of Tenant.

33.1.3 Violation of Covenant. Any mortgage, deed of trust, encumbrance or lien not permitted by this Article 33 shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

33.2 Leasehold Liens.

33.2.1 Tenant's Right to Mortgage Leasehold. Subject to the terms and conditions of this Article 33, and provided that no Event of Default or Unmatured Event of Default then exists, Tenant shall have the right during the Term to assign, mortgage or encumber Tenant's leasehold estate created by this Lease by way of leasehold mortgages, deeds of trust or other security instrument for the purpose of financing the construction of the Project (including the cost of all or a portion of the purchase price to a Mortgagee or its Nominee following any Foreclosure by such Mortgagee or its Nominee), refinancing the completed Project, any permanent take-out financing, and the refinancing of permitted Mortgages including all costs and expenses associated therewith and any Mortgagee required repairs, improvements or reserves.

33.2.2 Leasehold Mortgages Subject to this Lease. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give, or be deemed to give, a Mortgagee any greater rights than those granted to Tenant hereunder.

33.2.3 Limitation of Number of Leasehold Mortgagees Entitled to Protection Provisions. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees (other than notice rights, which shall apply to all Mortgagees that have given Landlord the notice required under Section 33.9.2) shall only apply to the most senior Mortgagee (in terms of lien priority) with respect to any particular portion of the Premises, unless such Mortgagee elects in writing in accordance with this Lease not to exercise its rights thereunder in which event such rights will apply to the next most senior Mortgagee.

33.3 Notice of Liens. Tenant shall notify Landlord promptly of any lien or encumbrance other than the Permitted Title Exceptions of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise.

33.4 Limitation of Mortgages. In addition to the limitations set forth elsewhere in this Article 33, the limitations set forth in this Section 33.4 shall apply to all Mortgages.

33.4.1 Limitations. A Mortgage may be made only for the purpose of financing the construction of the Project, refinancing the completed Project, any permanent take-out financing (subject to the limitations herein with respect to construction financing for the Project), and the refinancing of permitted Mortgages including all costs and expenses associated therewith and any Mortgagee required repairs, improvements or reserves. In addition, Tenant's right to enter into a Mortgage shall be subject to the following limitations:

(a) With respect to the construction of the Project, the total amount of the debt encumbering Tenant's interest with respect to any financing for the construction of the Project shall not exceed the actual and reasonable costs (both hard and soft costs) of such construction, including all costs and expenses associated therewith;

(b) Unless otherwise approved by Landlord in writing, with respect to any financing for the construction of the Project, such financing shall not permit Tenant to draw or receive any advances or proceeds of such financing for any purpose other than payment of legitimate third party costs for such construction (including design costs and development impact fees), interest, costs of issuance of such indebtedness, property taxes or assessments, and operating and leasing expenses, and Tenant shall not use any such advances or proceeds for any other purpose whatsoever;

(c) Tenant has received the prior written confirmation from Landlord that each such Mortgage is in compliance with this Section 33.4;

(d) A Mortgage may not cover any property of, or secure any debt issued by, any Person other than Tenant for the purpose described in Section 33.4(a);

(e) No Person other than a Bona Fide Institutional Lender/Bond Trustee or other lender approved by Landlord pursuant to Section 33.6 shall be entitled to the benefits and protections accorded to a Mortgagee in this Lease;

(f) No Mortgage or other instrument purporting to mortgage, pledge, encumber or create an Encumbrance on or against any or all of the interest of Tenant shall

encumber the fee simple interest in the Property, Landlord's interest hereunder or its reversionary interest and estate in and to the Premises or any part thereof, or adversely affect the rights or increase the liabilities or obligations of Landlord except to the extent set forth in this Lease;

(g) Landlord shall have no liability whatsoever for payment of the principal sum secured by any Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder;

(h) Landlord shall have no obligation to any Mortgagee except as expressly as set forth in this Lease, the LDDA, and documents executed by Landlord for the benefit of a Mortgagee from time to time, and only with respect to such Mortgagee that has provided Landlord with written notice of its Mortgage;

(i) Each Mortgage shall provide that if an event of default under the Mortgage has occurred and is continuing and the Mortgagee gives notice of such event of default to Tenant, then the Mortgagee shall give concurrent notice of such default to Landlord;

(j) Subject to the terms of this Lease and except as specified herein, all rights acquired by a Mortgagee under any Mortgage shall be subject and subordinate to all of the provisions of this Lease and to all of the rights of Landlord hereunder;

(k) Notwithstanding any enforcement of the security of any Mortgage, Tenant shall remain liable to Landlord for the payment of all sums owing to Landlord under this Lease and the performance and observance of all of Tenant's covenants and obligations under this Lease;

(l) A Mortgagee shall not, by virtue of its Mortgage, acquire any greater rights or interest in or to the Premises than Tenant has at any applicable time under this Lease, other than such rights or interest as may be granted or acquired in accordance with this Lease;

(m) Proceeds of refinancing shall first be used to pay off then-existing Mortgages, in order of lien priority, unless otherwise agreed to by City and such other Mortgagees, as applicable.

33.4.2 Statement.

(a) Landlord agrees within thirty (30) days after request by Tenant to give to any holder or proposed holder of a Mortgage a statement in recordable form as to whether such Mortgage is permitted hereunder to secure all of the advances and indebtedness stated by the terms of the applicable financing documents. Except as set forth in such statement, such a statement shall estop Landlord from asserting, against either Tenant or such prospective Mortgagee, that such Mortgage (if done in the way described in the statement) is not permitted hereunder, but shall create no liability on Landlord, and shall conclusively establish that such Mortgage is permitted hereunder and does not constitute a default by Tenant.

(b) In making a request for such statement, Tenant shall furnish Landlord true, accurate and complete copies of such of the financing documents as are required

reasonably by Landlord to permit Landlord to make the determination whether such Mortgage is permitted hereby.

(c) In no event, however, shall any failure by Tenant or other party to comply with the terms of any Mortgage, including without limitation the use of any proceeds of any debt, the repayment of which secured by a Mortgage, be deemed to invalidate the lien of a Mortgage.

33.5 Interest Covered by Mortgage. A Mortgage may attach to any or all of the following interests in the Premises: (a) Tenant's leasehold interest in the Premises created hereby and Tenant's interest in the Improvements or some portion thereof granted hereunder, (b) Tenant's interest in any permitted Subleases thereon, (c) any Personal Property of Tenant, (d) rents, products and proceeds of the foregoing, and (e) any other rights and interests of Tenant arising under this Lease. As provided in Section 33.1.2 no Mortgage may encumber Landlord's interest in or under this Lease or Landlord's fee simple interest in the Property or Landlord's personal and other property in, on or around the Property.

33.6 Qualified Lender. A Mortgage may be given only to (a) a Bona Fide Institutional Lender/Bond Trustee, or (b) any other lender that shall have been approved in advance by Landlord in writing in Landlord's reasonable discretion, subject to Landlord's receipt of substantial and adequate evidence providing Landlord with information on the structure, financial capacity, and experience of such other lender. In any instances in which Landlord's approval is so required, Landlord shall be deemed to have approved such other lender if the written notice from Tenant of the identity of such other lender specifies that no notification of disapproval within sixty (60) days after the receipt of such written notice constitutes approval, and Landlord sends no notification of disapproval within ten (10) days after written notice from Tenant to Landlord, notifying Landlord of the expiration of such sixty (60)-day period.

33.7 Rights Subject to Lease.

33.7.1 Subject to Lease. Except as otherwise expressly provided herein, all rights acquired by a Mortgagee under any Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder. None of such covenants, conditions and restrictions is, or shall be, waived by Landlord by reason of the giving of such Mortgage, except as expressly provided in this Lease or otherwise specifically waived by Landlord in writing.

33.7.2 Construction and Restoration Obligations.

(a) Notwithstanding any provision of this Lease to the contrary, no Mortgagee (including any such Mortgagee or its Nominee (as defined below) who obtains title to the leasehold or any part thereof as a result of Foreclosure proceedings or action in lieu thereof) shall be obligated by the provisions of this Lease or the LDDA to Restore any damage or destruction to the Improvements unless expressly assuming such obligation under Section 33.10.3. Any other Person who thereafter obtains title to the leasehold or any interest therein from or through such Mortgagee, or any other purchaser at Foreclosure sale (other than a Mortgagee or its Nominee), shall be required to Restore in accordance with the requirements of this Lease.

(b) Whether or not a Mortgagee or its Nominee elects to Restore, nothing in this Lease shall be construed to permit any such Mortgagee or its Nominee to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or authorized herein.

(c) If any Mortgagee or its Nominee obtains title to the leasehold and chooses not to complete or Restore the Improvements, it shall so notify Landlord in writing of its election within ninety (90) days following its acquisition of the tenancy interest in this Lease and shall use commercially reasonable efforts to sell its tenancy interest to a purchaser that shall be obligated to Restore the Improvements to the extent this Lease obligates the Tenant to so Restore. Mortgagee shall use good faith efforts to cause such sale to occur within six (6) months following the Mortgagee's written notice to Landlord of its election not to Restore, provided that any such purchaser shall be subject to Landlord's reasonable prior written approval, which approval shall not be unreasonably withheld so long as such purchaser provides evidence satisfactory to Landlord in its reasonable discretion showing that such purchaser possesses the qualifications, experience and financial capacity to Restore in accordance with the requirements of this Lease.

(d) In the event Mortgagee agrees to Restore the Improvements, all such work shall be performed in accordance with all the requirements set forth in this Lease, and Mortgagee must submit evidence reasonably satisfactory to Landlord that it has the qualifications, experience and financial responsibility necessary to perform such obligations.

