



Edwin M. Lee, Mayor  
Philip A. Ginsburg, General Manager

**Date:** July 2, 2015

**To:** Recreation and Park Commission  
Operation Committee

**Through:** Philip A. Ginsburg, General Manager  
Dana Ketcham, Director of Property Management and Reservations

**From:** Andrew Smothers, Property Management

**Subject:** Proposed Lease between the City and Uptown Parking Corporation for the operation of Union Square Parking Garage and portions of the surface of Union Square Plaza, and continued provision of supplemental maintenance services.

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**Agenda Item Wording:**

Discussion and possible action to approve a resolution recommending that the Board of Supervisors approve a new ten year lease between the City and Uptown Parking Corporation for the operation of Union Square Garage, management of two cafe buildings on Union Square Plaza, and continued provision of supplemental maintenance services.

**Background:**

Uptown Parking Corporation (“Uptown”) is a non-profit entity created in the 1950’s to assist the City in financing and managing the Sutter-Stockton and Union Square garages. On May 5, 1959 the City and Uptown entered into a Lease (the “Original Lease”) for the operation of the Union Square Parking Garage.

On May 1, 1999, the City and County of San Francisco, on behalf of the Recreation and Park Department (“RPD”), entered into a new lease (the “Second Lease”) with the Uptown for the purpose of issuing debt in the amount of \$19 million to fund the renovation of Union Square Park and the parking garage. Pursuant to the Second Lease, Uptown was also required to provide certain supplemental maintenance services to Union Square Park in addition to maintenance services provided by the City, as provided in a separate supplemental maintenance agreement between City and Uptown. In 2002, Uptown entered into a subcontract with MJM Management Group, Inc. (“MJM”) for the provision of such services.

On February 20, 2003, the City and County of San Francisco, on behalf of RPD, entered into a separate lease (the “Plaza Lease”) with Uptown for the purpose managing certain premises on Union Square Plaza for the operation of a café by a restaurant subtenant.

On December 15, 2011, the Recreation and Park Commission (“Commission”) approved RPD’s participation in a San Francisco Municipal Transportation Agency (“SFMTA”) debt issuance. The issuance included sufficient funds to repay the outstanding debt held by Uptown and closed in July 2012. Pursuant to Section 49 of the Second Lease, the Second Lease would be terminated 90 days after such repayment. RPD and Uptown negotiated a short term extension of the contract which was approved by the Commission and Board of Supervisors in summer of 2012. That extension allowed Uptown to continue to operate the garage while a new lease was negotiated and finalized.

On May 16, 2013, the Recreation and Park Commission recommended that the Board of Supervisors approve a ten –year lease with Uptown for the Union Square Parking Garage. That particular proposed lease, however, contemplated the garage premises only and did not address the café premises or Uptown’s responsibilities for Union Square Plaza. The Department now desires to include the designated premises under the existing Plaza Lease in order to establish one comprehensive “Master Lease” that wholly captures the scope of responsibilities for the garage, the café premises and plaza maintenance obligations.

**Proposed Lease Terms**

All material lease terms are identical to those approved on May 16, 2013 except the addition of the two buildings on the plaza and the related rent, and the incorporation of the supplemental maintenance agreement described in Section 9.9 and Exhibit F.

<b>Initial Lease Term</b>	Ten years
<b>Extension Term</b>	Two (2) possible five-year extensions at City's option with respect to (i) the entire premises and supplemental services, or (ii) the garage premises and the supplemental services, or (iii) only the garage premises.
<b>Use</b>	Operation of an off-street parking facility and management of certain premises on the Plaza for the operation of café.
<b>Rent</b>	Garage Net Revenue and Café Gross Rents.
<b>Annual Operating Budget</b>	Uptown's annual operating budget, including administrative and operating expenses, must be approved each year by the SFMTA.
<b>Capital Account</b>	The lease will create a capital account and require Uptown to fund it with \$250,000 per year from garage gross receipts.

<b>Excess Revenue</b>	All revenue beyond those funds needed to fund Uptown's operating costs and the monthly deposit into the Capital Account are to be transferred to RPD. Uptown shall receive no management fee for its operation of the Garage,
<b>Supplemental Services</b>	Since 2002, Uptown has subcontracted with MJM Management Group for the provision of supplemental maintenance services at Union Square Plaza. In 2012, the Recreation and Park Commission approved a five (5) year extension with MJM. The new lease retains these important janitorial, security and event logistics services without a gap in service.
Café Sublease	In order to provide sufficient time for Uptown to enter into a new sublease of the café premises, Department staff recommends that Commission approve an initial month-to-month café sublease on the terms of the existing café sublease, revised to be subject to the new lease, for a term not to exceed twelve (12) months (the “Initial Short Term Café Sublease”)

**Staff Recommendation:**

Department staff recommends that the Commission recommend for approval the lease with Uptown Parking Corporation for the Union Square Parking Garage and certain surface areas in Union Square Plaza consistent with the terms of the lease, and approve the Initial Short Term Café Sublease.

**Supported By**

Department management and staff

San Francisco Municipal Transportation Agency

The Union Square Business Improvement District

**Opposed By**

None known at this time

## **Attachments**

Lease Agreement

## **Contact**

Andrew Smothers  
Property Manager  
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UNION SQUARE PUBLIC PARKING GARAGE AND CAFÉ PREMISES LEASE

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND

THE CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION

Dated as of \_\_\_\_\_

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**EXHIBITS**

EXHIBIT A – Garage Premises

EXHIBIT B – Café Premises

    Exhibit B-1 – Overall Premises Map

    Exhibit B-2 – Primary Café Premises and Café Arbor

    Exhibit B-3 – Café Annex

    Exhibit B-4 – Veranda Seating Area

    Exhibit B-5(1) and Exhibit B-5(2) – Additional Storage Area

    Exhibit B-6 – Common Area

    Exhibit B-7(1) – Garage Storage Area – Primary Storage Area #1

    Exhibit B-7(2) – Garage Storage Area – Primary Storage Area #2

EXHIBIT C – Park Rules and Regulations

EXHIBIT D – Insurance Requirements

EXHIBIT E – Standard Commercial Real Estate Business Terms

EXHIBIT F – Supplemental Park Maintenance Services

## UNION SQUARE PUBLIC PARKING GARAGE AND CAFÉ PREMISES LEASE

This lease ("Lease"), dated for convenience as of \_\_\_\_\_, 2015, is by and between the City and County of San Francisco, a California municipal corporation ("City") acting by and through the Recreation and Park Commission, as landlord, and the City of San Francisco Uptown Parking Corporation, a California nonprofit public benefit corporation ("Tenant"), as tenant, who agree as follows:

### 1. BASIC LEASE INFORMATION

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

Lease Reference Date:	_____, 2015
City (Landlord):	City and County of San Francisco, a municipal corporation
City Designee (General Manager):	Unless otherwise required by City's Charter or by applicable ordinance, this Lease or other applicable law, all rights, powers and privileges of City under this Lease may be exercised, on behalf of City, by the General Manager of City's Recreation and Park Department (the "General Manager"), or his or her designee, as specified in writing.
RPD or Department:	City's Recreation and Park Department is sometimes referred to in this Lease as "RPD" or the "Department."
Tenant:	City of San Francisco Uptown Parking Corporation, a California non-profit public benefit corporation.
Union Square Park:	The area within the City and County of San Francisco commonly known as Union Square Park, bordered by Geary Street, Powell Street, Post Street and Stockton Street. Union Square Park is under the jurisdiction of City's Recreation and Park Commission.
Garage Building:	That certain garage building located in the City and County of San Francisco, commonly known as the Union Square Garage, bordered by Geary Street, Powell Street, Post Street, and Stockton Street and more particularly described in the attached <u>Exhibit A</u> (the "Garage Building").
Café Buildings:	The buildings located on the Stockton Street side of Union Square Park, as shown on <u>Exhibit B-1</u> , referred to herein as the "Stockton Street Pavilion Building" and the "Stockton Street Pavilion Annex Building," and the buildings located on the Powell Street side of Union Square Park, as shown on <u>Exhibit B-1</u> , referred to herein as the "Powell Street Pavilion Building" and the "Powell

	<p>Street Pavilion Annex Building”, and collectively as the “Café Buildings.”</p> <p>The Garage Building, Stockton Street Pavilion Building, Stockton Street Pavilion Annex Building, Powell Street Pavilion Building, and Powell Street Pavilion Annex Building are sometimes collectively referred to as the “Buildings.”</p>
<p>Premises (Section 3):</p>	<p>The Premises are comprised of the Garage Premises and the Café Premises, described as follows:</p> <p>The “Garage Premises” are comprised of the Union Square Garage. (See <u>Exhibit A-1</u> for a more detailed description.) The Garage Premises include two storage rooms used in connection with the operation of the Café Premises.</p> <p>The “Café Premises,” other than the Garage Storage Area, are generally depicted on <u>Exhibit B-1</u>. The Café Premises are comprised of the following:</p> <ul style="list-style-type: none"> <li>(i) the “Primary Café Premises,” comprised of approximately 1,012 square feet of space in the Stockton Street Pavilion Building, as generally depicted and labeled “Primary Café Premises” on <u>Exhibit B-2</u>;</li> <li>(ii) the “Café Arbor,” comprised of space in the Stockton Street Pavilion Annex Building, as generally depicted and labeled “Café Arbor” on <u>Exhibit B-2</u>;</li> <li>(iii) the “Café Annex,” comprised of approximately 420 square feet of space in the Powell Street Pavilion Annex Building, as generally depicted and labeled “Café Annex” on <u>Exhibit B-3</u>;</li> <li>(iv) the “Veranda Seating Area,” comprised of space located adjacent to the Café Annex, as generally depicted and labeled “Veranda Seating Area” on <u>Exhibit B-4</u>;</li> <li>(v) the “Additional Storage Area,” comprised of approximately 75 square feet of space in the Powell Street Pavilion Building, as generally depicted and labeled “Additional Storage Area” on <u>Exhibit B-5(1)</u> and <u>Exhibit B-5(2)</u>; and</li> <li>(vi) the “Garage Storage Area,” comprised of (i) a storage room comprised of approximately 568 square feet of space in the Garage Premises, located under the Primary Café Premises, as generally depicted and labeled “Primary Storage Area #1” on <u>Exhibit B-7(1)</u>, and (ii) a storage room comprised of approximately 285.5 square feet of space in the Garage Premises, located under the Café Annex, as generally depicted and labeled</li> </ul>

	“Primary Storage Area #2” on <u>Exhibit B-7(2)</u> .
Common Area (Section 3):	Tenant shall have the non-exclusive right to use the area in the Powell Street Pavilion Annex Building outlined and labeled “Common Area” on <u>Exhibit B-6</u> (the “Common Area”), including, without limitation, the restroom and kitchenette.
Term (Section 4):	Ten (10) years, commencing on the Commencement Date and expiring on the Expiration Date, subject to any extension or early termination specifically provided by the terms of this Lease.  Commencement Date: _____, 2015.  Expiration Date: The date immediately preceding the tenth anniversary of the Commencement Date, or the last date of an Extended Term, as applicable
Extended Term (Section 4.2):	City has the option to extend the Term of this Lease for two periods of five (5) years each (each, an “Extended Term”), with respect to (i) the entire Premises and Supplemental Park Maintenance Services, or (ii) the Garage Premises and the Supplemental Park Maintenance Services, or (iii) only the Garage Premises, subject to Tenant's right to void the extension, as provided in <u>Section 4.2</u> .
Termination Right (Section 4.3):	City has the option, at any time upon ninety (90) days' written notice, to terminate this Lease early (i) in its entirety, or (ii) with respect to the Café Premises and the Supplemental Park Maintenance Services, or (iii) only with respect to the Café Premises, in accordance with the provisions of <u>Section 4.3</u> . Tenant has the option to terminate this Lease early in its entirety at any time upon one hundred eighty (180) days' written notice, in accordance with the provisions of <u>Section 4.3</u> .
Rent (Article 6):	Tenant shall pay as Rent hereunder:  (i) Garage Gross Receipts, in accordance with the provisions of <u>Section 6.1</u> and <u>Section 10.3</u> below; and  (ii) Café Gross Rent plus Additional Charges, if applicable, less Café Sublease Management Expenses, subject to the Sublease Management Expense Cap, in accordance with the provisions of <u>Section 6.1</u> and <u>Section 10.4</u> below.
Use (Article 8):	The Garage Premises shall be used for the operation of an off-street public parking facility, provided that the Garage Storage Area shall be used in connection with the operation of a café in the Café Premises.  The Café Premises shall be used for a café operated in a first-class manner as more particularly described in <u>Section 8.2</u> and <u>Section 9.6</u> below.
Garage Operator (Section 9.4):	The Parties acknowledge that Tenant does not intend to

	operate the Garage Premises but will be responsible for such operation. Tenant shall engage, as a professional operator, a person, firm or corporation with a staff experienced in the management and operation of public parking facilities for the operation of the Garage Premises, as provided in <u>Section 9.4</u> below.
Café Premises Subtenant (Section 8.2):	The Parties acknowledge that Tenant does not intend to operate the Café Premises but will be responsible for such operation. Tenant shall be responsible for subleasing the Café Premises to a café operator to operate the Café Premises, as provided in <u>Section 8.2(a)</u> , <u>Section 9.6</u> , and <u>Section 19.3</u> below.
Notice Address of City:	<p>Recreation and Park Department  501 Stanyan Street  San Francisco, CA 94117  Attention: Director of Administration and Finance</p> <p>With a copy to:  Office of the City Attorney  City Hall, Room 234  1 Dr. Carlton B. Goodlett Place  San Francisco, CA 94102  Attn: Real Estate/Finance Team</p> <p>And a copy to:  San Francisco Municipal Transportation Agency  1 South Van Ness Avenue, ____ Floor  San Francisco, CA 94102  Attn: Parking Division</p>
Address for Delivery of Insurance Certificates:	<ol style="list-style-type: none"> <li>1. Hard (paper) copy to first Notice Address listed above.</li> <li>2. Electronic copy to <a href="mailto:andrew.smothers@sfgov.org">andrew.smothers@sfgov.org</a></li> </ol> Certificates must clearly indicate the Premises for which the certificate is issued
Key Contact for City:	Director of Property, Recreation and Park Department; (415) 831-2700
Notice Address for Tenant:	Uptown Parking Corporation Corporation Manager 444 Stockton Street San Francisco, CA 94108
Key Contact for Tenant:	Corporate Manager 444 Stockton Street San Francisco, CA 94108 Phone: (415) 982-7275
Existing Leases:	The existing leases of the Premises shall terminate as of the commencement of this Lease, as provided in <u>Section 4.4</u> below.
Initial Short-Term Café Sublease:	City has approved an initial month-to-month Café

	Sublease on the terms of the Existing Café Sublease, revised to be subject to this Lease, for a term not to exceed twelve (12) months, as provided in <u>Section 19.3</u> below.
Supplemental Park Maintenance Services (Section 9.9 and Exhibit F):	Tenant shall assist in the maintenance of the Park as a public recreational open space and public plaza for the benefit and convenience of the public, as provided in <u>Section 9.9</u> and <u>Exhibit F</u> .

## 2. DEFINITIONS

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

“**Additional Charges**” means any and all real and personal property taxes, possessory interest taxes, insurance premiums and other costs, impositions and expenses described in hereof or otherwise payable by Tenant under this Lease.

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

“**Alterations**” means any alterations, installations or additions to any Improvements or to the Premises, including but not limited to any interior alterations or renovations.

“**Annual Comprehensive Budget**” has the meaning given in Section 10.2(a) hereof.

“**Annual Supplemental Park Budget**” has the meaning given in Exhibit F hereto.

“**Annual Supplemental Park Work Plan**” has the meaning given in Exhibit F hereto.

“**Assignment**” has the meaning given in Section 19.1 hereof.

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

“**Basic Lease Information**” means the information with respect to this Lease summarized in Article 1 hereof.

“**Café Gross Rent**” means any and all revenues collected or generated by Tenant in connection with the Café, including, without limitation, all revenue collected by Tenant under a Sublease of the Café Premises (including, without limitation, base rent and percentage rent payable by the Café Subtenant).

“**Café Gross Rent Deposit Account**” has the meaning given in Section 10.4(a) hereof.

“**Café Rent**” has the meaning given in Section 6.1(c) hereof.

“**Café Sublease Management Expense Report**” has the meaning given in Section 10.4(b) hereof.

“**Café Sublease Management Expenses**” means the cost of Tenant’s management of any Café Sublease and maintenance of the Café Premises described in the Initial Café Sublease Management Budget or the Annual Café Sublease Management Budget approved by the Department and SFMTA or otherwise approved by the Department and SFMTA in writing. Café Sublease Management Expenses may include, but are not limited to, all costs and expenses of the management of any Café Sublease and maintenance of Café Premises, all taxes, including possessory interest taxes and similar charges required to be paid by Tenant, all costs of providing

utilities, capital maintenance, insurance, legal bookkeeping and auditing costs, and costs of complying with any order of any governmental body required in connection with the use and operation of the Café Premises, Notwithstanding the foregoing, Café Sublease Management Expenses shall not include any costs that arise with respect to the Garage Premises (other than the Garage Storage Area that is part of the Café Premises) or the Supplemental Park Maintenance Services or in connection with the repayment of the Bonds, any costs in connection with the operation of the Café Premises paid or payable by Café Subtenant or any other person or entity, any costs arising from the negligence or intentional misconduct of Tenant, or any charges or allowances for depreciation or amortization of Tenant's interest in the Café Premises.

“**Café Sublease Management Expenses Cap**” has the meaning given in Section 10.2(d) hereof.

“**Café Subtenant**” means any café operator for the Café Premises selected by Tenant and approved in writing by Landlord, who enters into a sublease of the Café Premises.

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

“**Commencement Date**” means the date on which the Term of this Lease commences as described in Section 4.1 hereof.

“**Commission**” means the City and County of San Francisco Recreation and Park Commission or its successor.

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

“**Department**” means City's Recreation and Park Department.

“**Department Facilities**” means any and all surface and subsurface facilities owned by the City and now or later located in, under, on or about the Premises, including, without limitation, sidewalks, plazas and street improvements.

“**Effective Date**” means the date on which this Lease becomes effective pursuant to Section 28.1 hereof.

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

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

“**Environmental Laws**” means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

“**Event of Default**” means any one of the events of default described in Section 20.1 hereof.

“**Existing Café Lease**” has the meaning set forth in Section 4.4 hereof.

“**Existing Café Sublease**” means that certain sublease, dated February 20, 2003, as amended, between Tenant, as Sublessor, and Emporio Rulli, Inc., as Sublessee, pursuant to which Existing Café Subtenant subleases the Café Premises from Tenant. The Existing Café Sublease is subject to the terms and conditions of the Existing Café Lease, as master lease.

“**Existing Café Subtenant**” means Emporio Rulli, Inc., as Sublessee under the Existing Café Sublease.

“**Existing Garage Lease**” has the meaning set forth in Section 4.4 hereof.

**“Expiration Date”** means the date on which the Term of this Lease expires as described in Section 4.1 hereof.

**“Fiscal Year”** means May 1<sup>st</sup> through April 30th.

**“Garage Gross Receipts”** means all amounts received and receivable from all sales and business conducted in, from or attributable to the Garage Premises by Tenant, or by any other person, firm, partnership or corporation conducting sales or performing services of any sort in, upon, or from any part of the Garage Premises as a sublessee, licensee, concessionaire, contractor or subcontractor of Tenant, including amounts received from orders or bookings for rental or sales of merchandise made by telephone, mail or online or through tour operators or third parties.

**“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” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”, also commonly known as the “Superfund” law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any “hazardous waste” listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

**“Hazardous Material Claims”** means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the Department, their Agents, or the Premises or any Improvements, 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 Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

**“Improvements”** means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises by or on behalf of Tenant pursuant to this Lease, including, without limitation, any trailers, mobile homes, permanent tent facilities, signs, billboards or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping.

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

**“Indemnified Parties”** means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Department, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.

**“Initial Cafe Sublease Management Budget”** has the meaning given in Section 10.2(c) hereof.

**“Initial Short Term Café Sublease”** shall have the meaning given in Section 19.3 hereof.

**“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 thereof 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.

“**Invitees**” when used with respect to Tenant means the clients, customers, invitees, guests, members and licensees, assignees and sublessees of Tenant.

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

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

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

“**Losses**” means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs.

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

“**Release**” when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Tenant, or in, on, under or about the Premises or Department Facilities or any portion thereof.

“**Remediation**” when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material located in, on, under or about the Premises or Department Facilities or which have been, are being, or threaten to be Released into the environment. Remediate 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 the Rent specified in the Basic Lease Information and all other charges payable hereunder, whether or not any such amounts are specifically characterized as rent.

“**RPD**” means City’s Recreation and Park Department.

“**SFMTA**” means the San Francisco Municipal Transportation Agency.

“**Sublease**” has the meaning given in Section 19.1 hereof.

“**Supplemental Park Maintenance Services**” means the supplemental maintenance services Tenant is required to provide to Union Square Park pursuant to Section 9.9 below.

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

“**Tenant**” means the Party identified as Tenant in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word “itself,” the term Tenant shall also refer to the successors and assigns of Tenant’s interests under this Lease, provided that the rights and obligations of Tenant’s successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

“**Term**” means the term of this Lease as determined under Section 4.1, Section 4.2 and Section 4.3 hereof.

“**Transfer**” means any Assignment or Sublease.

“**Transferee**” means any recognized assignee of any part of Tenant's leasehold interest hereunder or any recognized sublessee of any portion of the Premises, pursuant to a Transfer that complies with Article 16 hereof.

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

### **3. PREMISES; CAFÉ COMMON AREAS**

**3.1. Premises.** Subject to the terms, covenants and conditions of this Lease, City leases to Tenant and Tenant leases from City the Garage Premises and the Café Premises. The Garage Premises and the Café Premises are sometimes referred to collectively in this Lease as the “Premises.” Any square footage stated in this Lease with respect to the Premises or any part thereof is an estimate only, and City does not warrant it to be correct. Tenant shall have the non-exclusive right to use, together with City and other tenants or occupants of the Powell Street Pavilion Annex Building and Powell Street Pavilion Building, the area outlined and labeled “Common Areas” on **Exhibit B-6** (the “Common Area”), including, without limitation, the restroom and kitchenette (collectively, the “Common Area” or “Café Common Area”), and the non-exclusive right of access to and from the Premises and Café Common Area through the exterior portions of the Union Square Park required for such access.

#### **3.2. Rights Reserved to City.**

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

(a) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct any Department Facilities, any common area and any part of the Premises or the Premises systems;

(b) The right to grant future easements and rights of way over, across, under, in and upon the Premises as City shall determine to be in the public interest, provided that any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right of way;

(c) Without limiting the generality of Section 3.2(b) above, the right to grant future easements, rights of way, permits and/or licenses over, across, under, in and upon the Premises for the installation, operation, maintenance, repair and removal of (i) equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs and/or advertising kiosks, provided that any such easement or right-of-way shall not materially interfere with Tenant's use of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right of way; and

(d) All rights of access provided for in Article 21 below.

Without limiting the foregoing, City shall have the right, in City's sole discretion and from time to time, (i) to make changes to the Café Common Area, (ii) to close temporarily any of the Café Common Area for maintenance or safety purposes, (iii) to install, use, maintain, repair, alter, relocate or replace any facilities within the Café Common Area, and (iv) to do and perform

such other acts and make such other changes in, to or with respect to the Café Common Area and Union Square Park as City may, in its sole discretion, deem to be appropriate or prudent.

**3.3. Café Premises Subject to Public and Municipal Uses and Rules.** Tenant acknowledges that the property of which the Café Premises are a part constitutes a portion of City's public park system, which City holds for public and municipal use. Tenant's rights under this Lease shall be subject and subordinate to City's use of the Premises for such purposes. However, so long as there is no Event of Default or Unmatured Event of Default on the part of Tenant outstanding hereunder and subject to the terms and conditions of this Lease, City shall use its best efforts to avoid interfering with Tenant's quiet use and enjoyment of the Café Premises. Tenant shall comply with RPD's rules and regulations relating to its park property, as the same may change from time to time (the "Rules and Regulations"). A copy of the current Rules and Regulations can be downloaded from the web address provided in the attached **Exhibit C**.

#### **4. TERM**

**4.1. Initial Term.** The Premises are leased for a term (the "Term") commencing on the date (the "Commencement Date") that is the later of the commencement date specified in the Basic Lease Information, or the date this Lease becomes effective pursuant to Section 28.1 below. The Term of this Lease shall end on the Expiration Date specified in the Basic Lease Information, unless extended or sooner terminated pursuant to the provisions of this Lease.

**4.2. Extension Options.** The City shall have the right to extend the Term (i) in its entirety, or (ii) with respect to the Garage Premises and the Supplemental Park Maintenance Services only, or (iii) with respect to the Garage Premises only, in its sole discretion, for two successive additional terms of five (5) years each (each, an "Extended Term"), commencing upon the date immediately following expiration of the initial Term or the expiration of the initial Extended Term, as applicable, upon the following terms and conditions. The City shall exercise its right to extend the Lease, if at all, by delivering written notice of extension (the "Exercise Notice") to Tenant not less than ninety (90) days before the Expiration Date of the current Term, which Exercise Notice shall specify whether the option is being exercised for the entire Lease or the Garage Premises only. Notwithstanding the foregoing, Tenant shall have the right to void City's exercise of the option to extend the Term of the Lease for an Extended Term by delivering to City a written notice of rejection within thirty (30) days after receipt of City's Exercise Notice, and in such event this Lease shall expire on the Expiration Date of the then Term. All terms and conditions of this Lease shall remain the same for the Extended Term, except and to extent the parties agree to an amendment in writing, provided that City shall not have the option to extend the Term of this Lease beyond the second Extended Term, and provided further that if this Lease is extended only with respect to the Garage Premises (or only with respect to the Garage Premises and the Supplemental Park Maintenance Services), (i) Tenant shall surrender the Café Premises to City in the condition required hereunder prior to the commencement of the applicable Extended Term and shall vacate the Garage Storage Area and (ii) effective as of the commencement date of such Extended Term the term "Premises," as used in this Lease, shall apply only to the Garage Premises. All references in this Lease to the Term shall include the Extended Term(s), if applicable.

**4.3. Early Termination Rights.** Notwithstanding anything to the contrary herein, City shall have the right to terminate this Lease for convenience (i) in its entirety, or (ii) with respect to the Café Premises and the Supplemental Park Maintenance Services, or (iii) with respect to the Café Premises only, upon not less than ninety (90) days' written notice to Tenant specifying the early termination date and whether the termination is for the entire Lease or the Café Premises and the Supplemental Park Maintenance Services or the Café Premises only. The right to terminate for City's convenience shall be exercised by the General Manager at the

direction of the Recreation and Park Commission. Further, upon written notice to Tenant, City, through the General Manager, shall have the right to terminate this Lease at any time for good cause, including but not limited to Tenant's default of any provision of this Lease, as provided in Section 20.3, below. Tenant shall have the right to terminate this Lease in its entirety for convenience upon not less than one hundred eighty (180) days' written notice to City specifying the early termination date. Upon termination of the Lease in part or in its entirety hereunder, Tenant shall assign to City all subleases and vendor agreements in effect with respect to that portion of the Premises for which the Lease is being terminated, as directed by the City in writing. If this Lease is terminated in whole or in part Tenant shall surrender the Premises (or applicable portion of the Premises) to City as of the date of such termination in the condition required hereunder, and if such termination is with respect to part, but not all, of the Premises, as provided above, then effective as of the date of such partial termination the term "Premises," as used in this Lease, shall apply to the portion of the Premises for which this Lease was not terminated.

**4.4. Termination of Existing Leases.** City and Tenant acknowledge that Tenant is presently in possession of the Garage Premises pursuant to a lease, dated May 1, 1999, between City, as landlord, and Tenant, as tenant, as amended (the "Existing Garage Lease"), and is presently in possession of the Café Premises pursuant to a lease, dated February 20, 2008, between City, as landlord, and Tenant, as tenant, as amended (the "Existing Café Lease"). Notwithstanding the provisions of the Existing Garage Lease or the Existing Café Lease to the contrary, the Existing Garage Lease and the Existing Café Lease shall terminate as of the commencement of the Term of this Lease; provided, however, that Tenant shall not be relieved of any of its obligations under the Existing Garage Lease or the Existing Café Lease accruing prior to such termination of the Existing Garage Lease and Existing Café Lease, and Tenant's indemnification obligations under the Existing Garage Lease and Existing Café Lease shall survive the termination of the leases with regard to events occurring prior to such termination.

**4.5 Bond Financing.** City and Tenant acknowledge that the San Francisco Municipal Transportation Agency ("SFMTA"), on behalf of RPD, has issued revenue bonds secured by the revenue from the operation of the Garage, and Tenant's prior parking revenue bonds, if any, were redeemed. Tenant represents and covenants that its only activities and operations are and will be operating the Premises as provided in this Lease and that it shall not undertake in any material respect any activities that are not contemplated by the terms of this Lease, including but not limited to contractual obligations or any obligations for borrowed money or indebtedness. Tenant shall not permit or otherwise allow any portion of the Premises that have been financed or refinanced with proceeds of the SFMTA revenue bonds to be used by or for the benefit of any purpose other than general public use (i.e., commercial purposes), including but not limited to any lease or sublease thereof without the expressed written consent of the RPD. Tenant shall not enter into or explore entering into bonded indebtedness (or any other similar indebtedness) using the Premises or any part thereof or Garage Gross Receipts as security without the express written approval of the General Manager. Tenant shall not engage the services (either through a written or oral contract) of any bond counsel, disclosure counsel, financial advisors, underwriters, continuing disclosure counsel or any other professionals in contemplation of such indebtedness without the express written approval of the General Manager, including the City Attorney with respect to legal counsel (and the Mayor's Office of Public Finance with respect to garages located under property that is under the jurisdiction of the Recreation and Park Commission).

Notwithstanding any other provisions of this Lease, Tenant shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from federal gross income of interest on any SFMTA bonds or other indebtedness relating to the Premises, including, without limitation, the preparation and filing of any statements required to be filed by it in order to maintain such exclusion.

## 5. SUITABILITY; ACCEPTANCE

**5.1 As Is; Disclaimer of Representations.** Tenant acknowledges and agrees that the Premises are being leased and accepted in their "as is" condition, without representation or warranty of any kind, and subject to all applicable laws, rules and ordinances governing their use, occupancy and possession. Tenant represents and covenants to City that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's intended use. Costs associated with any inspection of the Garage Premises by Tenant shall be paid for as a City pre-approved Garage Operating Expense. Tenant has determined, based solely on its own investigation, that the Premises are suitable for Tenant's business and intended use. Tenant acknowledges and agrees that neither City nor any of its agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises the physical or environmental condition of the Premises or the Buildings, the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

**5.2 Accessibility Inspection Disclosure.** California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises have not been inspected by a CASp.