33.8 Required Provisions of any Mortgage. Tenant agrees to have any Mortgage provide: (a) that the Mortgagee shall by (i) a reputable overnight delivery service, or (ii) registered or certified mail, postage prepaid and return receipt requested, give written notice to Landlord of the occurrence of any event of default as defined under the Mortgage; and (b) that Landlord shall be given notice at the time any Mortgagee initiates any Foreclosure action.

33.9 Notices to Mortgagee.

33.9.1 Copies of Notices. Landlord shall give a copy of each notice Landlord gives to Tenant from time to time of the occurrence of a default or an Event of Default, or of Landlord's consent to an assignment of any interest in this Lease or to a Significant Change, to any Mortgagee that has given to Landlord written notice substantially in the form provided in Section 33.9.2. Copies of such notices shall be given to each such Mortgagee at the same time as notices are given to Tenant by Landlord, addressed to each such Mortgagee at the address last furnished to Landlord pursuant to Section 33.9.2. Landlord shall acknowledge in writing its receipt of the name and address of a Mortgagee so delivered to Landlord. Landlord's failure to give such notice to a Mortgagee shall not be deemed to constitute a default by Landlord under this Lease, but no such notice by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been so given to Mortgagee. Any such notices to Mortgagee shall be given in the same manner as provided in Section 31.1.

33.9.2 Notice From Mortgagee to Landlord. The Mortgagee under any Mortgage shall be entitled to receive notices from time to time given to Tenant by Landlord under this Lease in accordance with Section 33.9.1, provided such Mortgagee shall have delivered a notice to Landlord in substantially the following form:

“The undersigned does hereby certify that it is a Mortgagee, as such term is defined in that certain Lease entered into by and between the City of Oakland, as Landlord, and _____ as Tenant (the “Lease”), of Tenant’s interest in the Lease demising the parcels, a legal description of which is attached hereto as Exhibit and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to Tenant by Landlord be sent to the undersigned at the following address:
_____.”

33.10 Mortgagee’s Right to Cure. If Tenant, or Tenant’s permitted successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section 33.10, then, so long as any such Mortgage remains unsatisfied of record, except as provided below following a Foreclosure, the following provisions shall apply:

33.10.1 Cure Periods.

(a) Each Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay the Rents due hereunder, to effect any insurance, to pay taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease; provided, however, that no such action shall constitute an assumption by such Mortgagee of the obligations of Tenant under this Lease.

(b) Each Mortgagee and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by Tenant.

(c) In the case of any notice of default given by Landlord to Tenant, the Mortgagee shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of ninety (90) days (or, except for a default relating to the payment of money, such longer period as reasonably necessary so long as Mortgagee commences cure within such ninety (90)-day period and diligently proceeds to completion) after the later to occur of (i) the expiration of such cure period, or (ii) the date that Landlord has served such notice of default upon Mortgagee, and Landlord shall accept such performance by, or at the instance of, the Mortgagee as if the same had been made by Tenant. The time in which Mortgagee may cure is referred to herein as the “**Mortgagee Cure Period**”.

33.10.2 Foreclosure.

(a) Anything contained in this Lease to the contrary notwithstanding, upon the occurrence of an Event of Default due to a default in the payment of money, Landlord shall take no action to effect a termination of this Lease if, within thirty (30) days after notice of such Event of Default is given to each Mortgagee, a Mortgagee cures such Event of Default.

Anything contained in this Lease to the contrary notwithstanding, upon the occurrence of an Event of Default other than an Event of Default due to a default in the payment of money, Landlord shall take no action to effect a termination of this Lease, if, within ninety (90) days after notice of such Event of Default is given to each Mortgagee, a Mortgagee shall have (i) obtained possession of the Premises (including possession by a receiver if Mortgagee deems it advisable), or (ii) notified Landlord of its intention to institute Foreclosure proceedings (or to commence actions to obtain possession of the Premises through appointment of a receiver or otherwise) or otherwise acquire Tenant's interest under the Lease, and thereafter promptly commences and prosecutes such proceedings with diligence, subject to normal and customary postponements and compliance with any judicial orders relating to the timing of or the right to conduct such proceedings or Force Majeure. The period from the date Mortgagee so notifies Landlord until a Mortgagee acquires and succeeds to the interest of Tenant under this Lease or some other party acquires such interest through Foreclosure is referred to herein as the "**Foreclosure Period**".

(b) A Mortgagee, upon acquiring Tenant's interest under this Lease, shall be required to make reasonably diligent efforts to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Mortgagee to the extent not cured prior to Foreclosure; provided however, the Mortgagee shall not be obligated to pay damages, costs, or expenses due to actions or inactions of Tenant that first occurred or accrued prior to the Foreclosure Period ("**Excluded Costs**").

(c) The foregoing provisions of this Section 33.10.2 are subject to the following: (i) no Mortgagee shall be obligated to continue possession or to continue Foreclosure after the defaults or Events of Default hereunder referred to shall have been cured (and the Landlord shall accept such cure or performance of such obligation by any party, including Tenant); (ii) nothing herein contained shall preclude Landlord, subject to the provisions of this Section 33.10.2, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such Foreclosure proceedings; and (iii) such Mortgagee shall comply during the Foreclosure Period with the terms, conditions and covenants of this Lease that are reasonably susceptible of being complied with by such Mortgagee, including but not limited to the payment of all sums due and owing hereunder other than Excluded Costs. Notwithstanding anything to the contrary, including an agreement by Mortgagee given under clause (iii) of the preceding sentence, Mortgagee shall have the right at any time to notify Landlord that it has relinquished possession of the Premises or that it will not institute Foreclosure or, if such Foreclosure has commenced, that it has discontinued them, and, in such event, the Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Landlord, and, thereupon, Landlord shall be entitled to seek the termination of this Lease and/or any other available remedy as provided in this Lease unless such Event of Default has been cured. Upon any such termination, the provisions of this Section 33.10.2 shall apply.

(d) If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Mortgagee shall (i) have fully cured any Event of Default due to a default in the payment of money other than Excluded Costs),

(ii) continue to pay currently such monetary obligations as and when the same become due, and
(iii) perform all other obligations of Tenant under this Lease to the extent that they are reasonably susceptible of being performed by Mortgagee.

33.10.3 Construction.

(a) Subject to Section 33.7.2, if an Event of Default occurs following any damage or destruction but prior to Restoration of the Improvements, Mortgagee, either before or after Foreclosure, shall not be obligated to Restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless such Mortgagee expressly assumes Tenant's obligations to Landlord by written agreement reasonably satisfactory to Landlord, to Restore, in the manner provided in this Lease, the Improvements on the Premises or the part thereof to which the lien or title of such Mortgagee relates, and submitted evidence satisfactory to Landlord that it has the qualifications and financial responsibility necessary to perform such obligation.

(b) Upon assuming Tenant's obligations to Restore in accordance with Section 33.10.3(a), Mortgagee or any transferee of Mortgagee shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such Restoration or otherwise agreed to shall be extended for a reasonable period of time necessary to complete the Restoration.

33.10.4 Nominee. Any rights of a Mortgagee under this Section 33.10 may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Mortgagee ("**Nominee**").

33.10.5 Limited to Permitted Mortgagees. Anything herein contained to the contrary notwithstanding, the provisions of this Article 33 shall inure only to the benefit of Bona Fide Institutional Lender/Bond Trustees that are the holders of the Mortgages permitted hereunder.

33.10.6 Consent of Mortgagee. No amendment, modification, termination, surrender by Tenant, or cancellation of this Lease shall be effective as against a Mortgagee unless a copy of the same shall have been delivered to such Mortgagee and such Mortgagee shall have approved the amendment, modification, termination, surrender by Tenant, or cancellation in advance and in writing. No merger of this Lease and the fee estate in the Premises shall occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of Mortgagee.

33.10.7 Limitation on Liability of Mortgagee. Anything contained in this Lease to the contrary notwithstanding, no Mortgagee, or its Nominee, shall become liable under the provisions of this Lease, unless and until such time as it becomes the owner of the leasehold estate created hereby, and then only for so long as it remains the owner of the leasehold estate and only with respect to the obligations of Mortgagee, or its Nominee, arising during such period of ownership. In no event will Mortgagee have personal liability under this Lease greater than Mortgagee's interest in this Lease, and Landlord will have no recourse against Mortgagee's assets other than its interest herein or therein.

33.10.8 Assignment by Mortgagee.

(a) Pursuant to Section 12.1.6, Foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or its Nominee through Foreclosure or other appropriate proceedings in the nature thereof, or any Transfer of this Lease by Mortgagee or its Nominee after acquisition of the leasehold estate through Foreclosure, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such Foreclosure, sale or conveyance Landlord shall recognize the Mortgagee or other transferee in connection therewith as the Tenant hereunder. The right of the transferee of such Mortgagee or its Nominee (but not the right of the Mortgagee or its Nominee) thereafter to assign or transfer this Lease shall be subject to the restrictions of Article 12.

(b) In the event Mortgagee or its Nominee subsequently assigns or transfers its interest under this Lease after acquiring the same by Foreclosure, and in connection with any such assignment or transfer, Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to the applicable Mortgagee for such assignment or transfer, then such mortgage or deed of trust shall be considered a permitted Mortgage, and Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Article 33 and any other provisions of this Lease intended for the benefit of a permitted Mortgagee who holds a permitted Mortgage.

33.10.9 Transfer of Mortgage. Landlord hereby consents to a transfer or encumbrance by Mortgagee, absolutely or as collateral security for performance of its obligations, of its Mortgage or any interest therein, provided such transfer is to a Bona Fide Institutional Lender/Bond Trustee and otherwise satisfies the requirements of this Lease, and in the event of any such transfer the new holder or pledgee of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate.