## 6. PAYMENTS BY TENANT

### 6.1. Rent.

**(a) Generally.** During the Term of this Lease, Tenant shall account for all Garage Gross Receipts, Garage Operating Expenses, Café Gross Rent, Café Additional Charges, and Café Sublease Management Expenses under the terms and conditions set forth below, and shall pay Rent for the Premises to City at the times and in the manner provided in this Lease. Rent shall be payable in cash or by good check, cashier's or certified check, wire transfer, ACH, or EFT to the City and County of San Francisco, without prior demand and without any deduction, setoff or counterclaim whatsoever, at: Recreation and Park Department, McLaren Lodge Annex, San Francisco, California 94117 (Reference Rec & Park Union Square Café Lease), or such other place as City may designate in writing. If Tenant pays by check and such check is not honored, then City may require Tenant to make all future payments by cashier's check.

**(b) Rent for Garage Premises.** Commencing on the Commencement Date and continuing throughout the Term, Tenant shall pay Rent for the Garage Premises in an amount equal to surplus sums from time to time in the Garage Revenue Account in accordance with the provisions of Section 10.3 below.

**(c) Rent for Café Premises.** Commencing on the Commencement Date and continuing throughout the Term, Tenant shall pay Rent for the Café Premises ("Café Rent") in an amount calculated in accordance with the provisions of Section 10.4 below. The Café Rent shall be payable monthly as specified in Section 10.4(a) below.

**6.2. Additional Charges.** Tenant shall pay to City any all additional charges and other amounts required under this Lease as additional rent. Any such additional charges shall be payable to City at the same place and in the same manner as the Café Rent is payable. City shall

have the same remedies for a default in the payment of any additional charges as for a default in the payment of rent.

**6.3. Recoverable Costs.** To the extent a Garage Operating Expense (as defined below) results from the wrongful acts or omissions of an operator of the Garage Premises engaged by Tenant or of any other third party (a "Recoverable Cost"), Tenant agrees to use reasonable efforts or to assist the City, at City's sole discretion, to recover such amounts from the responsible third party including, if applicable, from an insurer. If Tenant recoups payment of any Recoverable Cost from any operator or other third party, Tenant shall promptly provide City with written notice of such recovery, and such recouped amounts shall be deposited in the Garage Revenue Account, or such other account as City may designate.

## **7. TAXES AND ASSESSMENTS**

### **7.1. Taxes, Assessments, Licenses, Permit Fees and Liens**

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

(b) Tenant agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law when the same become due and payable and before delinquency. To the extent such taxes or other matters relate to the Garage Premises they shall be paid as a City pre-approved Garage Operating Expense.

(c) Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same.

(d) City ordinances require City to report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and Tenant to report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City to enable the City to comply with those requirements.

## **8. USE OF PREMISES**

### **8.1. Use of Garage Premises as Off-Street Public Parking Facility.**

(a) **Generally.** Tenant shall use and continuously occupy the Garage Premises as a public off-street parking facility. The Garage Premises shall be operated for the benefit and convenience of the public, which shall have the right to use the Garage Premises at all times, except as provided below, subject to such rates, charges, hours of operation, regulations and restrictions as may be fixed and established from time to time in accordance with Article 14.

(b) **Vehicle Parking and Capacity/Floor Load.** Tenant shall strictly enforce parking capacity limits of the Garage Premises. Tenant shall make reasonable efforts to ensure that vehicles are parked in designated spaces only. Valet or valet assist parking operations that

park vehicles in aisles, lanes or other areas other than designated as single-vehicle occupancy spaces is prohibited unless expressly authorized in writing by the SFMTA.

(c) **Disabled Persons Parking.** Tenant shall strictly enforce disabled parking restrictions, rules, regulations and laws within the Garage Premises. Tenant shall not cause or allow designated spaces or areas designated for disabled parking to be used for any other purpose, including but not limited to valet or special event parking, and Tenant shall ensure that such spaces and areas are accessible to disabled persons at all times that the Garage Premises are open to the public.

## 8.2. Use and Operation of Café Premises.

(a) **Generally.** The Parties acknowledge that Tenant does not intend to operate the Café Premises but will be responsible for the subleasing the Café Premises to a café operator to operate the Café Premises (the “Café Subtenant”) and will be responsible for enforcing the terms of such Café Premises sublease. The provisions of Section 19.3 below shall apply to the subletting of the Café Premises to the Café Subtenant.

(b) **Permitted Use of Primary Café Premises, Café Arbor and Café Annex.** Tenant cause the Primary Café Premises to be continuously used and occupied as a café providing moderately priced fresh food items including pastries and desserts, sandwiches, soups and salads. Coffee, espresso and other coffee specialty beverages, tea, juice and soft drinks must be available. Beer and wine sales for consumption in the Café Premises shall be permitted, subject to Tenant or Café Subtenant obtaining and keeping in force all required alcoholic beverage sale licenses. The Café Arbor shall be used for seating for the Primary Café Premises, and subject to obtaining necessary health permits, Café Subtenant shall be permitted to operate an espresso coffee cart in the Café Arbor for the sale of fresh roasted coffee, breakfast pastries, grilled panini sandwiches, cold beverages, and other items permitted by City in writing. The Café Annex shall be used to expand the food and beverage operations of the Primary Café Premises, and, subject to obtaining necessary health permits, Café Subtenant shall be permitted to operate an espresso coffee cart in the Café Annex for the sale of fresh roasted coffee, breakfast pastries, grilled panini sandwiches, cold beverages, and other items permitted by City in writing. All food and beverages sold on the Café Premises will be properly prepared and served in compliance with all applicable health and sanitary standards, including, without limitation, all applicable rules, regulations and codes including, without limitation, San Francisco Department of Public Health regulations. The Café Premises shall be operated for the benefit and convenience of the public.

(c) **Use of Seating Areas.** The Café Arbor and the Veranda Seating Area are sometime referred to individually or collectively as the “Outdoor Seating Area” or “Outdoor Seating Areas.” During the hours of operation of the Primary Café Premises or operation of any espresso cart in the Café Arbor, the Café Arbor shall be used for seating for Café Subtenant’s customers. During the hours of operation of the Café Annex, the Veranda Seating Area shall be used for seating for Café Subtenant’s customers. Tenant acknowledges that the Outdoor Seating Area is in a highly visible area in Union Square Park. The furniture, equipment and fixtures used in the Outdoor Seating Area shall be good quality, attractive and in keeping with the image and operation of the Primary Café Premises, the Café Annex, and Union Square Park, and such furniture, equipment and fixtures will require City's prior written approval, at City’s sole discretion. Tenant shall cause the Café Subtenant to repair or replace the furniture used in the Outdoor Seating Area from time to time as required to maintain such furniture in a first class condition. The legs of all furniture used in the Outdoor Seating Area must be capped with rubber or other material approved in writing by City. The tables and chairs in the Outdoor Seating Area shall be configured so that there are walkways and sufficient area for pedestrian and ADA

ingress and egress on either side of the tables and to minimize any potential tripping or other hazards.

**(d) Standards of Operation.** Tenant shall carefully supervise the food and beverage operations at the Café Premises, and shall ensure that the Café Subtenant employs a competent and adequate staff therefor, all of whom shall be the Café Subtenant's employees and none of whom shall be deemed for any purpose whatsoever to be City's employees. Tenant shall ensure that the Café Premises, including the Outdoor Seating Area, is kept free of debris and in a neat, clean, orderly and attractive condition at all times and that garbage, compost and recycling receptacles serving such area are provided and regularly emptied as necessary, and that during Café Subtenant's hours of operation (i) the tables in the Café Premises are free of dishes, utensils, food, debris and spills, and (ii) Café Subtenant provides bussing service in a timely fashion of all of Café Subtenant's products items from tables elsewhere in Union Square Park. Tenant shall cause the Café Subtenant to maintain high standards of sanitation and to maintain the Café Premises at all times in a clean and sanitary manner in compliance with all applicable health and sanitation laws and with any reasonable health and safety guidelines promulgated by City, and to clean with reasonable frequency the interior and exterior surfaces of the windows in the Café Premises. Tenant shall require the Café Subtenant to provide janitorial services to the Café Premises at the Café Subtenant's sole cost and expense and City shall have no responsibility therefor. The minimum and maximum hours of operation of the Café Premises shall be subject to the approval of the General Manager.

**(e) Storage and Prep Areas.** The Garage Storage Area and Additional Storage Area shall be used only to store inventory permitted to be sold in the Primary Café Premises, Café Arbor and Café Annex, and to prepare food items for sale in the Primary Café Premises, Café Arbor and Café Annex.

**(f) Restricted and Prohibited Items.** The sale of newspapers and such items as mugs, aprons, t-shirts and/or other items related to the café and branded with the logo and/or name of the café may be permitted only with the prior written approval of the General Manager or his or her designee, as provided in Section 8.9 below. The sale of lottery tickets, post cards and other merchandise and the operation of vending machines and electronic games is prohibited.

**(g) Special Alcohol Restrictions.** Tenant shall cause Café Subtenant to comply with all regulations of the California Department of Alcoholic Beverage Control. Alcohol served by Café Subtenant must remain in the Café Premises, even if Tenant's or Café Subtenant's ABC (Liquor) license authorizes the sale of beer and wine for consumption off the premises where sold. Tenant shall direct Café Subtenant to avoid over-serving alcoholic beverages to individuals and shall to refrain from serving alcoholic beverages to obviously intoxicated individuals.

**8.3. Limitations on Use.** Tenant's use of the Premises as provided in this Lease shall be in accordance with the following:

(a) Tenant shall not do, bring, or keep anything in or about the Premises that will cause a cancellation of any insurance covering the Premises.

(b) Tenant shall comply with all laws concerning the Premises or Tenant's use of the Premises, including, without limitation, the obligation to alter, maintain, or restore the Premises in compliance and conformity with all laws relating to the condition and shall pay for such Alterations (as a City pre-approved Garage Capital Expenditure, where applicable), use or occupancy of the Premises during the term of this Lease.

(c) Tenant shall not use the Premises in any manner that will constitute waste, nuisance or unreasonable annoyance to owners or occupants of adjacent properties.

(d) Tenant shall not do anything on the Premises that will cause damage to the Premises.

(e) Tenant shall not allow or permit any use of the Premises (or any portion thereof) that will adversely affect the tax-exempt status of SFMTA revenue bonds issued to finance or refinance the Premises.

**8.4 No Unlawful Uses, Nuisances or Waste.** Without limiting the foregoing, Tenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Tenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Tenant shall not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises, or on or about the Buildings, except identification signs in a location and size and design approved by City in its sole discretion.

## **8.5 Advertising**

(a) **Rental of Advertising Space.** City may direct Tenant to rent space on walls and structures the Garage Building and about the Premises at the rates, charges and in the locations determined appropriate for the display of commercial advertisements and public information (“Advertising”). City also reserves the right itself to rent space for Advertising on the Garage Premises as the City may determine to be appropriate. Whether the placement of advertising is administered by Tenant or City, the City shall receive all revenues from such rental of advertising space. The City may include the rental of advertising space in any advertising program administered on behalf of the City by a third party, and Tenant shall assist and cooperate with any vendor authorized by the City to place Advertising on the Garage Building and about the Garage Premises.

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

(c) **Prohibition of Alcoholic Beverage Advertising in Garage Premises.** Tenant shall not cause or allow to be displayed any general advertising of alcoholic beverages on the Garage Premises, in accordance with San Francisco Administrative Code Section 4.20, and as that code may be amended. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product in any general advertising sign. This advertising prohibition does not apply to business signs and displays allowed under San Francisco Planning Code Section 602.3, and as that code may be amended. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health

hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

**(d) Other Advertising Restrictions.** Tenant shall comply with any other restrictions or regulations on advertising on City property enacted prior to the Commencement Date of this Lease.

**8.6 Litigation and Legal Expenses.** Tenant shall not commence litigation concerning any matter concerning or touching this Lease, the Premises or Buildings, including but not limited to litigation concerning any subtenant or sublessee, without the express written authorization of the City. Tenant shall provide City with written reports as requested by the City concerning the status and costs of any litigation concerning or touching this Lease, the Premises or Buildings, including but not limited to litigation concerning any subtenant or sublessee. Tenant shall discontinue and resolve any third party litigation concerning or touching this Lease, the Premises or Buildings, including but not limited to litigation concerning any subtenant or sublessee, as directed by the City.

**8.7 Public Transit Information.** Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant or others employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises, and encouraging use of such facilities. Costs incurred in connection therewith with respect to the Garage Premises shall be a Garage Operating Expense.

## **8.8 Signs**

**(a)** Tenant shall erect and maintain such signs, notice, graphics, advertisement, awning, banner, or other exterior decoration ("Signs") upon or about the Garage Premises or Garage as may be required by the City.

**(b)** Tenant shall not erect or maintain or permit to be erected or maintained, any Signs upon or about the Garage Premises or on the exterior of the Café Buildings without City's express written consent. Any Sign that Tenant shall be permitted to place, construct and maintain shall comply with all laws, and Tenant shall obtain all permits and approvals required by such laws, including, if necessary, approval of the Art Commission of the City and County of San Francisco. City makes no representation with respect to Tenant's ability to obtain such approvals. If requested by City, Tenant, as an Operating Expense, shall remove any or all Signs placed by it on the Premises at the expiration or earlier termination of this Lease. City shall have the right to use for its Signs, or for Signs placed thereon by others with City's consent, the exterior walls of the Garage Premises.

## **8.9 Additional Operating Covenants**

**(a) General Operating Covenants.** Tenant shall use the Premises continuously for the permitted uses specified in this Lease and shall not allow the Premises to remain unoccupied or unused without City's prior written consent, which City may give or withhold in its sole discretion. Tenant shall use and operate its business on the Premises in a first class and professional manner.

**(b) Recycling and Resource Conservation.** The City of San Francisco has set ambitious recycling and composting goals for City Departments including 75% landfill diversion by 2010 and maximum participation the City's municipal composting program at all City Department locations where there is food service. In addition, the City has recently passed the Food Service Waste Reduction Ordinance (see Section 26.40) which, in part, "Prohibits the

use of polystyrene foam dispensable food service ware and requires the use of recyclable or compostable food service ware by restaurants, retail food vendors, City Departments and the City's contractors and lessees." City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease. City contractors and lessees using any Disposable Food Service Ware shall use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City Facilities and while performing under a City contract or lease unless there is no suitable Affordable Biodegradable/Compostable or recyclable product available as determined by the City Administrator in accordance with Subsection 1604(a). Tenant shall develop a program to work toward a zero waste goal for the Café Premises, including the implementation of a composting system for food waste, packaging and 100% biodegradable supplies whenever practical. Tenant shall submit a recycling and composting plan at commencement of this Lease, and provide an annual report on each anniversary date of this Lease outlining their progress toward meeting the recycling and composting goals described above and their success toward a zero waste goal.

**(c) Americans with Disabilities Act.** Tenant acknowledges that the Americans with Disabilities Act (the "ADA") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Tenant further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Without limiting the provisions of this Lease regarding compliance with Laws, Tenant warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Lease.

**(d) Branded Products.** Tenant shall not use or permit the Garage Operator or Café Subtenant or any other subtenant or licensee under this Lease to use artwork, logos, trademarks or service marks, related to Union Square (collectively "Logo") without the Department's consent. The Logo and any other original works of authorship or designs (including any domain names or website designs, source code, and content) related to the facility, or Tenant's or any Subtenant's or Garage Operator's services or operations in or for the facility ("Works") shall be works for hire under Title 17 of the United States Code, and all copyrights in such Logo and other Works are the City's property. If the Department or Tenant's or any Subtenant's or Garage Operator's use of the Logo or Works creates trademark, service mark or trade dress rights in connection with the Logo or Works, the City shall also have an exclusive and irrevocable right in such trademark, service mark, or trade dress. If any Logo or Works created by Tenant or any Subtenant or Garage Operator or their respective subcontractors under this Lease are not works for hire under federal law, such party hereby assigns all copyrights to such Logo and Works to the City and further agrees to provide any material and execute any documents necessary to effectuate such assignment. The Department shall have the right to pre-approve or disapprove all products that are to receive the Logo, including the use and placement of such Logo on the products.