33.10.10 Appointment of Receiver. In the event of any default under a Mortgage, the holder of the Mortgage shall be entitled to have a receiver appointed, irrespective of whether such Mortgagee accelerates the maturity of all indebtedness secured by its Mortgage and the right of a Mortgagee to appoint a receiver shall be superior to the rights of Landlord to appoint a receiver.

33.10.11 LDDA. The provisions of this Article 33 shall govern and control over any contrary provisions contained in the LDDA.

33.10.12 New Lease. In the event of the termination of this Lease before the expiration of the Term, including, without limitation, the termination of this Lease by the Landlord on account of an Event of Default or the rejection of this Lease by a trustee of Tenant in bankruptcy or by Tenant as a debtor-in-possession, except by a total or substantial Taking as provided in Article 10, Landlord shall serve upon the Mortgagees written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. The Mortgagee shall thereupon have the option to obtain a new Lease with respect

to the portion of the Premises subsumed within such termination (for purposes of this Section 33.14, a “**New Lease**”) in accordance with, and upon the following terms and conditions:

(a) Upon the written request of the Mortgagee, within sixty (60) days after service of such notice that this Lease has been terminated, Landlord shall enter into a New Lease with the most senior Mortgagee giving notice within such period or its Nominee; and

(b) Such New Lease, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease (except for any requirements or conditions which Tenant has satisfied prior to the termination). Such New Lease shall have the same priority of this Lease, including priority over any mortgage or other lien, charge or encumbrance on title to the Premises. Such New Lease shall require the Mortgagee to perform any unfulfilled monetary obligation of Tenant under this Lease that would, at the time of the execution of the New Lease, be due under this Lease if this Lease had not been terminated (other than Excluded Costs) and to perform as soon as reasonably practicable any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Mortgagee. Upon the execution of such New Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination (other than Excluded Costs). The provisions of this Section 33.14 shall survive any termination of this Lease (except as otherwise expressly set forth in the first sentence of this Section 33.14) and shall constitute a separate agreement by the Landlord for the benefit of, and enforceable by, the Mortgagee.

(c) Simultaneously with the execution and delivery of the New Lease, the Landlord shall confirm and acknowledge that Mortgagee has title to the Improvements for the term of the New Lease by such means as is customary or may be reasonably required by a reputable title insurance company to insure the leasehold estate created by the New Lease; provided, however, that Landlord shall have no responsibility for (i) any Permitted Title Exceptions, or (ii) any other exceptions to title or title defects that affected title to the Improvements on or after the Effective Date of this Lease except to the extent created by the actions of Landlord.

(d) Between the date of termination of this Lease and commencement of the term of the New Lease, Landlord shall not, except in the case of an emergency: (i) enter into any new Subleases, management agreements, or agreements for maintenance of the Premises or the supplies therefor which would be binding upon Mortgagee if Mortgagee enters into a new Lease, (ii) cancel or materially modify any of the existing management agreements or agreements for maintenance of the Premises or the supplies therefor, or any other agreements affecting the Premises, or (iii) accept any cancellation, termination or surrender of any of the above without the written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed. Effective upon the commencement of the term of the new Lease, Landlord shall also transfer to Mortgagee, without recourse, all Personal Property.

33.11 Condemnation and Insurance Proceeds. Except as otherwise expressly set forth in this Lease, the rights of any Mortgagee, pursuant to its Mortgage, to receive condemnation or insurance proceeds which are otherwise payable to such Mortgagee or to a party which is the mortgagor shall not be impaired.

ARTICLE 34.
NO JOINT VENTURE

34.1 No Joint Venture. Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other Person, or cause Landlord to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

ARTICLE 35.
REPRESENTATIONS AND WARRANTIES

35.1 Representations and Warranties of Tenant. Tenant represents, warrants and covenants to Landlord as follows, as of the date hereof and as of the Commencement Date:

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

35.1.2 Authority. Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant. This Lease is a legal, valid and binding obligation of the Tenant, enforceable against it in accordance with its terms subject to and qualified by the effect of: (a) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (b) general principles of equity.

35.1.3 No Limitation on Ability to Perform. Neither Tenant's authorizing documents (e.g., Articles of Incorporation, Bylaws), nor any applicable Law, prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to, or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to Landlord in writing, there are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

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

35.1.5 No Default. The execution, delivery and performance of this Lease (a) does not and will not violate or result in a violation of, contravene or conflict with, or constitute a

default by Tenant under (i) any agreement, document or instrument to which Tenant is a party or by which Tenant is bound, (ii) any Law, statute, ordinance, or regulation applicable to Tenant or its business, or (iii) the authorizing documents of Tenant; and (b) does not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

35.1.6 Financial Matters. Except to the extent disclosed to Landlord in writing, (a) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (b) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (c) there has been no event that has materially adversely affected Tenant's ability to meet its Lease obligations hereunder, and (d) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

35.1.7 Parking, Business, or Similar Taxes. Tenant has fully complied with, and is current in paying, any and all obligations regarding parking, business license, or similar taxes owed to Landlord, in its regulatory capacity.

Tenant's representations and warranties set forth in this Section 35.1 shall survive the expiration or any earlier termination of this Lease.

35.2 Landlord Representations and Warranties.

35.2.1 Landlord represents and warrants that as of the Commencement Date: (a) Landlord has all requisite right, power and authority to lease the Premises to Tenant pursuant to this Lease, and (b) Landlord has received no notice that any action or suit, or threat of any action or suit, exists that could prevent Landlord's execution or performance of this Lease or prevent Tenant's ability to construct and develop the Improvements and operate the Project.

35.2.2 Landlord has taken all necessary or appropriate actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of, this Lease by Landlord.

35.2.3 This Lease is a legal, valid and binding obligation of the Landlord, enforceable against it in accordance with its terms subject to and qualified by the effect of: (a) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (b) general principles of equity.

ARTICLE 36. SPECIAL PROVISIONS

36.1 Nondiscrimination.

36.1.1 Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants for itself, its heirs, executors, administrators and assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, national origin, immigration status, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or

Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), disability, age (other than senior housing permitted by law) or source of income (including rental housing subsidies) in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Tenant or any person claiming under or through the Tenant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees or vendees in the Property. The foregoing covenants shall run with the land. Tenant shall ensure that language substantially similar to the above is incorporated as covenants running with the land into all leases, subleases, rental agreements and grant deeds for the Project.

36.1.2 Subleases and Other Contracts. Tenant shall include in all Subleases and other contracts entered into by Tenant relating to the Premises a nondiscrimination clause applicable to such subtenant or other contractor in substantially the form of Section 36.1.1.

36.2 Conditions of Approval. Tenant shall comply with all City Conditions of Approval for the Project and any CEQA mitigation, monitoring and reporting requirements applicable to the Project.

36.3 Alcohol, Cannabis, Firearms, Tobacco Product Advertising Prohibition. Tenant acknowledges and agrees that no advertising of alcohol, cannabis, firearms, cigarettes or tobacco products shall be allowed on the Premises, except only as incidental to an allowed retail use such as advertising in markets or stores that sell such products if allowed by Law. The foregoing prohibition shall include the placement of the name of a company producing, selling or distributing alcohol, cannabis, firearms, cigarettes or tobacco products or the name of any alcohol, firearms, or cigarette or tobacco product in any promotion of any event or product or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of drinking, using firearms, or using cigarettes and tobacco products or to encourage people not to drink, use firearms, or smoke or to stop smoking.

36.4 Waiver of Relocation Assistance Rights. If Tenant holds over in possession of the Premises following the expiration of this Lease under Section 30.1, Tenant shall not be entitled, during the period of any such holdover, to rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Section 7260 *et seq.*, or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 *et seq.*, or under any similar law, statute or ordinance now or hereafter in effect, except as provided in Section 10 relating to condemnation, and Tenant hereby waives any entitlement to any such rights, benefits and privileges with respect to any such holdover period.

36.5 Campaign Contribution Limits.

36.5.1 This Lease is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations. The City of Oakland Campaign Reform Act prohibits developers that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either one hundred eighty (180) days after completion of, or termination of, contract negotiations.

36.5.2 Tenant shall sign and date an Acknowledgement of Campaign Contribution Limits Form attached hereto as **Exhibit F** and incorporated herein.

36.6 City Employment and Contracting Requirements. Tenant shall comply with all applicable City of Oakland employment contracting requirements, including, but not limited to, the following:

36.6.1 Equal Benefits Ordinance. Tenant shall comply, and require all employers within the Project to comply, with responsibilities of “Contractors” as described in the City Equal Benefits Ordinance codified in Chapter 2.32 of the Oakland Municipal Code (“**Equal Benefits Ordinance**”), except where such application would be inconsistent with the terms or conditions of a grant or a contract with an agency of the United States or the State of California. The Tenant warrants and represents that it does not discriminate in the provision of those benefits enumerated in the Equal Benefits Ordinance between its employees with domestic partners and its employees with spouses, or between the domestic partners and spouses of its employees. The Tenant must post written notice to its employees of their potential rights under the Equal Benefits Ordinance. The Tenant must promptly provide to the City upon the City’s request documents and information verifying its compliance with the Equal Benefits Ordinance.

36.6.2 Employment Nondiscrimination. The Tenant, its successors, assigns, contractors and subcontractors may not discriminate against any employee or applicant for employment in connection with the Project on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, marital status, AIDS or AIDS-related complex, or physical or mental disability. Each of the following activities shall be conducted in a nondiscriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rates of pay and other forms of compensation; and selection for training, including apprenticeship. Tenant, and its successors, assigns, contractors and subcontractors may not retaliate against, threaten, or harass employees based on immigration status.