**(e) Public Relations.** Tenant and City shall use good faith efforts to cooperate on matters of public relations and media responses related to this Lease. Any response to an inquiry by a news or community organization to Tenant regarding this Lease shall include a recommendation to contact the City's contact set forth below or other person designated by City from time to time. Neither Tenant nor City shall issue a press release in regard to this Lease without providing prior notice to the other Party. Nothing in this Agreement shall prohibit City or Tenant from discussing this Agreement in response to inquiries from the public or the press. All media contacts to City will be directed to Sarah Ballard, Director of Policy and Public Affairs, 501 Stanyan Street, San Francisco, CA 94117. Tenant's subleases or other agreements with organizations providing services at the Premises shall include a provision similar to this Section.

(f) **Website Content and Domain Names.** The Department shall have the right to reasonably disapprove the content of any website related to the Premises or the operations thereon.

**8.10 Waiver of Tenantability.** Tenant waives the provisions of California Civil Code Sections 1941 and 1942, or of any law, statute or ordinance now or hereafter in effect, with respect to City's obligations for tenantability of the Premises and Tenant's right to make repairs and deduct the expenses of such repairs from rent.

## **9. MANAGEMENT OF PREMISES AND PARK OPERATIONS AND TENANT ENTITY**

**9.1. Approval of Tenant Bylaws.** Tenant represents and warrants that Tenant will provide City with a true and correct draft of Tenant's corporate bylaws for review and approval by the City within thirty (60) days after commencement of this Lease. Tenant shall provide City with a written request to amend Tenant's bylaws prior to any such amendment. Tenant's corporate bylaws governing the composition, term, duties and responsibilities of Tenant's Board of Directors shall be consistent with best practices for non-profit organizations. Among other matters Tenant's bylaws shall provide for a sufficient number of members to make it likely that the Board of Directors can achieve a quorum at most meetings, provide for regular meeting, provide for members with appropriate background and skills, including at least one member with financial expertise appropriate to the operation of the garage in the Premises, require replacement of member who regularly miss meetings, establish effective standards and procedures to minimize and require disclosure of potential conflicts of interest. Tenant's corporate Board of Directors shall hold regular, effective meetings and properly document the actions of the Board of Directors.

**9.2. Approval of Corporation Staff.** Tenant shall follow hiring guidelines established from time to time by the City outlining a job description and compensation standards of Tenant's employees and staff. City shall provide Tenant with written notice of City's current hiring guidelines.

**9.3. Open Meetings.** All meetings of the Board of Directors of Tenant during the term of this Lease shall be open and shall comply, as nearly as practical, with Chapter 67 of the Administrative Code of the City. A failure to comply with this Section 14 shall, at the option of the City, result in (i) termination of this Lease, (ii) removal of members of the Board of Directors of the Tenant, or (iii) sanctions being imposed. Tenant shall give City written notice of each meeting, including special meetings, of its Board of Directors.

**9.4. Garage Operating Standards.** Except as otherwise specifically provided herein, Tenant shall be responsible for the management and operation of the Garage Premises in accordance with the SFMTA Parking Facility Operation and Management Regulations. In connection with managing and operating the Garage Premises, Tenant shall provide (or require others to provide), such services as may be necessary or appropriate to achieve and maintain first class operating standards (subject to the budget and Garage Operating Expense limitations set forth in this Lease), including, but not limited to , (a) routine and extraordinary repair and maintenance of the improvements, (b) utility services, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and groundskeeping, (e) security services, (f) marketing the Garage Premises, selection of retail subtenants and negotiation of Garage subleases, to the extent allowed by this Lease, (g) enforcement of reasonable rules and regulations for the conduct of persons present on the Garage Premises, (h) collection of parking fees, rents and other receivables and preparation of statements, (i) use reasonable efforts to enforce, as fully as practicable, the compliance by any subtenants or licensees with the terms, covenants and conditions of their subleases or licenses, (j) securing certificates of insurance from subtenants

and persons working on the Garage Premises, and (k) establishing and maintaining books and records and systems of account covering operations of the Garage Premises in accordance with sound accounting practices. When entering into contracts, issuing purchase orders or otherwise arranging for goods or services for the operation of the Garage Premises, Tenant shall attempt to secure the best price reasonably obtainable.

**9.5. Approval of Garage Premises Management Agreement.** During the term of this Lease and any extension, Tenant shall engage, as a professional operator of the Garage Premises, a person, firm or corporation with a staff experienced in the management and operation of public parking facilities (the "Garage Operator"). Tenant shall complete a competitive selection process, identify a proposed operator and submit a written request for consideration and approval by the City at least forty-five (45) days prior to the expiration of existing Garage Operator agreement. Upon failure to submit request within forty-five (45) days, the City shall have the option to enter into an agreement or modify an existing agreement, and assign an Operator as deemed necessary for the continued operations of the garage. Tenant's selection of such Garage Operator shall be subject to City's prior written approval, in accordance with the San Francisco Charter, SFMTA Parking Facility Operation and Management Regulations concerning off-street parking facilities in effect from time to time (the "Parking Facility Operation and Management Regulations"), and Chapters 17 and 21 of the San Francisco Administrative Code, of: (i) the manner in which such Garage Operator is selected, including the bid process and bid documents, (ii) the terms of the contract engaging such Garage Operator, (iii) the identity of the Garage Operator, and (iv) the identity of the Garage Operator's facility manager to be employed at the Garage Premises (the "Facility Manager"). The City shall have the authority at any time to require Tenant to remove the Facility Manager for poor job performance. Tenant shall not amend the approved agreement with such Garage Operator, or permit any assignment of any interest therein, without obtaining City's written consent. The San Francisco Board of Supervisors, by approving this Lease, authorizes the General Manager to approve or reject the above matters without the need for further Board action, so long as, based solely on the opinion of the General Manager, the operating agreement or any changes or modifications thereto does not adversely affect the tax-exempt status of interest on any bonds or other indebtedness relating to the Premises. The Garage Operator's compensation must be based on a fixed periodic fee and the term of the operating agreement, including any renewal periods, must not exceed nine (9) years. Neither Tenant, its manager, nor any member of its board of directors shall have any proprietary, pecuniary or other beneficial interest in the Garage Operator or in those persons or entities that have a controlling interest in the Garage Operator.

**9.6. Café Operating Standards; Approval of Café Sublease.** Except as otherwise specifically provided herein, Tenant shall be responsible for the management and operation of the Café Premises in accordance with the standards set forth in this Lease and in any Café Sublease. Tenant, at its election, shall either manage the Café Premises and negotiate the Café Sublease by its staff or shall engage one or more third-party entities to manage and market the Café Premises. Tenant shall manage the Café Premises, whether directly or indirectly, in a commercially reasonable manner. In connection with managing and operating the Café Premises, Tenant shall enter into a Café Sublease (on terms and conditions approved by City), and provide, as sublessor under the Café Sublease, such services as may be necessary or appropriate to achieve and maintain first class operating standards (subject to the budget and expense limitations set forth in this Lease), including, but not limited to: (a) routine and extraordinary repair and maintenance of the improvements, (b) selection of the Café Subtenant and negotiation of Café Sublease, to the extent allowed by this Lease, (c) collection of rents and other receivables and preparation of statements, (d) use reasonable efforts to enforce, as fully as practicable, the compliance by the Café Subtenant with the terms, covenants and conditions of the Café Sublease, (e) securing certificates of insurance from the Café Subtenant and persons working on the Garage Premises, and (f) establishing and maintaining books and records and systems of account covering enforcement of the Café Sublease in accordance with sound

accounting practices. When entering into contracts, issuing purchase orders or otherwise arranging for goods or services for the operation of the Café Premises, Tenant shall attempt to secure the best price reasonably obtainable.

**9.7 Garage Operator and Café Subtenant Must Abide by Lease Terms.** Tenant shall ensure that the Garage Operator engaged by Tenant for the operation of the Garage Premises and the Café Subtenant selected by Tenant for the operation of the Café Premises shall be aware of the terms and conditions of this Lease and shall abide by the terms, conditions and restriction on the use of, respectively, the Garage Premises and the Café Premises, including but not limited to those set out in Section 8 above.

**9.8 Prevailing Wages.** Certain contracts for activities to be performed on City facilities or services to be provided at City's cost are subject to the provisions of Sections 6.22(E) and 21C.1-21C.8 of the San Francisco Administrative Code (as those sections may be amended, supplemented or replaced), and such sections are incorporated in this Lease by this reference and made a part of this Lease as though fully set forth herein.

**9.9. Supplemental Park Maintenance Services.** In addition to its other rights and obligations under this Lease, Tenant shall assist in the maintenance of the Park as a public recreational open space and public plaza for the benefit and convenience of the public, which shall have the right to use the Park at all times approved by the Commission, by providing certain maintenance, engineering, coordination, safety and support services in close coordination with Department staff. Tenant shall perform its obligations hereunder to maintain and preserve the Park in a first class condition and to assure the enjoyment and safety of the general public. Tenant's maintenance and service rights and responsibilities for the Park under this Lease (the "Supplemental Park Maintenance Services") are more particularly described in Exhibit F, attached hereto and incorporated by reference as though fully set forth herein, and are subject to the terms and conditions of Exhibit F.

## **10. FISCAL DUTIES AND MATTERS**

**10.1. Separate Accounting for Garage and Café Operations.** Tenant acknowledges that the Tenant shall keep separate depository accounts for the Garage operations and for the Café operations, as provided in this Article 10.

### **10.2. Annual Comprehensive Budget/Marketing Plan.**

**(a) Annual Comprehensive Budget.** Tenant will prepare and submit to the City one comprehensive annual operating budget for the Garage Premises and Café Premises (including the Café Sublease and any and all other sublease agreements) ("Annual Comprehensive Budget"); in such line item form as from time to time is approved by the City. Such line item form must include specific entries for professional services to be provided to Tenant in connection with the operation and management of the Garage, including legal and accounting fees, separate line items for the Café Sublease management budget as described in Section 10.2(c), and separate line items for the Annual Supplemental Park Budget (as described in Exhibit F). The Annual Comprehensive Budget, if requested, shall include a marketing plan, and the payment of marketing expenses shall be approved within the approval of the Annual Comprehensive Budget.

Tenant will submit the Annual Comprehensive Budget to the City, by and through SFMTA, for review, revision and written approval or disapproval by the City in a reasonable time to be established by the City but not later than five months (December 1) prior to the date the budget shall be in effect (May 1). City will approve or conditionally approve (with proposed changes) such Annual Comprehensive Budget no later than thirty (30) days (April 1) before the

budget is scheduled to go into effect. Tenant will promptly revise the Annual Comprehensive Budget in accordance with the changes proposed by the City and resubmit such revised Annual Comprehensive Budget for approval or disapproval by the City.

**(b) Garage Operations Consistent with Annual Comprehensive Budget.**

Tenant will operate the Garage Premises within the approved Annual Comprehensive Budget both as to overall amount budgeted and within the maximum amount established for each budget line item, and shall use diligent, good faith efforts to inform City at the earliest possible date if Tenant anticipates that it will request approval to exceed the Annual Comprehensive Budget for any line item. Within parameters established by the City, offsets between budget line items will be limited to emergencies or other exigent circumstances. Any additions or changes in line items of the Annual Comprehensive Budget shall be allowed only upon the written approval of the City. Tenant's failure to manage and operate the Garage Premises within the approved Annual Comprehensive Budget shall constitute a material breach of this Lease.

**(c) Café Sublease Management Budget.**

Pursuant to the terms of the Existing Café Lease, Tenant prepared and submitted to City for approval a proposed Café Sublease management budget setting forth in reasonable detail the contemplated expenditures to be included in the management of the Café Sublease and Café Premises during the period from July 1, 2013 and continuing through November 30, 2015 (the "Initial Café Sublease Management Budget"). Incorporated as part of the Annual Comprehensive Budget (Section 10.2(a) above) Tenant shall include annual Café Sublease management budget line items setting forth in reasonable detail the contemplated expenditures to be made in the management of the Café Sublease and the Café Premises during the succeeding Fiscal Year or portion thereof during the Term (the "Annual Café Sublease Management Budget"). The Initial Café Sublease Management Budget line items and each Annual Café Sublease Management Budget (each a "Café Budget") shall set forth anticipated Café Gross Rent based on the rent payable under the Café Sublease and a detailed estimate of all projected Café Sublease Management Expenses. The incorporation of the Annual Café Sublease Management Budget line items into the Annual Comprehensive Budget shall commence no later than December 1, 2015.

**(d) Café Sublease Management Expense Cap.**

Tenant agrees that Café Sublease Management Expenses shall not exceed Three Thousand Dollars (\$3,000) per Fiscal Year without the prior written consent of the Department and SFMTA (the "Café Sublease Management Expenses Cap"). The Department and the SFMTA shall review the applicable Café Budget and make such recommendations with respect thereto as it may deem advisable and deliver a copy thereof to Tenant. Each Café Budget shall be changed to conform to any recommendations of the Commission and the City's Controller, and Tenant shall comply with such revised Café Budget. Upon approval by the Commission and the City's Controller, each Annual Café Sublease Management Budget shall be the management Budget for the Café Premises and Café Sublease for the corresponding Fiscal Year. Subject to the Café Sublease Management Expenses Cap, Tenant shall not deviate more than five percent (5%) in any line item of any Café Budget without the Commission's and the City's Controller's prior written consent

**(e) Annual Supplemental Park Budget.**

The Annual Supplemental Park Budget shall be prepared, submitted and reviewed as provided in Exhibit F.

**10.3 Garage Operations: Accounts, Audits, and Periodic Reports**

**(a) Annual Audit.**

On or about May 30th of each year during the term of this Lease City shall arrange for an annual audit of Tenant's operations in the Garage Premises in accordance with generally accepted accounting principles and otherwise in a form required by City. Tenant shall fully cooperate with such audit. City shall provide a copy of the final audit

report to the Tenant within fifteen (15) days of the completion of the audit. Tenant shall implement findings and recommendations of the audit within thirty (30) days of the receipt of the audit, or inform the City in writing of Tenant's proposed implementation timeline and reasoning behind a delayed implementation. City and Tenant shall cooperate to establish a reasonable timeline for promptly implementing such findings and recommendations, and Tenant shall use diligent, good faith efforts to implement the findings and recommendations within the agreed timeline and shall provide City with monthly written reports detailing any outstanding issues.

**(b) Periodic Report.** Within twenty (20) days after the end of each calendar month during the term of this Lease or within such other period specified by the City, Tenant shall submit to the City a correct, detailed and complete statement in writing, on a form approved by the City, showing all Garage Gross Receipts and Parking Taxes received and all Garage Operating Expenses incurred during such month. Such statement shall be signed and verified by representatives of Tenant under oath and forwarded to the City. Tenant agrees to keep full, true and accurate books, records and accounts at all times during the term of this Lease of the Garage Gross Receipts and Parking Taxes received, the Garage Operating Expenses incurred, the details of operation and of such other matters and to render such reports thereon as may be required by the City from time to time. City and its representatives shall at all times have the right to inspect, examine and audit all such records and all accounts established and maintained under this Lease.

**(c) Creation of Garage Accounts.** Tenant shall establish and maintain special accounts designated as the Garage Revenue Account ("Garage Revenue Account"), the Corporations Operating Account ("Operating Account") and the Corporate Employee Payroll Account ("Payroll Account"). On the first day of the second (2nd) year of the initial Term of this Lease, Tenant shall establish a Capital Expenditures Account ("Garage Capital Account"). Such accounts shall be held by a financial institution approved by the Controller of the City. At City's request, Tenant shall respect any limit on the size of the funds held in any account(s) as shall be established from time to time by the Controller for City with the goal of ensuring that Tenant is afforded full FDIC deposit insurance coverage for the deposits in such account(s). Funds from the operation of the Garage Premises shall not be commingled with other funds. Tenant shall cause each person who has authority to withdraw or transfer funds from any account to be bonded or otherwise insured.

**(d) Garage Capital Account.** The Garage Capital Account, established beginning the second (2nd) year of the initial Term, shall be used by Tenant to provide for expenditures for the cost of Alterations and Capital Improvements for the Garage described in Article 11. Periodically, but not more than monthly, based on its accounting records, Tenant shall estimate the amount of "Net Garage Revenues" (meaning Garage Gross Receipts less Garage Operating Expenses) received from the operation of the Garage Premises for the City's fiscal year to date. Subject to City's review and approval of Tenant's estimate of Net Garage Revenues, City shall authorize transfer from the Garage Revenue Account to the Garage Capital Account in the amount of Twenty Thousand Eight Hundred Thirty-Three Dollars (\$20,833) per month. In the event the monthly amount creates an excess in the Garage Capital Account above the limit stated below, the monthly amount will be reduced by the excess amount and no credit will be provided on subsequent monthly transfers.

City shall approve expenditures from the Garage Capital Account as part of the approval of the Annual Garage Budget. All disbursements from the Garage Capital Account shall require the joint signatures of two (2) current members of the board of directors of Tenant and the Corporation Manager (as defined in Section 10.3(f) below).

Based on City's review of Tenant's annual audit for the City's fiscal year in accordance with Section 10.3 (a), the balance in the Garage Capital Account shall be adjusted each such fiscal year to ensure that the amount transferred to the Garage Capital Account does not exceed

Two Hundred Fifty Thousand Dollars (\$250,000) for such fiscal year. In the event of a deficiency in the Garage Capital Account, and subject to City's prior written approval, moneys shall be transferred from the Garage Revenue Account to the Garage Capital Account. In the event of a surplus in the Garage Capital Account such excess shall be transferred from the Garage Capital Account to the City. Notwithstanding the foregoing, in no event shall the balance in the Garage Capital Account exceed Seven Hundred Fifty Thousand Dollars (\$750,000).

**(e) Garage Gross Receipts, Deposits and Transfers.** All Garage Gross Receipts collected or received by Tenant arising out of operations of the Garage Premises shall be deposited in the Garage Revenue Account upon receipt. Such deposits shall be made no later than the next Banking Day after such amounts are collected if such day is a Banking Day or, if such day is not a Banking Day, on the next succeeding Banking Day. Tenant's failure to deposit Garage Gross Revenues on a timely basis shall constitute a material breach of this Lease.

"Banking Day" shall mean any day which is not a Saturday or Sunday or a day on which banking institutions are authorized or required by law to be closed for commercial banking purposes in San Francisco, California, or by the Federal Reserve System.

"Garage Gross Receipts" shall mean (a) all revenue received by Tenant from whatever source arising out of its lease of the Garage Premises including, without limitation, commercial rents and interest earned on investments or deposits; plus (b) all revenues from whatever source, received from and related to, parking operations on the Garage Premises and activities incidental to parking operations including, but not limited to, the following: (1) all revenues received from the operation of the Garage Premises for daily and monthly parking of any vehicle therein; (2) the commission paid to, or on behalf of, Tenant for revenue collected from pay telephones, automatic teller machines and the sale of merchandise in vending machines on the Garage Premises, (3) all charges of any character made by Tenant or any operator for the rendering of any service or work of any kind conducted in, on, about, or from the Garage Premises, (4) the gross amounts of all deposits forfeited by parking customers at the Garage Premises and retained or received by Tenant or any operator in connection with the operation of the Garage Premises, (5) all interest received from the Garage Gross Receipts deposited in the Garage Revenue Account and the Garage Capital Account, (6) fees collected for storage rental, (7) the value of any in-kind services received by Tenant or any operator in exchange for a benefit derived from the use of the Garage Premises, and (8) any Parking Tax collected.

"Parking Taxes" shall mean the Tax on Occupancy of Parking Space in Parking Stations, as imposed by Article 9 of the San Francisco Business and Tax Regulations Code, beginning with Section 601 thereof, and any successor ordinances or amendments thereto, or another federal, state or local tax or fee imposed on the occupancy of parking spaces.

Subject to reasonable provision for the transfer of funds to the Garage Capital Account as provided below, funds (including all interest accrued on such funds) remaining in the Garage Revenue Account shall be transferred to the City no later than the twentieth (20<sup>th</sup>) day of each month or at such other more frequent periodic intervals as specified in writing by the City. All interest accrued on any other account held by Tenant relating to the Garage Premises shall be transferred to the City no later than thirty (60) days after Tenant's fiscal year ending April 30.

**(f) Payment of Garage Operating Expenses.** Periodically, but at least once each month, City will authorize the withdrawal and transfer of funds from the Garage Revenue Account for the purpose of paying Garage Operating Expenses, including Tenant's employee salaries, payroll expenses and Parking Taxes due included in the Annual Garage Budget and expenses included in the Annual Supplemental Park Budget in the respective amounts approved in such Annual Supplemental Park Budget. Disbursements from the Garage Revenue Account for the purpose of paying Garage Operating Expenses and from the Corporate Employee Payroll

Account for purpose of paying Tenant corporation employee salaries and payroll expenses shall require the joint signatures of two (2) current members of the board of directors of Tenant and the employee of Tenant that is responsible for supervising the day to day operation of the Garage Premises (the "Corporation Manager").

"Garage Operating Expenses" shall mean all direct and indirect operating and routine maintenance and repair expenses incurred in the operation of the Garage Premises and certain approved expenses incurred in connection with the Café Premises and the Supplemental Park Maintenance Services, including, without limitation, the following: (1) reasonable salaries, payroll taxes and other payroll expenses, including Tenant's employee salaries and payroll expenses; (2) charges for utility services for the Garage Premises; (3) expenses for repair and maintenance of equipment and furnishings for the Garage Premises, including, without limitation, a full service, 24 hour elevator repair contract if the Garage Premises contains one or more elevators, full functionality of the existing fire suppression system; (4) expenses for routine maintenance and repair and for cleaning of the Garage Premises, including, without limitation, expenses related to vandalism or other damage to gates, equipment, supplies or the Garage Premises; (5) the cost of parking tickets, supplies and equipment for the Garage Premises; (6) license and permit fees for the Garage Premises not related to an Alteration; (7) the cost of insurance attributable to insuring Tenant's property used in the operation of the Garage Premises and insuring Tenant against liability relating to the management and operation of the Garage Premises; (8) the cost of Workers' Compensation Insurance and fidelity and surety bonds for the Garage operations; (9) deductible amounts required under any of the insurance policies insuring Tenant for the Garage operations; (10) sales taxes and all other taxes resulting from operation of the Garage Premises, except Parking Taxes, (11) real property taxes and possessory interest taxes for the Garage Premises; (12) the cost of courier deposit services for the Garage Premises, (13) Café Sublease Management Expenses; (14) approved Supplemental Park Maintenance Services costs, and (15) all other costs and expenses for the Garage and Café Premises and Supplemental Park Maintenance Services approved by City in accordance with Section 10.3(g)(i), including administrative expenses, amounts paid as a fee or otherwise to any professional operator employed by Tenant, legal expenses, and "Tenant's Organizational Expenses," which shall mean the reasonable costs of operating the entity which is Tenant under this Lease. Tenant shall operate Tenant's corporate entity in an efficient manner that is consistent with best practices for non-profit organizations using commercially reasonable efforts to operate in a manner that is efficient and consistent with Tenant's mission, corporate purposes, applicable laws and this Lease, at all times avoiding lavish, extravagant or excessive expenditures. Garage Operating Expenses shall not include any charges or allowances for depreciation or amortization of Tenant's interest in the Garage Premises.

**(g) Reimbursement Process for Garage Operating Expenses.** Garage Operating Expenses incurred in the operation of the Garage Premises shall be processed for payment or reimbursement as follows:

**(i) Requisitions.** Tenant shall prepare and process, or shall cause to be prepared and processed, requisitions that itemize each Garage Operating Expense for which payment or reimbursement is being requested. Each requisition for Garage Operating Expenses, together with supporting documentation, shall be approved by at least two (2) members of the Board of Directors of Tenant, the Corporation Manager and the Garage Operator. The requisition, approved by Tenant, then shall be submitted to the City for the City's review and approval. Approval by the City shall constitute authorization for the withdrawal of funds from the Garage Revenue Account for payment of the Approved Garage Operating Expense and Parking Tax. Tenant promptly will initiate the withdrawal and disbursement procedures.

**(ii) Supporting Documentation.** (i) Each item of Garage Operating Expense in a requisition submitted by Tenant will be evidenced by an original invoice

accompanying the requisition. The time frame of Tenant's requisition preparation and submittal shall allow adequate review and approval time so as to avoid late payment charges. Tenant will be responsible for the payment of late fees, penalties and similar late payment charges. (ii) All requests for payments for reimbursable salary, wages and benefits will be accompanied by: a payroll record showing the employee name, social security number and work classification; straight time and overtime hours worked for each payroll period; and records which include all "calendar year to date" wages for each employee.

**(iii) Operating Expense Warranty.** In preparing and submitting certified requisitions, Tenant warrants to the City that each item for which payment is being requested is an Garage Operating Expense authorized under an existing Annual Garage Budget line item and that the requested payment, together with all previous payments under the subject line item, will not exceed the maximum line item expenditure authorized under the Annual Garage Budget.

**(iv) Third Party Contracts.** City will not approve reimbursement of any expenditure for professional services (including legal and accounting services) or products procured by Tenant (including expenses incurred under any operating agreement) unless the expense was made pursuant to applicable sections of this Lease and/or the Parking Facility Operation and Management Regulations. With respect to legal fees, Tenant shall provide a reasonably detailed statement showing costs incurred, including names of persons performing the work, hourly rates for such person(s), the total number of hours spent by person(s), and a brief non-confidential description of the work performed.

**(h) Emergency Expenditures.** Tenant may make emergency expenditures to safeguard the Garage Premises due to emergency or exigent circumstances, as provided in the Parking Facility Operation and Management Regulations.

**(i) Parking Tax Payment.** Tenant shall pay or cause to be paid all Parking Taxes from amounts held in the Garage Revenue Account in accordance with the requisition process outlined above.

#### **10.4 Café Operations: Café Gross Rent, Café Rent, Rent Requisitions.**

**(a) Café Gross Rent Deposit Account; Café Rent.** Tenant will deposit all Café Gross Rent into a deposit account, which deposit account will remain segregated from all of Tenant's other accounts and shall be utilized solely in connection with Tenant's performance of obligations with respect to the Café Premises pursuant to the terms of this Lease (the "Café Gross Rent Deposit Account"). Tenant has informed City that in order for Tenant to pay Café Rent to City as required by this Lease, Tenant must submit a requisition for the Café Rent (the "Rent Requisition"), executed by the Tenant, to SFMTA for signature by the designated staff member of SFMTA prior to submitting the Rent Requisition to Trustee for the release of Café Rent from the Café Gross Rent Deposit Account. Tenant shall use its best efforts to obtain the designated SFMTA signature on all Rent Requisitions in an expedited manner. Tenant shall (i) deposit all Café Gross Rent received from Café Subtenant in the Café Gross Rent Deposit Account within one (1) business day of receipt thereof from Café Subtenant, (ii) obtain all requisite Tenant signatures and submit Rent Requisitions for SFMTA's signature within two (2) business days of receipt of Café Gross Rent, and (iii) pay Café Rent to City within three (3) days after the Tenant's receipt of each Rent Requisition executed by SFMTA. Tenant will use its best efforts to pay Café Rent (including percentage rent, if any, payable by the Café Subtenant for the previous month) on or before the twentieth (20th) day of each month.

**(b) Café Rent Reconciliation; Café Sublease Management Expense Report.** Within twenty (20) days after the end of each month during the Term Tenant shall

deliver to City a correct, detailed and complete statement in writing on a form approved by City (the "Café Sublease Management Expense Report") showing all Café Gross Rent received, Café Sublease Management Expenses and Café Rent paid for such month, together with a copy of the statement from Café Subtenant showing its computation of percentage rent and other rent paid for within that month, if any, as described in the Café Sublease (the "Percentage Rent Statement"). The Café Sublease Management Expense Report shall be signed and verified under oath by Tenant's president and chief financial officer and forwarded to City.

(c) **Books and Records.** Tenant shall at all times during the Term keep full, true and accurate books, records and accounts, according to generally accepted accounting principles, of the Café Gross Rent, Sublease Management Expenses, Café Rent, maintenance work for the Café Premises, the details of operation of the Café Premises and or such other matters as may be required by City, and shall render such reports thereon as may be required by City. Additionally, Tenant shall keep full, true and accurate records regarding the operation of the café, copies of plans and specifications for the Café Premises together with all other documents regarding the construction of and repairs to the Café Premises, written correspondence with Café Subtenant, copies of all operating permits and government inquiries, citations, requests and reports regarding the Café Premises, and all other documents requested by City or that a prudent landlord of a café operation would generate and/or maintain.

(d) **Audit.** Tenant agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City or to any auditor or representative designated by City, for the purpose of examining such books and records to determine the accuracy of Tenant's earnings from the operation of the Café Premises. Such books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing these accounts; except that, if an audit is made within such four-year period and City claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. If an audit reveals that Tenant has understated Café Gross Rent or overstated Café Sublease Management Expenses, Tenant shall pay City, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to City. If Tenant understates its Café Gross Rent or overstates its Café Sublease Management Expenses by three percent (3%) or more, the cost of the audit shall be borne by Tenant. A second such understatement made with knowledge of or by reason of gross negligence shall be considered an Event of Default.

**10.5 Security Interest.** Tenant hereby grants to City a lien and security interest in the accounts described in this Article 10 (the "Accounts") to secure the performance by Tenant of all of Tenant's obligations under this Lease. Tenant shall execute, deliver, file and refile, at Tenant's expense, any instruments, financing statements, continuation statements, or other security agreements that City may require from time to time to confirm the lien granted herein. Tenant hereby warrants and represents that the Accounts shall be free and clear of all other liens and encumbrances. Tenant shall execute from time to time such additional documents as may be reasonably necessary to effectuate and evidence such the lien granted hereby if requested by City, including, without limitation, a security agreement and a depository account control agreement. Upon the occurrence of either an Event of Default, or the expiration or earlier termination of this Lease, City shall have the immediate right of possession of the funds in the Accounts. The requirements set forth in this Section are the minimum requirements imposed on Tenant in connection with the Accounts and Tenant acknowledges that City may impose the same or further requirements with respect thereto. Upon the expiration or earlier termination of this Lease all funds in the Accounts shall be transferred to City or City's designee.

**10.6 Litigation and Legal Expenses.** Unless expressly authorized by the City in writing, Tenant shall not commence, maintain, or otherwise participate in any legal proceedings

concerning the Buildings or the Premises, including but not limited to prosecuting actions, cross-actions or counter-actions for unlawful detainer, tort or breach of contract where the costs of said litigation, including but not limited to attorney's fees, are paid from Garage Gross Receipts or are otherwise reimbursed from funds or revenues of the City. Without limiting the foregoing, Tenant shall not (i) engage any "collection agencies" to collect any rent or other income arising out of the use or operation of the Premises, or (ii) terminate any sublease or lockout any subtenant, without, in each instance, the prior written approval of the City. If so directed by the City, Tenant shall seek to settle or otherwise resolve any such litigation in a manner to maximize the reduction of litigation costs where such costs are or would be paid from Garage Gross Receipts or are or would be otherwise reimbursed from funds or revenues of the City, however City shall retain final authority over the conduct of any such proceedings.