36.6.3 Implementation Through Relevant Contracts. Where compliance with **Section 36.6** will impose requirements on entities that are not parties to this Lease, Tenant shall ensure that the applicable contracts: (a) impose such requirements on such entities; (b) require such entities to impose such requirements on subcontractors or other parties involved in the Project pursuant to the applicable contract; and (c) require all entities subject to such requirements to provide to the City upon request any information necessary to determine compliance with such requirements.

36.7 Other Requirements. Tenant shall operate and maintain the Premises in accordance with all applicable Laws for (a) access for disabled persons, and (b) environmental sustainability measures.

36.8 Community Outreach. Tenant has existing partnerships with numerous community organizations and health clinics and has established a new Center for Community Engagement that is focused on strengthening and expanding community partnership to support healthy communities in Oakland. So long as Samuel Merritt University or its Affiliate is the Tenant under this Lease, Tenant will continue to serve the Oakland community in a manner that advances Tenant’s health equity mission, through local partnerships and community-serving

healthcare clinics and volunteer contributions. For example, Tenant's current community engagement efforts include:

- volunteer health fairs in underserved communities;
- partnerships to provide support to local nonprofit health clinics such as the Davis Street Clinic, ROOTS Clinic, Asian Health Services, and La Clinica de la Raza;
- partnerships with the Oakland Unified School District, Peralta Community College, the Alameda County Health Department, and the East Bay Regional Park District to provide health education resources; and
- volunteer work with at-risk and homeless populations through free clinics.

ARTICLE 37.

GENERAL

37.1 Time of Performance.

37.1.1 Expiration. All performance dates (including cure dates) expire at 5:00 p.m., Pacific Time, on the performance or cure date.

37.1.2 Weekend or Holiday. A performance date that falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 p.m. the next Business Day.

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

37.1.4 Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the payment of Rent and any other sums due hereunder, subject to the provisions of Section 16.1 relating to Force Majeure.

37.2 Interpretation of Agreement.

37.2.1 Exhibits/Schedules. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

37.2.2 Captions. Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Lease.

37.2.3 Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such

statement, term or matter, and shall be construed as though followed immediately by the phrase “but not limited to. As used herein, (a) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (b) “shall,” “will,” “must,” “agrees,” and “covenants,” are mandatory and “may” is permissive; and (iii) “or” is not exclusive.

37.2.4 No Presumption Against Drafter. This Lease has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Lease shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including, but not limited to, California Civil Code Section 1654).

37.2.5 Fees and Costs. The Party on which any obligation is imposed in this Lease shall be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

37.2.6 Lease References. Wherever reference is made to any provision, term or matter “in this Lease,” “herein,” “hereof,” “hereto,” “hereunder” or words of similar import, the reference shall be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Lease or any specific subdivision thereof.

37.3 Successors and Assigns. This Lease is binding upon and will inure to the benefit of the successors and assigns of Landlord, Tenant and any Mortgagee. Where the term “Tenant,” “Landlord” or “Mortgagee” is used in this Lease, it means and includes their respective successors and permitted assigns, including, as to any Mortgagee, any transferee and any successor or assign of such transferee. Whenever this Lease specifies or implies Landlord as a Party or the holder of the right or obligation to give approvals or consents, if Landlord or a comparable public body which has succeeded to Landlord’s rights and obligations no longer exists, then the City will be deemed to be the successor and assign of Landlord for purposes of this Lease.

37.4 No Third Party Beneficiaries. This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and shall not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in Article 33 with regard to Mortgagees.

37.5 Real Estate Commissions. Tenant represents that it has not used any broker for this transaction. Landlord shall not pay or be liable for any commissions, brokerage fees, or finder’s fees which may arise from this Lease. Tenant shall hold harmless and defend Landlord against any claims for commission, brokerage fees, or finder’s fees.

37.6 Counterparts; Facsimiles. This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument. The Parties shall be entitled to rely upon facsimile copies or electronic copies of a Party’s signature to this Lease and any instrument executed in connection therewith.

37.7 Entire Agreement. Except as otherwise expressly provided herein, this Lease (including the Exhibits and Schedules) and the agreements referenced herein, including without limitation, the LDDA, constitutes the entire agreement between the Parties with respect to the subject matter set forth therein, and supersedes all prior and contemporaneous negotiations or agreements between the Parties with respect to all or any part of the subject matter of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the provisions of this Lease.

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

37.9 Governing Law; Selection of Forum. This Lease is entered into in the City of Oakland, State of California, and shall be governed by, and interpreted in accordance with, the laws of the State of California, without reference to its conflict of laws provisions. As part of the consideration for Landlord's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of Landlord, be litigated in courts having situs within the City of Oakland, and Tenant hereby irrevocably consents and submits to the jurisdiction and venue of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

37.10 Recordation. This Lease will not be recorded by either Party. The Parties agree to execute and record in the Official Records a memorandum of lease in substantially the form attached hereto as **Exhibit G** ("**Memorandum of Lease**"). Promptly upon Landlord's request following the expiration of the Term or any other termination of this Lease, Tenant shall deliver to Landlord a duly executed and acknowledged Termination and Quitclaim Deed substantially in the form attached hereto as **Exhibit D**, for the purpose of evidencing in the public records the termination of Tenant's interest under this Lease. Landlord may record such Termination and Quitclaim Deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

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

37.12 Further Assurances. The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease. The City Administrator of the Landlord or his or her designee is authorized to execute on behalf of the Landlord any closing or similar

documents and any contracts, agreements, memoranda or similar documents with Tenant, State, regional and local entities or enter into any tolling agreement with any Person that are necessary or proper to achieve the purposes and objectives of this Lease, if the City Administrator determines, after consultation with the City Attorney, that the document or agreement is necessary or proper and is in the Landlord's best interests.

37.13 Attorneys' Fees. If either Party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, reasonable Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment. For purposes of this Lease, the reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of Oakland in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

37.14 Lease Effectiveness. Notwithstanding any provision herein to the contrary, this Lease shall only become effective on the date the Parties duly execute and deliver this Lease upon the Commencement Date in accordance with the LDDA. Such date will be inserted by Landlord as the Commencement Date in the Memorandum of Lease; provided however, that Landlord's failure to insert the Commencement Date shall not invalidate this Lease.

37.15 Severability; Survival. If any provision of this Lease, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other Person or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease. Except as otherwise expressly set forth herein, the rights and obligations of Tenant and Landlord under this Lease shall survive any termination of the LDDA.

37.16 Cooperation in the Event of Legal Challenge. In the event of any Legal Challenge, Landlord and Tenant, at no cost to Landlord, shall cooperate and coordinate with one another in the defense against such Legal Challenge.

37.17 Public Disclosure. Tenant acknowledges that under the California Public Records Act and the City's Sunshine Ordinance both as they may be amended or modified, or any similar public records disclosure law hereinafter enacted that by its terms applies to this Lease (collectively, the "**Disclosure Laws**"), and all Tenant's books and records and documents maintained by Tenant (or maintained for Tenant by Tenant's Agents) relating to the operation of the Premises and delivered or required to be delivered by Tenant to Landlord may be considered

public records and, to the extent required by the Disclosure Laws, will be made available to the public upon request. Landlord shall not in any way be liable or responsible for the disclosure of any such information, books or records or portions thereof if the disclosure is made pursuant to a request under the Disclosure Laws.

37.18 Dispute Disclosure. Tenant and its Affiliates are required to disclose pending disputes with City when they are involved in submitting bids, proposals or applications for a City contract or transaction involving professional services. This includes contract amendments. Tenant agrees (and shall require its Affiliates to agree) to disclose, and has disclosed, any and all such pending disputes to the City prior to execution of this Lease. City will provide a form for such disclosure upon Tenant's or its Affiliate's request. Failure to disclose pending disputes prior to execution of the contract or contract amendment shall be a basis for termination of the contract or contract amendment.

ARTICLE 38.

DEFINITION OF CERTAIN TERMS

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

"Additional Casualty Cash" is defined in Section 9.4.4.

"Additional Improvements" means any and all buildings, structures, fixtures, and other improvements, including, but not limited to any work of improvement as defined in California Civil Code Section 3106, constructed, installed, erected, built, placed or performed (or to be so done) upon or within the Premises at any time during the Term by or on behalf of Tenant in accordance with this Lease, excluding the Project.

"Additional Rent" means any and all sums, other than Rent, that may become due or be payable by Tenant at any time pursuant to this Lease.

"Affiliate" means any Person directly or indirectly Controlling, Controlled by or under Common Control with another Person.

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

"Appraisal Instructions" is defined in Section 2.3.2.

"Appraisal Report" is defined in Section 2.3.2.

"Appraiser" is defined in Section 2.3.2.

"Annual Rent Adjustment" is defined in Section 2.3.1.

"Attorneys' Fees and Costs" means reasonable attorneys' fees (including fees from attorneys in the Office of the City Attorney of Oakland), costs, expenses and disbursements,

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

“Base Rent” is defined in Section 2.2.2.