**10.7 Patron's Audit.** Tenant shall participate in the City's Patrons Audit program whereby signs provided by the City will be clearly posted at each point of sale, stating that receipts are to be given for each purchase, and that if a receipt is not given, the patron shall be allowed some form of compensation as mutually agreed upon by the City and Tenant. Further, at City's request, Tenant shall post a sign in a visible place near a point of sale location for the Garage Premises and Café Premises that says "Each purchase supports your park." each receipt issued and printed shall say the same.

**10.8 Cash Registers; Cash Register Receipts.** Tenant shall insure that the Garage Operator and the Café Subtenant shall each use cash registers which segregate sales by categories and shall have separate function keys with non-resettable daily sequential transaction numbers and non-resettable daily cumulative sales totals. Such cash register(s) used on the Premises shall be of a type approved by General Manager in writing and shall register every transaction made in, on, about or from the Premises, including every type of gross receipts, and the tape or digital record of each such cash register shall be accessible to and subject to inspection by the General Manager or his/her agent, provided that such inspection shall be conducted in a manner reasonable designed to minimize interference with the conduct of the businesses at the Premises, and City shall not perform such inspection unless a manager of the business is present. Tenant shall make a manager available to City for such inspection during business hours upon request (which may be oral) by City. Unless otherwise specifically approved by the General Manager, mechanical cash register(s) must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit capacity or grater, as determined by the General Manager based on the type of business, with a four-digit overrun counter. If computerized cash registers or other similar electronic devices are used, that system must accurately record all sales on the Premises and be no more subject to tampering than mechanical cash register(s). Each sale or other transaction on the Premises must be recorded at the time of each sale or other transaction, in the presence of the customer, and the Garage Operator or Café Subtenant shall present a receipt from such sale or other transaction to the customer. Each customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register tapes. All cash receipts must include Garage Operator's or Café Subtenant's identification thereon, as applicable. Each cash register (including computerized cash registers or other similar electronic devices) shall be serviced by an established contractor approved by General Manager. At General Manager's request, Tenant must furnish to City a statement from an established contractor that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by General Manager. Upon the installation or removal of any cash register (including computerized cash registers or other similar electronic devices) used on the Premises, Tenant must immediately furnish to General Manager notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s) (including computerized cash registers or other similar electronic devices). Any repair contractor employed to repair or replace any cash register (including computerized cash registers or other similar

electronic devices if used) on the Premises is hereby authorized and directed to disclose and furnish to City or its auditors any information obtained by the contractor in the course of making such repair or replacement pertaining to such cash register (including computerized cash registers or other similar electronic devices if used). City shall have the right during business hours to examine the totals of the cash register(s) (including computerized cash registers other similar electronic devices if used) used on the Premises and to inspect for compliance with this section.

## **11. ALTERATIONS AND CAPITAL IMPROVEMENTS**

**11.1. Permitted Alterations or Capital Improvements** Tenant shall not make or permit any alterations or capital improvements to the Premises or to the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, communications systems of the Premises ("Building Systems"), and shall not make or permit any alterations, installations, additions or capital improvements, structural or otherwise (collectively, "Alterations or Capital Improvements"), in, to or about the Premises, without City's prior written consent in each instance. All Alterations or Capital Improvements shall be done in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics approved by City, and subject to any conditions that City may impose. With respect to any Alterations or Capital Improvements that would be visible from the exterior of the Premises, Tenant shall obtain the prior written approval of City's Arts Commission to the extent the Arts Commission has jurisdiction over the design of such proposed Alterations or Capital Improvements under City's Charter Section 5.103. If the Alteration relates to an expansion, change in use, construction, Tenant shall also post a sign in accordance with the Citizen's Right to Know Act of 1998 (Chapter 79 of the City's Administrative Code).

**11.2 Asbestos.** Without limiting Section 25.2 (No Hazardous Materials) below, in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations or Capital Improvements and any asbestos related work, as defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all laws relating to asbestos, including but not limited to California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Section 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations or Capital Improvements affecting ACM-containing areas or any asbestos related work shall be performed without City's prior written consent in each instance.

**11.3 Tenant's Alterations or Capital Improvements that Disturb or Remove Lead Based Paint.** Tenant, on behalf of itself and its Agents or Invitees (as such terms are defined in Article 1), shall comply with all requirements of the San Francisco Building Code, Section 3407, and all other applicable present or future federal, state, local and administrative laws, rules, regulations, orders and other governmental requirements, the requirements of any board of fire underwriters or other similar body, any directive or occupancy certificate issued pursuant to any law by any public officer or officers acting in their regulatory capacity (collectively, "Laws"), including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior lead-based or "presumed" lead-based paint (as defined below). Tenant and its Agents or Invitees shall give to City three (3) business days prior written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane

burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. Notice to City under this Lease shall not constitute notice to the City's Department of Building Inspection required under Section 3407 of the San Francisco Building Code.

**11.4 Ownership of Alterations or Capital Improvements.** Unless otherwise provided by express written agreement, all appurtenances, fixtures, improvements, equipment, alterations, additions, and other property attached or affixed to or installed in the Premises at the Commencement Date or during the Term, including, without limitation, any tenant improvements and any Alterations or Capital Improvements, shall be and remain City's property. Alterations or Capital Improvements of the Premises, except trade fixtures of any subtenants, shall become the property of City and shall remain upon and be surrendered with the Premises. Tenant may not remove any such property at any time during or after the term of this Lease unless the City so requests as further provided under Section 27.21.

**11.5 City's Alteration or Capital Improvements of the Premises.** City reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the Premises or the Building Systems, provided that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the uses permitted hereunder and pay for such Alterations or Capital Improvements from the Capital Account.

**11.6 Non-responsibility of City.** Tenant agrees that if it or any subtenant shall make any Alterations or Capital Improvements, they shall not commence until fifteen (15) days after City has received written notice from Tenant stating the commencement date of the installation of the Alterations or Capital Improvements, in order that the City may post appropriate notices of non-responsibility. Tenant will at all times permit such notices to be posted and to remain posted for the time required by law.

**11.7 Construction/Acquisition of Capital Improvements.** At the request of City and for Tenant proposed Capital Improvements approved by the City and subject to the availability of sufficient uncommitted funds in the Garage Capital Account, Tenant shall acquire, install, construct and complete items of capital improvements to the Garage Premises. Such items of capital improvement shall be provided (i) in strict accordance with plans and specifications approved in advance by City, (ii) by duly licensed and bonded contractors or mechanics approved by City, (iii) in a good and professional manner, where applicable, in accordance with Article 11. Prior to the acquisition or commencement of any work, Tenant shall procure all required permits and approvals and shall promptly deliver copies of such approvals and permits to the City upon receipt. No material change from the plans and specifications approved by City may be made without prior consent. City shall have the right to inspect the work progress of the capital improvements at all times. Upon completion of the capital improvements, Tenant shall furnish City with a complete set of final as-built plans and specifications or specification of installed equipment. All approved costs and expenses incurred by Tenant in the performance of the obligations set forth in this Section with respect to the Garage Premises shall be deemed to be

a "Capital Improvement Expenditure" under this Lease, and such expenses will be paid from the Garage Capital Account. All capital improvements to the Premises shall be owned by the City.

### **11.8 Repairs and Maintenance of Garage Premises**

(a) **City's Repairs.** City shall repair and maintain the structural portions of the Garage Premises, including the Building Systems, the elevators and the common areas; provided, however, Tenant shall seek reimbursement on behalf of City for any damage, excluding normal wear and tear, caused by any act or omission of Tenant's Agents or Invitees (as such terms are defined in Article 1). For the purpose of making any such repairs, City may use structures in the Garage Premises where reasonably required by the character of the work to be performed, provided that such work shall not block the main entrance to the Garage Premises nor unreasonably interfere with Tenant's business. Tenant waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned thereby.

(b) **Tenant's Repairs.** Tenant shall maintain the Garage Premises (including, without limitation, the floors, interior plumbing, electrical wiring, fire suppression system, fixtures and equipment) in good repair and working order and in a clean, secure, safe and sanitary condition. Tenant shall promptly make all repairs and replacements: (a) by licensed contractors or qualified mechanics approved by City, (b) so that the same shall be at least equal in quality, value and utility to the original work or installation, (c) in a manner and using equipment and materials that will not interfere with or impair the operations, use or occupation of the Premises or the Building Systems, and (d) in accordance with all applicable laws, rules and regulations, including the SFMTA Parking Facility Operation and Management Regulations.

### **11.9 Repairs and Maintenance of Café Premises**

(a) **Tenant Responsible for Maintenance and Repairs.** Tenant assumes full and sole responsibility for the conditions, operation, repair and maintenance and management of the Café Premises and any permitted improvements thereof from and after the Commencement Date. City shall not under any circumstance be responsible for the performance of any repairs, changes or alterations to the Café Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Café Premises), nor shall City be liable for any portion of the cost thereof.

(b) **Tenant's Repairs.** Tenant, at no expense to City shall promptly make, or require that Café Subtenant make, all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, that may be necessary to maintain the Café Premises and any existing and permitted Improvements thereof at all times in clean, safe, attractive and sanitary condition and good order and repair, to City's reasonable satisfaction. Tenant shall make all such repairs and replacements: (i) at no cost to City (provided such cost may be a Garage Operating Expense to the extent approved by City in accordance with the provisions of Section 10.3(g)(i) above); (ii) by licensed contractors or qualified mechanics approved by City; (ii) so that the same shall be at least equal in quality, value and utility to the original work or installation; (iv) in a manner and using equipment and materials that will not interfere with or impair the operations, use or occupation of the Department Facilities; and (v) in accordance with all applicable Laws and Rules and Regulations. If any portion of the Café Premises or any of City's property location on or about the Café Premises is damaged by any of the activities conducted by Tenant or its Agents or Invitees hereunder, Tenant shall immediately, at its sole cost, repair any and all such damage and restore the Café Premises or City's property to the previous condition.

**11.10 No Right to Repair and Deduct.** Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof in good order, condition or repair, or to abate or reduce any of Tenant's obligations hereunder on account of the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Tenant to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Tenant to make repairs or replacements and deduct the cost thereof from Rent.

**11.11 Local Hire Requirements.** Unless exempt, Tenant agrees to comply with the Local Hiring Policy set forth in San Francisco Administrative Code Section 6.22(G) (the "Local Hiring Policy") in the performance of any Alterations or Capital Improvements. Before starting any Alterations or Capital Improvements, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to verify the Local Hiring Policy requirements that apply to the Alterations or Capital Improvements, and Tenant shall comply with all such requirements. Failure to comply shall be deemed a breach of this Lease, and Tenant may also be liable for penalties as set forth in Section 6.22(G). Without limiting the foregoing:

(1) For Covered Projects that exceed \$750,000, Tenant shall comply with the applicable mandatory participation levels for Project Work Hours performed by Local Residents, Disadvantaged Workers, and Apprentices as set forth in Section 6.22(G)(4).

(2) For Covered Projects that exceed \$1,000,000, Tenant shall prepare and submit to OEWD for approval a local hiring plan as set forth in Section 6.22(G)(6).

(3) Tenant shall comply with the applicable record keeping and reporting requirements and shall cooperate in City inspections and audits for compliance with the Local Hiring Policy.

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

## **12. LIENS AND ENCUMBRANCES**

**12.1. Liens.** Tenant shall pay all costs for construction done by it or caused to be done by it on the Premises. Tenant shall keep the Premises and all interests therein free and clear of all mechanics' liens and claims of mechanics' liens resulting from construction done by or for Tenant. Tenant shall have the right to contest the correctness or the validity of any such lien if, immediately on demand by the City, Tenant procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to one and one half times the amount of the claim of lien. The surety bond shall meet the requirements of Civil Code Section 3143 and shall provide for the payment of any sum that the claimant may recover on the claim (together with costs of suit, if claimant recovers in the action).

**12.2. Encumbrances.** Tenant shall not create, permit or suffer any liens or encumbrances affecting any portion of the Premises or City's interest therein or under this Lease.

**12.3 Non-Responsibility Notices.** Tenant shall inform its own contractors and shall ensure that all subtenants inform their contractors that the Premises and the Buildings are public

property and are not subject to mechanics liens or other encumbrances. City shall have the right to post on the Premises any notices that City may deem proper for the protection of City, the Premises, and the Buildings, from mechanics' and material supplier's liens. Tenant shall give to City at least fifteen (15) days' prior written notice of commencement of any Alteration, repair or construction on the Premises. Tenant agrees to indemnify, defend and hold City and its Agents harmless from and against any claims for mechanic's, material supplier's or other liens in connection with any Alterations or Capital Improvements, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

### **13. UTILITIES AND SERVICES**

#### **13.1. Utilities and Services**

(a) **Garage Premises.** Tenant shall make all arrangements for and pay from the Garage Revenue Account as a Garage Operating Expense for all utilities and services furnished to or used by it in or for the Garage Premises, including, but not limited to, gas, electricity, water, telephone service and trash collection, and for all connection charges, provided, however, that City may elect to furnish some or all of the utility services required by Tenant and, in such event, Tenant shall pay to City the prevailing rates for all such utility services furnished to or used by Tenant together with reasonable charges for the connection and maintenance of such utility services.

(b) **Café Premises.** City has no responsibility or liability of any kind with respect to any utilities that may be on or about the Café Premises. Tenant has the sole responsibility to locate such utilities and protect them from damage. Tenant shall make all arrangements directly with the utility companies for, and shall pay for, any all utilities and services furnished to or used by it in connection with the operation of the Café Premises, including without limitation, gas, electricity, water, sewage, telephone service, trash and recycling collection, pest control, security and janitorial services, and for all deposits, connection and installation charges. Tenant shall be responsible for the installation and maintenance of all facilities required in connection with such utility services. The parties agree that any and all utility improvements for the Café Premises shall be subject to the provisions of Article 11 and that such improvements shall be deemed part of City's real property, and not personal property or trade fixtures of Tenant or any subtenant. During the Term, Tenant shall be obligated to repair and maintain any and all utility systems and improvements located on or within the Café Premises in good operating condition.

**13.2. Mandatory or Voluntary Restrictions.** In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Premises or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event Tenant is required or elects to make Alterations or Capital Improvements to any part of the Premises in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such Alterations or Capital Improvements shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay all amounts or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant.

**13.3 Interruption of Services.** City's obligation to provide utilities and services for the Garage Premises are subject to Parking Facility Operation and Management Regulations and applicable Law (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of City. In the event of an interruption in, or failure or inability to provide any service or utility for

the Garage Premises or Café Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant, and no such failure of interruption shall entitle Tenant to any abatement in Rent or to terminate this Lease. Tenant hereby expressly waives any and all claims and rights against Landlord for compensation, damages, payments, offset or termination of this Lease based upon or with respect to any and all losses now or hereafter sustained by Tenant by reason of any failure by City or any other person to furnish, supply or provide any service or utility furnished or supplied to or used by Tenant or any other person or entity in connection with the use, occupancy, maintenance, or operation of the Premises or any part thereof.

#### **14. PARKING RATES, CHARGES, RULES AND REGULATIONS**

**14.1. Parking Rates and Rules.** For all vehicles parked in the Garage Premises, Tenant is authorized and directed to charge and collect parking fees according to parking rates established by the City. From time to time, the Parking Rates charged at the Garage Premises may be adjusted by the appropriate legislative body. In such event, the City shall give written notice of the new Parking Rates to Tenant. Such notice shall specify the effective date of the new rates. Upon receiving such notice, Tenant shall take such measures necessary to implement the new Parking Rates on the effective date. Tenant shall not have any right to adjust the authorized Parking Rates or collect any other rates, fees or charges at the Garage Premises without the prior written consent of City. If and to the extent required by the City, Tenant shall assist and cooperate with City in implementing the policies of SFMTA's *SFpark* Program, including but not limited to placement of electronic signage where and as determined by the City, and the implementation of variable pricing of rates.

#### **14.2. Revenue Control and Parking Receipts.**

(a) City shall have the right in its sole discretion to direct Tenant and Tenant shall cooperate with and implement such direction to install a Parking Access Revenue and Control System (PARCS) or PARCS equipment selected by the City in the Garage Premises.

(b) Tenant shall comply, and shall require the Garage Operator to comply, with the San Francisco Police Code Sections 4901-4916 and San Francisco Business and Tax Regulation Code Article 22 and Section 6.6-1, which require parking stations to provide receipts to occupants, and to have certain signage, all as more fully set forth therein. Any violation of these requirements shall be deemed a breach of this Lease, and City shall have all rights and remedies set forth above Codes as well as the rights and remedies set forth in this Lease, including but not limited to, the right to terminate this Lease.

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

**15.1. Limitation on City's Liability; Waiver of Claims.** City shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases City and its Agents from all Claims (as defined below) for, any injury, loss or damage to any person or property in or about the Premises or the Park by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Building Systems, (v) building defects, and (vi) any other acts, omissions or causes. Nothing in this Article 15 shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages.

**15.2. Tenant's Indemnity** Tenant, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("Indemnify") City including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the RPD and SFMTA, and all of its and their Agents, and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "Indemnified Parties"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, "Claims"), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person, including, without limitation, employees of Tenant, or loss of or damage to property, howsoever or by whomsoever caused, occurring in or about the Premises or the Park; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use or occupancy or manner of use or occupancy of the Premises or the Park by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them; (d) the condition of the Premises or Park or Tenant's failure to properly repair or maintain any improvements on the Premises; (e) any construction or other work undertaken by Tenant on the Premises or the Park whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises or Park, all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease and further except only such Claims as are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

Any costs of an Indemnified Party incurred pursuant to any Claim not payable from insurance maintained by the Tenant shall be deemed a Tenant cost.

## **16. INSURANCE**

**16.1. Tenant's Garage Premises and Operations Insurance.** As a pre-approved Garage Operating Expense, Tenant shall procure and keep in effect or shall cause to be procured and kept in effect at all times during the Term insurance as set forth in Part I of the attached **Exhibit C**.

**16.2. Tenant's Café Premises Operations Insurance.** Tenant shall procure and keep in effect or shall cause to be procured and kept in effect at all times during the Term insurance as set forth in Part II of the attached **Exhibit C**.

### **16.3. Additional Requirements.**

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

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

**(c)** All liability insurance policies shall be endorsed to provide the following:

(1) Name as additional insured the City and County of San Francisco, its officers, agents and employees, except as otherwise agreed to by City in writing.

(2) That such policies are primary insurance to any other insurance available to the additional insured, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insured which would void or otherwise reduce coverage shall not reduce or void the coverage as to any other insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

**(d)** All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for City set forth in the Basic Lease Information.

**(e)** Tenant shall deliver to City certificates of insurance in form and from insurers satisfactory to City, evidencing the coverage required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor as a Tenant cost. Tenant shall cause a copy of each certificate and renewal certificate required hereunder to be delivered to both the physical address and the email address for delivery of insurance certificates specified in the Basic Lease Information.

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

**(g)** Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's liability under Section 15.2 of this Lease, or any of Tenant's other obligations under this Lease.

**(h)** Notwithstanding anything to the contrary in this Lease, if any of the required insurance coverage lapses, this Lease shall terminate upon three (3) days notice to Tenant, unless Tenant renews the insurance coverage within notice period.

**(i)** All insurance and surety companies are subject to approval as to coverage forms and financial security by the City. Insurers and sureties rated by A.M. Best Co. shall have a current rating not less than A,VIII.

**16.4. Compliance with Insurance Requirements** Tenant shall not do anything, or permit anything to be done, in or about the Premises which would be prohibited by or increase the rates under a standard form fire insurance policy or subject City to potential premises liability. Tenant shall faithfully observe, at its expense, any and all requirements to City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of the Premises.

**16.5 Bonds** As of the effective date hereof, if requested in writing by City, Tenant shall furnish or cause to be furnished to the City, and shall maintain throughout the term of this Lease, and pay the cost thereof as part of Garage Operating Expenses, the following surety and Parking Tax bonds made payable to the City and naming the City as obligee, as its interests may appear.

(a) Parking tax bond in the amount required by the San Francisco Business and Tax Regulation Code Section 6.6-1.

**16.6 City's Self Insurance.** Tenant acknowledges that City self insures against casualty, property damage and public liability risks and agrees that City may at its sole election, but shall not be required to, carry any third party insurance with respect to the building, the Premises, the Park or otherwise.

**16.7 Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Tenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises or the contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Tenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Tenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

**16.8 Miscellaneous Insurance and Bond Matters.**

(a) Two copies of each performance and fidelity bond, and two copies of each original policy of the property insurance and the boiler and machinery insurance, shall be provided to the City upon the mutual execution of this Lease, unless such bonds or insurance are to be provided by a professional operator in which case such bonds and insurance shall be provided at the time of execution of the agreement with such professional operator. Two copies of each certificate of all other insurance shall be provided to the City upon mutual execution of this Lease, and complete copies of any insurance policies obtained pursuant to this Lease shall be provided to the City if requested at any time.

(b) The City reserves the right to cancel any or all of the insurance required under this Lease and to replace such canceled insurance with one or more master insurance policies providing similar insurance coverage and covering any or all of the parking garages owned or leased by the City. In the event such a master insurance policy replaces a policy of insurance or a portion of a policy of insurance required to be carried by a professional operator pursuant to an operating agreement the premium for which was considered a Garage Operating Expense, then the amount of such premium shall thereafter be deducted from the management fee payable to such professional operator under an operating agreement.

(c) Upon City's request, Tenant shall provide evidence satisfactory to the City that Tenant has adequately provided for Social Security and Unemployment Compensation benefits for Tenant's employees employed at the Premise.

(d) Tenant shall comply with the provisions of any insurance covering Tenant, Operator, or the Premises, with any notices, recommendations or directions issued by an insurer under such insurance policies so as to not to adversely affect the insurance coverage or the cost thereof.

(e) In the event that Tenant receives notice that any insurance or bonds are to be or have been cancelled or non-renewed, Tenant shall immediately notify City, in writing, of this threatened cancellation or non-renewal. If Tenant does not provide to the City satisfactory written certification of renewed or replacement insurance or bonds within five (5) business days of the receipt (if delivered) or mailing date of the aforementioned written notice to City, then City shall have the right to (i) obtain the required insurance or bonds on behalf of Tenant, and, if such insurance was required hereunder for the Garage operations, to deduct the premiums from the Garage Revenue Account, and/or (ii) solely at the City's option, terminate this Lease.

## **17. DESTRUCTION**

**17.1 Destruction Due to Risk Covered by Insurance.** If, during the term of this Lease, the Premises are totally or partially destroyed from a risk required to be covered by the insurance described in Section 16, rendering the Premises totally or partially inaccessible or unusable, Tenant shall apply the proceeds of such insurance as instructed in writing by City.

**17.2 Destruction Due to Risk Not Covered by Insurance.** If, during the term of this Lease, the Premises are totally or partially destroyed from a risk not required to be covered by the insurance described in Section 16, rendering the Premises totally or partially inaccessible or unusable, Tenant shall, to the, extent feasible, continue to operate the Premises in substantially the same manner as they were being operated immediately before destruction. Such destruction, in and of itself, shall not terminate this Lease; provided, City shall have the right to terminate this Lease following and damage or destruction, at City's sole discretion, by delivering to Tenant written notice of termination which shall take effect on the date set forth in the notice.

**17.3 Waiver.** City and Tenant intend that the provisions of this Section 17 govern fully in the event of any damage or destruction and accordingly, City and Tenant each hereby waives the provisions of Section 1932, subdivision 2 and Section 1933, subdivision 4, of the Civil Code of California or of any similar law, statute or ordinance now or hereafter in affect.

## **18. EMINENT DOMAIN**

### **18.1 Definitions**

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

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

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

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

**18.2 General.** If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

**18.3 Total Taking; Automatic Termination.** If there is a total Taking of the Garage Premises or the Café Premises or both, then this Lease shall terminate with respect to the Garage Premises or the Café Premises or both, as applicable, as of the Date of Taking.

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

If there is a partial Taking of a substantial portion of the Premises, City shall have the right to terminate this Lease in its entirety.

Either party electing to terminate under the provisions of this Section 18 shall do so by giving the other party written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

**18.5 Compensation.** If, during the term of this Lease there is any taking of all or any part of the Premises or any interest in this Lease by condemnation, all funds and other compensation received from such taking shall belong to the City, and Tenant shall have no right or interest in any such funds or proceeds.

## **19. ASSIGNMENT AND SUBLETTING**

**19.1 Assignment and Subletting Generally.** Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder (collectively, an "Assignment"), or permit or license any portion of the Premises to be used or occupied by anyone other than itself, or sublet any portion of the Premises (collectively, "Sublease"), without City's prior written consent in each instance, which the City may withhold in its sole discretion. No assignment shall be effective unless the assignee shall execute an assumption agreement in form, scope and substance satisfactory to City, assuming all the

obligations of Tenant hereunder. No subletting shall be effective unless the subtenant shall execute an agreement which provides that the sublease is subject and subordinate to the terms of this Lease.

**19.2 Retail Subletting of Portions of Garage Premises.** If Tenant from time to time reasonably determines that space in the Garage Premises is unsuitable or unnecessary for parking purposes, and Tenant desires to use or sublease part or all of such space for commercial purposes, Tenant shall give City written notice thereof and the terms of use or sublease proposed (the "Garage Sublease Notice"), which Garage Sublease Notice shall designate the space proposed to be used or sublet for commercial purposes. City shall have the right to in its sole discretion to any of the following: (1) disapprove Tenant's request, (2) to terminate this Lease as it pertains to the portion of the Garage Premises so proposed by Tenant to be sublet and re-lease such space to third parties for such lawful purposes as City may determine, or (3) to approve Tenant's proposal to sublet conditional upon City's subsequent written approval of the specific sublease obtained by Tenant. Any such sublease shall be subject to applicable laws and the requirements of this Lease and shall at a minimum include the matters outlined in the attached **Exhibit E**. All Garage subleases shall be executed on a form provided or expressly approved in writing by the General Manager. City reserves the right to administer the subleasing of identified space in the Garage Premises suitable for such uses. City may at any time require Tenant to assign any or all existing Garage subleases to City.

**19.3 Café Sublease; Initial Short-Term Café Sublease.** Tenant shall from time to time sublease part or all of the Café Premises to one or more subtenants for food and beverage operations. Tenant shall give City written notice of its intention to enter into a sublease of part or all of the Café Premises (the "Café Sublease Notice"), which Café Sublease Notice shall designate the space proposed to be sublet and the terms and conditions of the proposed sublease, shall identify the proposed subtenant, and shall be accompanied by a copy of the proposed sublease and a current financial statement for the proposed subtenant prepared by an independent certified public accountant. Tenant shall promptly supply such additional information regarding the proposed subtenant and the proposed sublease as City shall reasonably request. City shall have the right to in its sole discretion to: (1) disapprove Tenant's request, or (2) approve Tenant's proposal to sublet conditional upon City's subsequent written approval of the specific sublease obtained by Tenant. Any such sublease shall be subject to applicable laws and the requirements of this Lease and shall at a minimum include the matters outlined in the attached **Exhibit E**. All Café Premises subleases shall be executed on a form provided or expressly approved in writing by the General Manager. Notwithstanding the foregoing, City hereby consents to the sublease of the Café Premises to Existing Café Subtenant on a month to month basis on the same terms and conditions as the Existing Café Sublease, provided (i) Tenant and Existing Café Subtenant enter into an agreement (the "Initial Short Term Café Sublease") providing that effective as of the Commencement Date of this Lease the Existing Café Sublease is subject to and subordinate to this Lease, rather than the Existing Café Lease, (ii) Tenant must use diligent good faith efforts to enter into a new Café Sublease in accordance with the provisions of Section 9.6 and this Article 19 not later than the date that is twelve (12) months after the Commencement Date of this Lease. Tenant's failure to enter into a new Café Sublease by the date that is twelve months after the Commencement Date of this Lease without the prior written consent of the General Manager to extend such deadline may at the election of the General Manager be a default under this Lease.

**19.4 Consent.** Consent to any assignment, subletting, mortgage or other encumbrance, shall not be deemed to constitute consent to any other attempted assignment, subletting; mortgage or other encumbrance.

**19.5 Subordination.** This Lease is and shall be subordinate to any reciprocal easement agreement, ground Lease, facilities Lease or other underlying Lease and the lien of any mortgage or deed of trust or bond issue secured by the Garage Premises (or revenues generated by the

Garage Premises), and all renewals, modifications, consolidations, replacements and extensions of any of the foregoing, that may now exist or hereafter be executed by City affecting the Garage Premises, or any part thereof, or City's interest therein, without the necessity of executing any instrument to effectuate such subordination; provided, however, upon request, Tenant, or Tenant's successor in interest, shall execute and deliver any and all instruments desired by City evidencing such subordination in the manner requested by Landlord. Notwithstanding the foregoing, City or the holder shall, in its respective discretion, have the right to subordinate any such interests to this Lease. If any ground Lease or underlying Lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall attorn to the successor-in interest to City, at the option of such successor in interest. The provisions of this Section 19.5 shall be self operative and no further instrument shall be required. Tenant agrees, however, to execute and deliver, upon demand by City and in the form requested by City, any additional documents evidencing the priority or subordination of this Lease.

## **20. DEFAULT**

**20.1 Tenant's Default.** The occurrence of any of the following shall constitute a default by Tenant:

- (a) Abandonment and vacation of the Premises (failure to occupy and operate the Garage Premises or the Café Premises for five (5) consecutive days shall be deemed an abandonment and vacation).
- (b) an appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.
- (c) Failure to abide by budget limits and obtain the City's approval of expenditures that are not in the approved budget.
- (d) Failure to ensure the security of revenues, failure to transmit revenues to the RPD or deposit revenues in accounts as required under this Lease, in failure to account accurately for revenues and expenditures, misappropriation of any funds, failure to put funds in the appropriate account, failure to adequately account for funds received or spent in any statement to the City.
- (e) Tenant's mismanagement of the Premises (as determined by City in its sole discretion), or Tenant's negligence, fraud, or misfeasance, or malfeasance (as determined by City in its sole discretion).
- (f) Failure by Tenant to comply with any other covenant, condition or representation made under this Lease where such failure continues for fifteen (15) days after the date of written notice by City, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from City. City shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall constitute an Event of Default hereunder;

(g) Failure of the Tenant to (i) qualify as a an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), or corresponding provisions of prior law, (ii) be exempt from federal income taxes under Section 501(a) of the Code, (iii) avoid qualification as a private foundation under Section 509(a) of the Code, or (iv) qualify as a nonprofit public benefit corporation pursuant to Section 5110 et seq. of the Corporation's Code of the State of California, or failure to maintain such tax-exempt status.