“Bona Fide Institutional Lender/Bond Trustee” means any one or more of the following, whether acting in its own interest and capacity or in a fiduciary capacity for one or more Persons none of which need be Bona Fide Institutional Lender/Bond Trustees and who is not an Affiliate of Tenant: (a) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, a government sponsored enterprise, a real estate investment trust, a religious, educational or charitable institution, an employees’ welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any other Person or group of Persons which, at the time of a Mortgage is recorded in favor of such Person or Persons, has (or is Specially Controlled by a Person having) assets of at least Five Hundred Million Dollars (\$500,000,000) in the aggregate (or the equivalent in foreign currency), as Indexed, and in the case of any Person or group of Persons none of whom is a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a governmental agency, or a real estate investment trust, is regularly engaged in the financial services business, (b) any special account, managed fund, department, agency or Special Affiliate of any of the foregoing; (c) any person acting in a fiduciary capacity for any of the foregoing; or (d) any financial institution with trustee powers acting as a bond trustee for the California Municipal Finance Authority revenue bonds or other bond issuances to finance or refinance the Project. For purposes hereof: (i) acting in a “fiduciary capacity” shall be deemed to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan agreement, indenture or other loan document; (ii) a lender, even if not a Bona Fide Institutional Lender/Bond Trustee, shall be deemed to be a Bona Fide Institutional Lender/Bond Trustee if promptly after such loan is consummated the note(s) or other evidence of indebtedness or the collateral securing the same are assigned to one or more persons then qualifying as a Bona Fide Institutional Lender/Bond Trustee; (iii) **“Special Affiliate”** means any Person directly or indirectly Specially Controlling, Specially Controlled by, or under common Special Control, through one or more other persons, with the person in question; and (iv) **“Special Control”** means the power to direct the affairs or management of another Person, whether by contract, operation of Law or otherwise (and Specially Controlling and Specially Controlled shall have correlative meanings).

“Business Day” means any day that is neither a Saturday, a Sunday, nor a day observed as a holiday by either the City or the State of California or the United States government.

“Casualty Date” is defined in Section 9.1.1.

“Casualty Event” is defined in Section 9.1.2.

“Casualty Notice” is defined in Section 9.6.1.

“Casualty Restoration Cost” is defined in Section 9.1.3.

“Casualty Restoration Funds” is defined in Section 9.4.4.

“Certificate of Completion” means a certificate of completion issued by City pursuant to the LDDA with respect to the Completion of Project.

“CEQA” means the California Environmental Quality Act.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601).

“City” means the City of Oakland, a municipal corporation.

“City Administrator” means the City Administrator of City or his or her designee.

“City Council” means the City Council of City.

“City Employment and Contracting Requirements” means collectively, the policies and requirements described in Section 36.6 of this Lease, and the policies and requirements described in Article 9 of the LDDA, as such policies and requirements may be amended or modified from time to time.

“Claims” means all claims (including Hazardous Material Claims), liabilities, losses, charges, costs, expenses (including, without limitation reasonable Attorneys’ Fees and Costs), expert witness and consulting fees, and costs of litigation, claims, demands, actions, causes of action, suits, judicial or administrative proceedings, penalties, deficiencies, fines, orders, judgments, and damages.

“Commencement Date” is defined in Section 1.3.

“Completion” means, with respect to any and all Improvements or Restoration on all or any portion of the Premises, the completion of construction and installation of such Improvements or Restoration in accordance with the terms of this Lease. The fact of such Completion shall be conclusively evidenced by the issuance by City of a certificate of occupancy or equivalent certificate of completion with respect to such Improvements or Restoration. “Complete,” “Completed” and “Completed Construction” shall have the same meaning as Completion.

“Completion Date” means the date of Completion of Project.

“Construction Documents” is defined in Section 6.3.4.

“Construction Rent” is defined in Section 2.2.3.

“Construction Period” is defined in Section 2.2.3.

“Control” means: (a) the ownership (direct or indirect) by one Person of more than fifty percent (50%) of the profits, capital, or equity interest of another Person; or (b) the power to direct

the affairs or management of another Person, whether by contract, other governing documents or operation of Law or otherwise, and Controlled and Controlling have correlative meanings. Common Control means that two Persons are both Controlled by the same other Person.

“CPI” means the Consumer Price Index for All Urban Consumers, All Items for the San Francisco-Oakland-San Jose CMSA (Base year 1982-84 = 100) published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics substantially revises the manner in which the CPI is determined, an adjustment shall be made in the revised CPI which would produce results equivalent, as nearly as possible, to those which would be obtained hereunder if the CPI were not so revised. If the 1982-84 average shall no longer be used as an index of 100, such change shall constitute a substantial revision. If the CPI becomes unavailable to the public because publication is discontinued, or otherwise, Landlord shall substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by a governmental agency, major bank, other financial institution, university or recognized financial publisher.

“Default Rate” is defined in Section 2.6.

“Depository” means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as a Bona Fide Institutional Lender/Bond Trustee, designated by Tenant and approved by Landlord to serve as depository pursuant to this Lease, provided that such Depository shall have an office, branch, agency or representative located in the State of California. Notwithstanding the foregoing, the Mortgagee with the most senior Mortgage may elect to act as the Depository.

“Disabled Access Laws” means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. Section 12101 et seq. and disabled access laws under the Landlord’s building code.

“Disclosure Laws” are defined in Section 37.17.

“Effective Date” is defined in the preamble of this Lease.

“Encumbrance” means any mortgage, deed of trust, claim, levy, lien, judgment, execution, pledge, charge, security interest, restriction, covenant, condition, reservation, rights of way, liens, encumbrances, certificate of pending litigation, judgment or certificate of any court, and other matters of any nature whatsoever, whether arising by operation of Law or otherwise created, affecting the Premises.

“Event of Default” is defined in Section 18.1.

“Excluded Costs” is defined in Section 33.10.2.

“Fair Market Rental Value” is defined in Section 2.3.2.

“Fair Market Value” is defined in Section 2.3.2.

“Final Construction Documents” means plans and specifications sufficient for the processing of an application for a building permit in accordance with applicable Laws.

“Force Majeure” means events which result in delays in a Party’s performance of its obligations hereunder due to causes beyond such Party’s control, including, but not restricted to, acts of God or of the public enemy, a general moratorium in the issuance of governmental or regulatory permits applicable to the Premises or the Improvements, epidemic, pandemic (except COVID-19 and its existing variants, which is a known and foreseeable condition), governmental orders that require closure of the Premises, quarantine restrictions, fires, floods, earthquakes, tidal waves, war, insurrection, terrorist acts, strikes, lockouts, riots, freight embargoes, delays of subcontractors due to any foregoing causes, and unusually severe weather and, in the case of Tenant, any delay resulting from a defect in Landlord’s title to the Premises other than a Permitted Exception. Force Majeure does not include failure to obtain financing or have adequate funds. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to complete performance of the hindered act. Since COVID-19 and its variants is an existing condition as of the Effective Date of this Lease, it cannot in and of itself be used for Force Majeure pursuant to this Lease as it is known and foreseeable. However, if a delay is caused by COVID-19 or its variants, Tenant shall provide written notice to Landlord of the specific delay and the specific cause, and Landlord and Tenant shall meet and confer in good faith to mutually agree to extension relate to the particular delay on a case-by-case basis.

“Foreclosure” means a foreclosure of a Mortgage or other proceedings in the nature of foreclosure (whether conducted pursuant to court order or pursuant to a power of sale contained in the Mortgage), deed or voluntary assignment or other conveyance in lieu thereof.

“Foreclosure Period” is defined in Section 33.10.2.

“Handle” when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material (“Handling” will have a correlative meaning).

“Hazardous Material” means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” under CERCLA or under Section 25281 or Section 25316 of the California Health & Safety Code; any “hazardous waste” as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of a structure, or are naturally occurring substances on, in or about the Premises and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

“Hazardous Material Claims” means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Material Laws, together with any and all Losses made or credibly (as determined by Landlord) threatened by any third party against City or the

Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any structures or other Improvements, the loss or restriction of the use of all or any portion of the Premises, and attorneys' fees and consultants' fees and experts' fees and costs.

"Hazardous Material Laws" means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises, including, without limitation, soil, air, air quality, water, water quality and groundwater conditions, including any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Material, or the protection of the environment or human, plant or animal health, including, without limitation, CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 et seq.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 et seq.).

"Impositions" means all taxes, assessments, liens, levies, charges, fees, or expenses of every description, levied, assessed, confirmed or imposed on or with respect to the Premises, any of the Improvements or Personal Property located on or within the Premises, this Lease, Tenant's leasehold estate, any Sublease, any subleasehold estate, any Transfer, or any use or occupancy of the Premises hereunder, and any parking taxes, business license fees, or similar fees or taxes owed to Landlord, in its regulatory capacity. Impositions shall include all such taxes, assessments (including but not limited to any taxes or assessments for a Special District encompassing all or any portion of the Premises), liens, levies, charges, fees, or expenses, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied, assessed, confirmed or imposed in lieu of or in substitution of any of the foregoing of every character. For purposes of this definition, "Special District" means any community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982 (California Government Code Sections 53311 et seq.) or otherwise, special assessment district, facilities assessment district, landscaping and lighting district, and any other infrastructure financing or infrastructure maintenance financing district or device established at any time upon the approval of City with respect to all or any portion of the Project or the Premises.

"Improvements" means, collectively, the Project and Additional Improvements.

“Indemnified Parties” means collectively, the City, its Councilmembers, other elected and appointed officials, employees, officers, commissioners, directors, and Agents and all of their respective heirs, legal representatives, successors and assigns.

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

“Indexed” means the product of the number to be Indexed multiplied by the percentage increase, if any, in the CPI from the first day of the month in which the Commencement Date, or such other date specified in this Lease as the start of a particular period, occurred on the first day of the most recent month for which the CPI is available at any given time.

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

“Landlord” means the City.

“Landlord’s Notice” is defined in Section 2.3.2.

“Late Charge” is defined in Section 2.7.

“Late-Term Casualty” is defined in Section 9.1.5.

“Law” or **“Laws”** means any one or more present and future laws, Environmental Laws, ordinances, rules, regulations, permits, codes, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, whether or not foreseen, unforeseen or in the present contemplation of the Parties, including all consents or approvals (including Regulatory Approvals) required to be obtained from or issued by, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including any subsurface area, the use thereof and of the buildings and Improvements thereon.

“LDDA” is defined in Recital H.

“Lease” means this Ground Lease, as it may be amended from time to time in accordance herewith.

“Leasehold Estate” means Tenant’s leasehold estate created by this Lease.

“Lease Year” means a period of twelve (12) consecutive months during the Term, commencing on the Commencement Date and continuing for each twelve (12) consecutive calendar months thereafter.

“Legal Challenge” means any action or proceeding before any court, tribunal, arbitration or other judicial, adjudicative or legislation-making body, including any administrative appeal, brought by a third party, who is not an Affiliate or related to Tenant, which (i) seeks to challenge the validity of any action taken by City in connection with the Project, including City’s approval, execution and delivery of this Lease, and its performance of any action required or permitted to be performed by City hereunder, including any challenge under CEQA, or any findings upon which any of the foregoing are predicated, or (ii) seeks to challenge the validity of any other Regulatory Approval.

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

“Major Alterations” is defined in Section 6.3.1; the term “Major Alterations” includes Restoration pursuant to Article 9.

“Major Damage” or “Destruction” is defined in Section 9.1.6.

“Memorandum of Lease” is defined in Section 37.10.

“Minimum Condition” is defined in Section 29.1.4.

“Minimum Rent” is defined in Section 2.2.4.

“Minor Alterations” is defined in Section 6.4.

“Mortgage” means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement or similar security instrument or assignment of Tenant’s leasehold interest under this Lease that is recorded in the Official Records, including without limitation, a leasehold deed of trust in favor of a bond trustee.

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

“Mortgagee Cure Period” is defined in Section 33.10.1.

“Net Condemnation Award” means the net amounts owed or paid to the Parties or to which either of the Parties may be or become entitled by reason of any Taking or pursuant to any agreement with any condemning authority which has been made in settlement of any proceeding relating to a Taking, less any costs and expenses, including reasonable attorneys’ fees incurred by the Parties in collecting such award or payment.

“Nominee” is defined in Section 33.10.4.

“Non-Affiliate” means any Person who is not an Affiliate of another Person.

“Non-Affiliate Mortgage” means a Mortgage that is held by a Non-Affiliate Mortgagee.

“Non-Affiliate Mortgagee” means the holder of a Mortgage, which holder (a) is not an Affiliate of Tenant, or (b) is a Bona Fide Institutional Lender/Bond Trustee.

“Official Records” is defined in Recital C.

“Original DDA” is defined in Recital C.

“Parcel Map” is defined in Recital B and attached hereto as Exhibit B.

“Party” or **“Parties”** is defined in the preamble of this Lease.

“Permitted Title Exceptions” is defined in Section 1.2.2 and attached hereto as Exhibit C.

“Permitted Use” is defined in Section 3.1.

“Person” means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

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

“Premises” is defined in Section 1.2.1.

“Project” is defined in Recital J.

“Project Financing” is defined in Section 2.2.3.

“Property” is defined in Recital B.

“Proposed Transfer” is defined in Section 12.1.1.

“Qualified Appraiser” or **“Regulatory Agencies”** means an appraiser who holds an M.A.I. designation from the Appraisal Institute (or its successor organization) with at least five (5) years’ experience appraising relevant property types in Oakland.

“Regulatory Agency” means any means any local, regional, state or federal governmental agency or political subdivision having jurisdiction over the Premises, including the City in its regulatory capacity.

“Regulatory Approval” means any authorization, approval or permit required or granted by any Regulatory Agency with respect to the Project, Major Alterations, Minor Alterations, or the Premises, as applicable.

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

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

“Rent” means, collectively, Base Rent, Construction Rent, Minimum Rent, and Additional Rent. For purposes of this Lease, Rent includes all unpaid sums that are payable as Rent, but that are unpaid when earned and/or accrue for payment at a later time in accordance with the provisions of this Lease.

“Rent Commencement Date” is defined in Section 2.2.3.

“Restoration” means the restoration, repair, replacement, rebuilding or alteration of the Improvements (or the relevant portion thereof), in accordance with all Laws then applicable, necessitated by any Casualty Event, including without limitation all required code upgrades and all razing and removal of damaged or destroyed Improvements necessary to conduct such restoration, replacement, rebuilding or alteration; provided that Tenant shall not be required to Restore the Improvements to the identical size or configuration as existed before the event giving rise to the Restoration so long as the Improvements, as Restored, constitute a first-class development similar to the original Project, subject to the provisions of Section 6.3 regarding Major Alterations. In connection with any Restoration, the Project and the other Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that the Project as so redesigned is a first-class development similar to the original Project, subject to the provisions of Section 6.3 regarding Major Alterations. “Restore” and “Restored” shall have correlative meanings. Notwithstanding anything to the contrary in this Lease, “Restoration” and its correlative meanings shall not include any restoration, repair, replacement, rebuilding or alteration of the Improvements necessitated by any Casualty Event if the entirety of the necessary restoration, repair, replacement, rebuilding or alteration falls within the definition of Minor Alterations.

“Schematic Drawings” means conceptual drawings in sufficient detail to describe a development proposal.

“Second Appraisal Report” is defined in Section 2.3.2.

“Second Appraiser” is defined in Section 2.3.2.

“Significant Change” means (a) any dissolution, merger, consolidation or other reorganization, or any issuance or transfer of beneficial interests in Tenant, directly or indirectly, in one or more transactions, that results in a change in the identity of the Persons Controlling Tenant, or (b) the sale of fifty percent (50%) or more of Tenant’s assets, capital or profits, or the assets, capital or profits of any Person Controlling Tenant other than a sale to an Affiliate, provided that a Significant Change will not include any change in the identity of Persons Controlling Tenant or sale of fifty percent (50%) or more of assets, capital or profits in a Person Controlling Tenant as a result of (i) the sale or transfer of shares of a publicly traded company; or (ii) the merger, consolidation or other reorganization of a Person Controlling Tenant or the sale of all or substantially all of the assets of a Person Controlling Tenant in a transaction.

“Site B” is defined in Recital B.

“State” means the State of California.

“Strada” is defined in Recital C.

“Sublease” means any lease or rental agreement pursuant to which Tenant leases or rents a portion of the Premises.

“Subtenant” means any Person leasing, occupying, or having the right to occupy any portion of the Premises.

“Taking” means a taking during the Term hereof of all or any part of the Premises and/or the Improvements, or any interest therein or right accruing thereto, as a result of the exercise of the right of condemnation or eminent domain materially affecting the Premises or any part thereof. A conveyance in lieu of, or in anticipation of, the exercise of any such right of condemnation or eminent domain shall be considered a Taking. Any such Taking shall be deemed to have occurred upon the earlier to occur of (a) the date on which the property, right or interest so taken must be surrendered to the condemning authority, or (b) the date title vested in a condemning authority or other party pursuant to any Taking.

“Tenant” is defined in the preamble of this Lease, and its permitted successors and assigns under this Lease.

“Term” is defined in Section 1.3.

“Termination and Quitclaim Deed” is defined in Section 1.2.3.

“Termination Date” is defined in Section 1.3.

“Third Appraiser” is defined in Section 2.3.2.

“Transfer” is defined in Section 12.1.1.

“Transfer Adjustment” is defined in Section 2.3.2.

“Uninsured Casualty” is defined in Section 9.1.7.

[Remainder of Page Intentionally Blank; Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the Effective Date.

LANDLORD:

City of Oakland,
a municipal corporation

By:



Edward D. Reiskin
City Administrator

Approved as to Form and Legality:

By:



JoAnne Dunec
Deputy City Attorney

[Signatures Continue on Following Page]

[SIGNATURE PAGE TO GROUND LEASE]

TENANT:

Samuel Merritt University,
a California nonprofit public benefit corporation

By: 
Name: Ching-Hua Wang
Title: President

[SIGNATURE PAGE TO GROUND LEASE]

LIST OF LEASE EXHIBITS

Exhibit	Description
A	Legal Description of Property
B	Parcel Map
C	Permitted Title Exceptions
D	Form of Termination and Quitclaim Deed
E	Required Insurance
F	Acknowledgement of Campaign Contribution Limits Form
G	Form of Memorandum of Lease

EXHIBIT A
to
GROUND LEASE
(T5-T6)

LEGAL DESCRIPTION OF PROPERTY

Real Property in the City of Oakland, County of Alameda, State of California, described as follows:

LOT 2, AS SHOWN ON PARCEL MAP 10430, FILED MARCH 06, 2018 IN MAP BOOK 338, PAGES 65-67, ALAMEDA COUNTY RECORDS.

EXCEPTING THEREFROM THOSE PORTIONS OF THE ELEVATIONS BELONGING TO STG CITY SQUARE, LLC, A DELAWARE LIMITED LIABILITY COMPANY AS SET FORTH IN PLAT ATTACHED TO GRANT DEED RECORDED JANUARY 25, 2018 AS INSTRUMENT NO. 2018014706 OF OFFICIAL RECORDS.

APN: 002-0097-039 and 002-0097-040

EXHIBIT B
to
GROUND LEASE
(T5-T6)

PARCEL MAP

[Attached]

EXHIBIT B

OWNER'S STATEMENT:

THE UNDERSIGNED HEREBY STATES THAT IT IS THE OWNER OF THE LAND DELINEATED AND EMBOSSED WITHIN THE EXISTING BOUNDARY LINES OF THE HEREIN EMBOSSED PARCEL MAP ENTITLED "PARCEL MAP 10430" AND THAT IT CONSENTS TO THE PREPARATION AND FILING OF THIS PARCEL MAP.

THE CITY OF OAKLAND, A MUNICIPAL CORPORATION

BY: James Gove
NAME: James Gove
TITLE: R.E. Manager

OWNER'S ACKNOWLEDGMENT:

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

ON FEBRUARY 1, 2018 BEFORE ME, NICOLA DUESBERG, NOTARY PUBLIC
PERSONALLY APPEARED JAMES GOVE

WHO PROVIDED 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/IT/THEY EXECUTED THE SAME IN HIS/HER/IT/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/IT/THEIR SIGNATURE(S) HE/SHE/IT/THEY INTENDED TO EXECUTE 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.

NOTARY PUBLIC

NAME: NICOLA DUESBERG

MY COMMISSION EXPIRES: MAY 11, 2021

MY COMMISSION NUMBER: 2206330

COUNTY OF PRINCIPAL PLACE OF BUSINESS: ALAMEDA CA

CLERK OF THE BOARD OF SUPERVISORS STATEMENT:

I, ANNA CAMPBELL-BEITON, CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY STATE THAT THE CERTIFICATES HAVE BEEN FILED AND DEPOSITS HAVE BEEN MADE IN CONFORMANCE WITH THE REQUIREMENTS OF SECTION 64022 AND 64043 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA.

DATED: FEB. 23, 2018

ANNA CAMPBELL-BEITON,
CLERK OF THE BOARD OF SUPERVISORS, COUNTY
OF ALAMEDA, STATE OF CALIFORNIA

BY: Anna Campbell-Beiton
DEPUTY CLERK

**SURVEYOR'S STATEMENT:**

THIS PARCEL MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF STRATA 72 LLC IN AUGUST OF 2015. I HEREBY CERTIFY THAT I AM A LICENSED SURVEYOR IN THE STATE OF CALIFORNIA AND THAT I HAVE CONDONATIONALLY APPROVED THE HEREIN EMBOSSED PARCEL MAP 10430.

BY: Bruce B. P...
PLS. NO. 2018

DATE: 2/1/2018

**CITY ENGINEER'S STATEMENT:**

I, RAYMOND R. HENRIK, HAVING BEEN AUTHORIZED TO PERFORM THE FUNCTIONS OF THE CITY ENGINEER OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE HEREIN EMBOSSED PARCEL MAP 10430, AND I AM SATISFIED THAT THE PARCEL MAP IS TECHNICALLY CORRECT.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 21st DAY OF FEBRUARY, 2018.

BY: [Signature]
RAYMOND R. HENRIK, R.E. NO. 40013
CITY ENGINEER, CITY OF OAKLAND, ALAMEDA COUNTY
STATE OF CALIFORNIA

**CITY SURVEYOR'S STATEMENT:**

I, RAYMOND R. HENRIK, HAVING BEEN AUTHORIZED TO PERFORM THE FUNCTIONS OF THE CITY SURVEYOR OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE HEREIN EMBOSSED PARCEL MAP 10430, AND I AM SATISFIED THAT THE PARCEL MAP IS TECHNICALLY CORRECT.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 1st DAY OF FEBRUARY, 2018.

BY: [Signature]
RAYMOND R. HENRIK, R.E. NO. 40013
CITY SURVEYOR, CITY OF OAKLAND
ALAMEDA COUNTY, STATE OF CALIFORNIA

**PARCEL MAP 10430**

A LOT MERGER AND TWO LOT SUBDIVISION
LOT 1, BEING A MERGER FOR CONDOMINIUM PURPOSES CONTAINING
289 RESIDENTIAL AND 3 COMMERCIAL MIXED-USE UNITS
LOT 2, BEING A MERGER FOR CONDOMINIUM PURPOSES
BEING A SUBDIVISION OF PARCEL PP, PARCEL MAP 5333,
FILED NOVEMBER 17, 1988,
IN BOOK 180 OF PARCEL MAPS, PAGES 44-45,
AND THOSE CERTAIN GRANT DEEDS RECORDED JANUARY 25, 2018,
INSTRUMENT NUMBERS 002-0097-039 & 002-0097-040 & PORTION OF 002-0097-001-01

CITY OF OAKLAND COUNTY OF ALAMEDA STATE OF CALIFORNIA

MARTIN M. RON ASSOCIATES, INC.

Land Surveyors

859 Harrison Street, Suite 200

San Francisco California

FEBRUARY 2018

SHEET 1 OF 3

EXHIBIT C
to
GROUND LEASE
(T5-T6)

PERMITTED TITLE EXCEPTIONS

1. General and special taxes and assessments for the fiscal year 2022-2023, a lien not yet due or payable.
2. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
3. The terms and provisions contained in the document entitled "Third Amended and Restated Easement Agreement" recorded November 17, 1988 as Instrument No. 88-295254 of Official Records.

Also included among the matters contained in the above document are the following easements affecting the herein described land as granted therein for the purposes stated below and purposes incidental thereto:

- A. Easement for: Loading, unloading and parking vehicles, holding area, office, trash compaction and storage uses
Granted to: To the City of Oakland
- B. Easement for: Access, vehicle maneuvering, loading, unloading and parking
Granted to: The City of Oakland, The Clorox Company, Bramalea Limited and City Square One
- C. Easement for: Electrical light fixtures and ventilation ducts
Granted to: The City of Oakland, The Clorox Company, Bramalea Limited and City Square One
- D. Easement for: Use of stairs and corridors as emergency exits
Granted to: The City of Oakland, The Clorox Company, Bramalea Limited and City Square One
- E. Easement for: Ingress and egress to and from a loading dock
Granted to: The Clorox Company and City Square One

Note: In connection with said Agreement, a document entitled "Agreement Regarding Construction Coordination, Truck Dock Easement Agreement", executed by and between The Clorox Company and Bramalea Pacific, Inc., was recorded March 14, 1989, Instrument No. 89-070167, Official Records.

Document(s) declaring modifications thereof recorded February 27, 2004 as Instrument No. 2004883973 of Official Records.

The terms, conditions and provisions of the above were made applicable to the Land by virtue of the following described document:

The terms and provisions contained in the document entitled "Amended and Restated Easement Agreement (1111 Broadway (T-5/T-6))" recorded March 12, 2018 as Instrument No. 2018050053 of Official Records.

4. The terms, provisions and easement(s) contained in the document entitled "Easement Agreement" recorded May 10, 1999 as Instrument No. 99180746 of Official Records.
Said Agreement includes the grant of a cross encroachment easement granted to Oakland City Center LLC, a Delaware limited liability company.
5. The terms and provisions contained in the document entitled "Grant Deed" recorded January 30, 2012 as Instrument No. 2012029231 of Official Records.
6. The terms and provisions contained in the document entitled "Grant Deed" recorded January 25, 2018 as Instrument No. 2018014706 of Official Records. By and between STG City Square, LLC and the City of Oakland.
7. The terms and provisions contained in the document entitled "T-5/T-6 Hotel and Residential Project Disposition and Development Agreement" recorded March 12, 2018 as Instrument No. 2018050055 of Official Records.
Assignment and Assumption Agreement thereto by and between 1100 Clay Venture, LLC and 1100 Clay (Oakland) Owner, LLC ("Assignee") recorded March 12, 2018 as Instrument No. 2018050056 of Official Records
8. The terms and provisions contained in the document entitled "Grant of Public Access Easement and Maintenance Agreement" recorded March 12, 2018 as Instrument No. 2018050058 of Official Records. By and between the City of Oakland, a California municipal corporation and 1100 Clay (Oakland) Owner, LLC, a Delaware limited liability company.
9. Any facts, rights, interests or claims which would be disclosed by a correct ALTA/NSPS survey.

EXHIBIT D
TO
GROUND LEASE
(T5-T6)

FORM OF TERMINATION AND QUITCLAIM DEED

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Oakland
Economic & Workforce Development Dept.
Public/Private Development Division
250 Frank H. Ogawa Plaza, 5th Floor
Oakland, California 94612
Attn: Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §27383

FOR RECORDER'S USE ONLY

APN: 002-0097-039 & 002-0097-040

TERMINATION OF GROUND LEASE
AND
QUITCLAIM AND RELEASE OF MEMORANDUM OF LEASE
(T5-T6)

This Termination of Ground Lease and Quitclaim and Release of Memorandum of Lease (T5-T6) (this "Termination and Quitclaim Deed") is made as of _____ by and between the CITY OF OAKLAND, a municipal corporation (the "Landlord"), and SAMUEL MERRITT UNIVERSITY, a California nonprofit public benefit corporation ("Tenant"). This Termination and Quitclaim Deed shall be effective upon execution by Landlord and Tenant and is entered into with reference to the following facts:

RECITALS

A. Landlord and Tenant executed that certain Ground Lease Agreement (T5-T6), dated as of November __, 2022, as evidenced by that certain Memorandum of Lease recorded on _____, 2022, in the Official Records of Alameda County, California ("Official Records") as Instrument No. _____ (the "Memorandum of Lease") (together with the Memorandum of Lease, the "Lease") with respect to the property described on Exhibit A, attached hereto and incorporated herein by reference (the "Property").

B. Landlord and Tenant now wish to formally terminate the Lease.

NOW, THEREFORE, it is hereby declared and understood as follows:

1. Landlord and Tenant hereby terminate the Lease in its entirety.
2. Tenant does hereby remise, release, and quitclaim to Landlord and its successors and assigns, all Tenant's right, title and interest in the Lease and Property, provided by the Lease, and as evidenced by the Memorandum of Lease, which are hereby cancelled, terminated, released and expunged.
3. This Termination and Quitclaim Deed may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same agreement.
4. This Termination and Quitclaim Deed has also been delivered and recorded for the purpose of releasing the Memorandum of Lease from the Official Records with respect to the Property.
5. This Termination and Quitclaim Deed may be executed in any number of counterparts, all of which, together, shall constitute but one and the same agreement.

[Remainder of Page Intentionally Blank; Signatures Follow]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Termination and Quitclaim Deed as of the day first above written.

LANDLORD:

CITY OF OAKLAND,
a municipal corporation

By: _____
Edward D. Reiskin
City Administrator

Approved as to Form and Legality:

By: _____
JoAnne Dunec
Deputy City Attorney

TENANT:

SAMUEL MERRITT UNIVERSITY,
a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

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, _____, a Notary Public, 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, _____, a Notary Public,
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 Property
(for Termination of Ground Lease)

Real Property in the City of Oakland, County of Alameda, State of California, described as follows:

LOT 2, AS SHOWN ON PARCEL MAP 10430, FILED MARCH 06, 2018 IN MAP BOOK 338, PAGES 65-67, ALAMEDA COUNTY RECORDS.

EXCEPTING THEREFROM THOSE PORTIONS OF THE ELEVATIONS BELONGING TO STG CITY SQUARE, LLC, A DELAWARE LIMITED LIABILITY COMPANY AS SET FORTH IN PLAT ATTACHED TO GRANT DEED RECORDED JANUARY 25, 2018 AS INSTRUMENT NO. 2018014706 OF OFFICIAL RECORDS.

APN: 002-0097-039 and 002-0097-040

CERTIFICATE OF ACCEPTANCE

This is to certify that the interests in real property remised, released, and quitclaimed by the Termination of Lease and Quitclaim and Release of Memorandum of Lease (T5-T-6), dated _____, 20__ by _____, a _____, as grantor, to The City of Oakland, a municipal corporation, as grantee (the "Termination and Quitclaim Deed"), are hereby accepted by the City Administrator of the City of Oakland, or his or her designee, pursuant to authority conferred by Ordinance No. _____ C.M.S. of the City Council adopted on _____, 20__, and The City of Oakland, as grantee, consents to recordation of the Termination and Quitclaim Deed.

Date: _____, 20__

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

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, _____, a Notary Public, 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 E
TO
GROUND LEASE
(T5-T6)

Schedule Q
INSURANCE REQUIREMENTS
(Revised 09/12/2019)

Insurance Coverage Required of Tenant

a. General Liability, Automobile, Workers' Compensation and Professional Liability

Tenant shall procure, prior to commencement of the Lease, and keep in force for the term of this Lease, at Tenant's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Tenant shall provide the City with copies of all insurance policies evidencing coverage shown below. The insurance shall at a minimum include:

- i. Commercial General Liability insurance shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal and advertising injury and contractual liability. Coverage shall be on an occurrence bases and at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).

Limits of liability: Tenant shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

- ii. Automobile Liability Insurance. Tenant shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 00 01.
- iii. Workers' Compensation insurance as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage with limits not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, and \$1,000,000 each employee bodily injury by disease. Tenant certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. Tenant shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

- iv. Intentionally Omitted.
 - v. Pollution Liability Insurance: Tenant must maintain pollution liability insurance of at least \$1,000,000 each occurrence and in the aggregate. Coverage must include environmental remediation, emergency response, hazmat cleanup or pickup, liquid waste remediation, fire or water restoration.
 - vi. Property Insurance covering all risk, including direct physical loss or damage by fire, lightning, wind, storm, explosion, collapse, underground hazards, flood, vandalism, malicious mischief, glass breakage, and such other causes as are covered under such form of insurance. Such policy shall include replacement cost in an amount not less than 100% of the then full replacement cost, demolition costs, and debris removal. The policy shall name the City of Oakland as loss payee, subject to rights of Mortgagees.
- b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. Insured Status (Additional Insured): Tenant shall provide insured status naming the City of Oakland, its Councilmembers, directors, officers, agents employees and volunteers as additional insureds under the Commercial General Liability policy. for both ongoing and completed operations. General Liability coverage can be provided in the form of an endorsement to Tenant's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions used). If Tenant submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and
- ii. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents, employees and volunteer shall be primary insurance. Any other insurance available to the City, Councilmembers, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement); and
- iii. Cancellation Notice: Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City of not less than thirty (30) days; and
- iv. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the contractor, its employees, agents and subcontractors; and

- v. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Lease; and
- vi. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits. of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Lease.

e. Proof of Insurance

Tenant will be required to provide proof of all insurance required for the work prior to execution of the Lease, including copies of Tenant's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should the Tenant subcontract out the work required under this Lease, it shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, Tenant may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and Tenant shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee

satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Waiver of Subrogation

Contractor waives all rights against the City of Oakland and its Councilmembers, officers, directors, employees and volunteers for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements with reasonable notice, upon not less than ninety (90) days prior written notice.

j. Higher Limits of insurance

If Tenant maintains higher limits than the minimums shown above, the City shall be entitled to coverage for the higher limits maintained by the contractor.

EXHIBIT F
TO
GROUND LEASE
(T5-T6)

ACKNOWLEDGEMENT OF CAMPAIGN CONTRIBUTION LIMITS FORM

[Attached]

EXHIBIT F



**CONTRACTOR ACKNOWLEDGEMENT OF CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS
FOR CONSTRUCTION, PROFESSIONAL SERVICE & PROCUREMENT CONTRACTS**

To be completed by City Representative prior to distribution to Contractor

City Representative _____ Phone _____ Project Spec No. _____

Department _____ Contract/Proposal Name _____

This is an _____ Original _____ Revised form (check one). If Original, complete all that applies. If Revised, complete Contractor name and any changed data.

Contractor Name _____ Phone _____ - _____ - _____

Street Address _____ City _____, State _____ Zip _____

Type of Submission (check one) _____ Bid _____ Proposal _____ Qualification _____ Amendment _____

Majority Owner (if any). A majority owner is a person or entity who owns more than 50% of the contracting firm or entity.

Individual or Business Name _____ Phone _____ - _____ - _____

Street Address _____ City _____, State _____ Zip _____

The undersigned Contractor's Representative acknowledges by his or her signature the following:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland and the Oakland Redevelopment Agency during specified time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act and certify that I/we have not knowingly, nor will I/we make contributions during the period specified in the Act.

I understand that the contribution restrictions also apply to entities/persons affiliated with the contractor as indicated in the Oakland Municipal Code Chapter 3.12.080.

If there are any changes to the information on this form during the contribution-restricted time period, I will file an amended form with the City of Oakland.

Signature

_____/_____/_____
Date

Print Name of Signer

Position

To be Completed by City of Oakland after completion of the form

Date Received by City: ____/____/____ By _____

Date Entered on Contractor Database: ____/____/____ By _____

EXHIBIT G
TO
GROUND LEASE
(T5-T6)

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Oakland
Economic and Workforce Development Department
250 Frank H. Ogawa Plaza, 5th Floor
Oakland, CA 94612
Attn: Director:

(Space Above For Recorder's Use)

MEMORANDUM OF GROUND LEASE
(T5-T6)

This Memorandum of Lease (this "Memorandum"), dated as of November __, 2022, is entered into by and between the City of Oakland, a municipal corporation ("Landlord"), and Samuel Merritt University, a California nonprofit public benefit corporation ("Tenant").

Pursuant and subject to the provisions of that certain Ground Lease between Landlord and Tenant, dated as of November __, 2022 (the "Ground Lease"), Landlord leases to Tenant, and Tenant leases from Landlord, that certain real property located in the City of Oakland as more particularly described on Exhibit A attached hereto and shown as Lot 2 on that certain Parcel Map 10430, filed March 6, 2018 in Map Book 338, Pages 65- 67, Official Records of Alameda County, California. All terms in this Memorandum that are not defined herein shall have the same meanings as set forth in the Ground Lease.

The Commencement Date of the Ground Lease is November __, 2022, and the Term of the Ground Lease shall expire on the date that is ninety-nine (99) years thereafter unless the Ground Lease is sooner terminated pursuant to the terms of the Ground Lease.

This Memorandum incorporates herein in full, by this reference, all provisions of the Ground Lease. This Memorandum is solely for recording and notice purposes and in no way alters, amends, modifies or supplements the provisions of the Ground Lease. In the event of any conflict between any provision of the Ground Lease and any provision of this Memorandum, the Ground Lease shall control.

This Memorandum shall extend to and be binding upon the parties hereto and their legal representatives, heirs, successors, and assigns.

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

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the date first written above.

LANDLORD:

City of Oakland,
a municipal corporation

By: _____
Edward D. Reiskin
City Administrator

Approved as to Form and Legality:

By: _____
JoAnne Dunec
Deputy City Attorney

[Signatures Continue on Following Page]

TENANT:

Samuel Merritt University,
a California nonprofit public benefit corporation

By: _____
Name; _____
Title: _____

ACKNOWLEDGMENT

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, _____, a Notary Public, 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)

ACKNOWLEDGMENT

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, _____, a Notary Public, 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
TO
MEMORANDUM OF GROUND LEASE
(T5-T6)

Legal Description of Real Property

Real Property in the City of Oakland, County of Alameda, State of California, described as follows:

LOT 2, AS SHOWN ON PARCEL MAP 10430, FILED MARCH 06, 2018 IN MAP BOOK 338, PAGES 65-67, ALAMEDA COUNTY RECORDS.

EXCEPTING THEREFROM THOSE PORTIONS OF THE ELEVATIONS BELONGING TO STG CITY SQUARE, LLC, A DELAWARE LIMITED LIABILITY COMPANY AS SET FORTH IN PLAT ATTACHED TO GRANT DEED RECORDED JANUARY 25, 2018 AS INSTRUMENT NO. 2018014706 OF OFFICIAL RECORDS.

APN: 002-0097-039 and 002-0097-040