(h) Either: (1) the failure of Tenant to pay its debts as they become due, or the written admission of Tenant of its inability to pay its debts, or a general assignment by Tenant for the benefit of creditors; or (2) the filing by Tenant of a petition in voluntary bankruptcy seeking reorganization, arrangement, liquidation, or other relief under any state or federal law relating to bankruptcy, insolvency, or reorganization or seeking or consenting to the appointment of a trustee, receiver, or liquidator of Tenant or of any substantial part of Tenant's assets; or (3) entry by a court of competent jurisdiction of an order, judgment or decree declaring Tenant an insolvent or adjudging Tenant a bankrupt, or appointing a trustee or receiver for Tenant or of the whole or any substantial part of the Premises, or approving a petition filed against Tenant seeking reorganization of Tenant under any applicable law or statute of the United States of America or any state thereof, if such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of the entry thereof; or (4) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, unless such seizure is discharged within ten (10) days.

**20.2 Notice.** Notices given by the City under this Section 20 shall specify the alleged default and the applicable Lease provisions, and shall demand that Tenant perform the provisions of this Lease or pay the rent or other amount that is in arrears, as the case may be, within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless City so elects in the notice.

**20.3 City's Remedies.** If Tenant commits a default, City shall have the following remedies, in addition to all other rights and remedies allowed by law, or in equity:

(a) The right to terminate this Lease for cause, in which event Tenant shall immediately surrender possession of the Premises and pay to City all amounts held in any accounts established by this Lease, all other amounts constituting Gross Revenues, Parking Taxes, or Tenant's Costs and other amounts payable by Tenant under this Lease to the date of such termination.

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

(c) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of Lease after breach and abandonment), allowing City to continue this Lease in effect and to enforce all its rights and remedies under this Lease, including the right to recover rent and other amounts as it becomes due, for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment

of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an assignment or sublease, or terminating an assignment or sublease, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the term) and at such rent and upon such other terms as City may in its sole discretion deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be liable for rent and other amounts due hereunder, as well as the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which rent and other amounts owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as rent and other amounts for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this subsection shall be deemed a waiver of any default by Tenant, and City may at any time elect to terminate this Lease for such previous default.

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

**20.4 Waivers.** Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges which it might have under any present or future Law to redeem the Premises or to continue this Lease after being dispossessed or ejected from the Premises. Tenant further waives all claims for damages that may be caused by City's re-entering and taking possession of the Premises or removing and storing Tenant's personal property pursuant to this Section 20, and Tenant shall indemnify, defend and hold City harmless from and against any and all Claims resulting from any such act. No re-entry by City shall constitute or be construed as a forcible entry by City.

**20.5 City's Right to Cure Tenant's Defaults.** If Tenant defaults in the performance of any of its obligations under this Lease, then City may, at its sole option, remedy such default by providing Tenant with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of such default or any rights or remedies of City, and nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform. Tenant's obligations under this Section shall survive the termination of this Lease.

## **21. CITY'S ENTRY ON PREMISES**

(a) City and its authorized representatives shall have the right to enter the Premises at any time for any of the following purposes:

- (1) To determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease.
- (2) To observe the operations of the Premises.
- (3) To do any necessary maintenance and to make any restoration to the Premises that City has the right or obligation to perform.
- (4) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease.

(5) To shore the foundations, footings, and walls of the Premises and to erect scaffolding and protective barricades around and about the Premises, but not so as to prevent entry to the Premises, and to do any other act or thing necessary for the safety or preservation of the Premises if any excavation or other construction is undertaken or is about to be undertaken on any adjacent property or nearby street.

(b) City may enter the Premises at any time, without notice, in the event of an emergency. City shall have the right to use any and all means which City may deem proper to open the doors in an emergency in order to obtain entry to the Premises. Any entry to the Premises by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Premises, or an eviction of Tenant from the Premises or any portion of them.

(c) City shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of City's entry on the Premises as provided in this Section 21, except damage to Tenant's property (if any) resulting from the gross negligence or willful misconduct of City or its authorized representatives.

(d) City shall use reasonable efforts to conduct its activities on the Premises as allowed in this Section 21 in a manner that will cause the least possible inconvenience, annoyance, or disturbance to Tenant and any approved subtenants.

(e) Tenant shall not alter any lock or install any new or additional locking devices without the prior written consent of City. City shall at all times have a key with which to unlock all locks installed in the Premises (excluding Tenant's vaults, safes or special security areas, if any, designated by Tenant in writing to City).

## 22. CERTIFICATES

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

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

## 23. COMPLIANCE WITH LAWS

**23.1. Compliance with Laws.** Tenant shall promptly maintain the Premises, any Improvements permitted hereunder and Tenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as

extraordinary, and shall comply with all Laws applicable to Tenant's operations on the Park. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements. The parties acknowledge and agree that Tenant's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Tenant's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant (as a pre-approved Garage Operating Expense or Capital Improvement cost with respect to the Garage Premises), shall comply with all laws, judicial decisions, orders and regulations of federal, state, county and municipal governments and the departments, courts, commissions, boards and officers thereof pertaining to Tenant's use and occupation of the Premises in effect either at the time of execution of this Lease or at any time during the term and whether or not within the present contemplation of the parties. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation. Certain costs of compliance with Laws with respect to the Garage Premises will be Garage Operating Expenses.

### **23.2. Regulatory Approvals.**

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

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

**23.3. Compliance with City's Risk Management Requirements.** Tenant shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. Tenant shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

**23.4. Reports.** Tenant shall submit a report and provide such documentation to City as City may from time to time request regarding Tenant's operations and evidencing compliance thereof with this Lease and all Laws. In the event that Tenant prepares or obtains any report or other informational document relating to the Premises or any Improvements thereon, Tenant shall promptly deliver a copy of such report or document to City.

## **24. SPECIAL CITY REQUIREMENTS**

### **24.1 Non Discrimination in City Contracts and Benefits Ordinance**

**(a) Covenant Not to Discriminate.** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership mall business, social, or other establishments or organizations operated by Tenant.

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

**(c) Non Discrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations or in San Francisco or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

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

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

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

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

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

**24.5 Restrictions on the Use of Pesticides.** Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “IPM Ordinance”) describes an integrated pest management (“IPM”) policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises or Park or contract with any party to provide pest abatement or control services to the Premises without first receiving City’s written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises or the Park during the term of this Lease, (ii) describes the steps Tenant will take to meet the City’s IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant’s primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant’s contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City’s Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant’s staff or contractors. If Tenant or Tenant’s contractor will apply pesticides to outdoor areas at the Premises or the Park, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation (“CDPR”) and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City’s current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website.

**24.6 Conflicts of Interest.** Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Tenant becomes aware of any such fact during the term of this Lease Tenant shall immediately notify the City. Willful failure by Tenant to make such disclosure, if any, shall constitute grounds for the City’s termination and cancellation of this Lease.

**24.7 Drug Free Workplace.** Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Tenant agrees that any violation of this prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Lease.

**24.8 First Source Hiring Plan.** The provisions of San Francisco Administrative Code Chapter 83, the First Source Hiring Program, are incorporated in this Section by reference, and are made a material part of this Lease as though fully set forth herein. As an essential term of, and consideration for, this Lease, unless exempted by the City’s Office of Economic and Workforce Development, Tenant shall enter into a First Source Hiring Agreement with the City, on or before the effective date of the Lease. Tenant shall keep, and provide to the City, accurate records demonstrating its compliance with the First Source Hiring Program. Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the Office of Economic and Workforce Development.

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

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

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

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

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

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

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

(g) Tenant shall keep itself informed of the current requirements of the HCAO.

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

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

(j) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with City when it conducts such audits

(k) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000) [Fifty Thousand Dollars (\$50,000) for nonprofits], but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

#### **24.10 Wages and Working Conditions.**

(a) **Public Works.** Tenant agrees that any person performing labor in connection with tenant improvements or any alterations at the Premises or on the Park that is a "public work" as defined under San Francisco Administrative Code Section 6.22(E) or California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. Tenant shall include in any contract for such tenant improvements and alterations a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises or on the Park.

(b) **Theatrical Workers.** Tenant further acknowledges that City law entitles individual engaged in theatrical or technical services related to the presentation of a Show at the Premises or the Park, including individuals engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services, to be paid not less than the Prevailing Rate of Wages (which includes fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the Show is free and open to the public or meets any of the other exemptions in San Francisco Administrative Code Section 21C.4(b). Capitalized terms in this subsection shall have the meanings provided in San Francisco Administrative Code Section 21.C4. Accordingly, Tenant, as a condition of this Lease, agrees that:

(1) Tenant shall comply with the obligations in San Francisco Administrative Code Section 21C.4, and shall require its subtenants, contractors, and subcontractors to comply with the obligations in San Francisco Administrative Code Section 21C.4, including the payment of Prevailing Rate of Wages to individuals engaged in theatrical or technical services related to the presentation of a Show at the Premises or in the Park. In addition, if Tenant or its subtenant, contractor, or any subcontractor fails to comply with these obligations, City shall have all available remedies against Tenant to secure compliance and seek redress for workers who provided the services as described in San Francisco Administrative Code Section 21C.7, together with the remedies set forth in this Lease.

(2) City may inspect and/or audit any workplace, job site, books and records pertaining to the presentation of a Show at the Premises or the Park, and may interview any individual who provides, or has provided, work involving theatrical or technical services for the Show at the Premises or the Park.

(3) Tenant shall provide to City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate the presentation of a Show at the Premises or the Park.

**(c) Trade Show and Special Event Work.** Tenant further acknowledges that City law entitles individuals engaged in work involving the on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, and decorative materials in connection with trade shows, conventions, expositions, and other special events on City property to receive the Prevailing Rate of Wages (which includes fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the event is free and open to the public or meets any of the other exemptions in San Francisco Administrative Code Section 21C.8(b). Capitalized terms in this subsection shall have the meanings provided in Section 21.C.8. Accordingly, Tenant, as a condition of this Lease, agrees that:

(1) Tenant shall comply with the obligations in San Francisco Administrative Code Section 21C.8, and shall require Tenant's subtenants, contractors, and any subcontractors, to comply with the obligations in Section 21C.8, including the payment of Prevailing Wage Rates to workers engaged in On-site work on Trade Shows or Special Events. In addition, if Tenant or its subtenant, contractor (or any subcontractor) fails to comply with these obligations, City shall have all available remedies against Tenant to secure compliance and seek redress for workers who provided the services as described in Section 21C.7, together with the remedies set forth in this Lease.

(2) City may inspect and/or audit any workplace, job site, books and records pertaining to On-site work on Trade Shows or Special Events at the Premises or the Park, and may interview any individual who provides, or has provided, On-site work on Trade Shows or Special Events at the Premises or the Park.

(3) Tenant shall provide to City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate a Trade Show or Special Event at the Premises or the Park.

**(d) Public Parking Garage Workers, Janitors and Certain Other Workers.** Tenant acknowledges that City law entitles certain individuals working in public parking garages on City property, including but not limited to individuals engaged in washing, polishing, lubrication, rent-car service, parking vehicles, cashiers, attendants, checking coin boxes, non-attendant parking lot checking, daily ticket audit, traffic directors and shuttle driver, and certain individuals performing janitorial services at facilities owned by the City to be paid not less than the Prevailing Rate of Wages (which includes fringe benefits or matching equivalents) fixed by the Board of Supervisors. Accordingly, Tenant, as a condition of this Lease, agrees that Tenant shall comply with the obligations in San Francisco Administrative Code Sections 21C.4 and 21.C.2. Capitalized terms in this subsection shall have the meanings provided in San Francisco Administrative Code Section 21C.8.

(e) **Prevailing Wage Rates.** For current Prevailing Wage rates, see [www.sfgov.org/olse/prevailingwages](http://www.sfgov.org/olse/prevailingwages) or call the City's Office of Labor Standard Enforcement at 415-554-6235.

**24.11 Preservative-Treated Wood Containing Arsenic.** Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**24.12 Resource Efficient City Buildings and Pilot Projects.** Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

**24.13 Food Service Waste Reduction.** Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth herein. This provision is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

**24.14 Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Tenant shall remove all graffiti from the Premises within forty eight (48) hours of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other

improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of Tenant to comply with this Section of this Lease shall constitute an Event of Default of this Lease.

**24.15 Sustainable Food.** Sustainable foods are those which, through their production, purchase, and consumption, enhance the health of the environment, producers and consumers through one or more of these methods: growing, processing and distributing locally; using low or no synthetic agricultural chemicals; fairly trading with developing countries; meeting animal welfare standards; processing minimally; no genetic modification; no unnecessary antibiotics; and no added growth hormones. Tenant shall use commercially reasonable efforts to incorporate sustainable food concepts into everyday operations of the business on the Café Premises. City encourages any Café Subtenant to source sustainable foods by buying certified and/or locally produced food products. Acceptable sustainability certifications are limited to organic certification under the National Organic Standards Act ("USDA Organic), Fair Trade certification, Protected Harvest certification, Food Alliance certification, Rainforest Alliance certification, Certified Humanely Raised and Handled certification, American Humane certification, Marine Stewardship Council certification, and Salmon-Safe certification. Sustainability-related product claims that are acceptable under this clause include "grass-fed" claims, "not treated with artificial growth hormones (RBGH)" claims," produced without the nontherapeutic use of antibiotics" claims, and "raised without added hormones/no hormones added" claims. Locally produced food products are produced within 200 miles of San Francisco including the following counties in the North Coast, Central Coast, Sacramento and San Joaquin Valleys: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Madera, Marin, Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, and Yuba counties. Tenant shall require any Café Subtenant to provide an annual report on each anniversary date of the date, if any, on which food service is permitted at the Cafe Premises, outlining how such Café Subtenant incorporated these sustainable food concepts into everyday operations of any food and beverage concession under this Lease and how such Café Subtenant informed customers and the youth employed by the Café Subtenant, if any, regarding sustainable foods. This report shall include the percentage of total sales that were products certified as sustainably produced.

**24.16. No Smoking in City Parks.** Tenant agrees to comply with Section 1009.81 of the San Francisco Health Code, which provides: "Smoking is prohibited on any unenclosed area of property in the City and County of San Francisco that is open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier, or other property used for recreational purposes, or a farmers' market."

**24.17 Bottled Drinking Water.** Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided therein, as the same may be amended from time to time.

The provisions of Chapter 24 are incorporated herein by reference and made a part of this Lease as though fully set forth.

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

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

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

(c) Tenant and subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

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

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

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

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

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact the City’s Real Estate Division for additional information. City’s Real Estate Division may

consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

**24.19. Supervision of Minors.** Tenant shall comply and shall require its subtenants, contractors and subcontractors to comply with the obligations in California Public Resources Code Section 5164 if Tenant, or any subtenant, contractor, or subcontractor is providing services at a City park, playground, recreational center or beach, Tenant shall not hire, and shall prevent any subtenant, contractor or subcontractor from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Tenant or any subtenant, contractor or subcontractor, is providing services to the City involving the supervision or discipline of minors, Tenant and any subtenant, contractor or subcontractor shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for positions involving the supervision of minors. In the event of a conflict between this section and Section 24.18, "Consideration of Criminal History in Hiring and Employment Decisions," of this Lease, this section shall control.

## **25. ENVIRONMENTAL REQUIREMENTS AND HAZARDOUS MATERIALS**

**25.1 Definitions.** As used herein, the following terms shall have the meanings set forth below:

"Environmental Laws" shall mean any present or future federal, state, local or administrative law, rule, regulation, order or requirement relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage), or to health and safety, industrial hygiene or the environment, including, without limitation, soil, air and groundwater conditions.

"Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health, welfare or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

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

"Release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Premises or Park, or in, on, under or about the Premises or Park or into the environment.

**25.2 No Hazardous Materials.** Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or Park, or transported to or from the Premises or Park, with the sole exception that Tenant may keep and use such

substances in the Premises in such reasonably limited amounts as are customarily used for general office purposes (such as copy toner and other normal office and cleaning supplies) and may generate such substances as a result of measures taken pursuant to Article 10 of this Lease that disturb or remove lead-based or presumed lead-based paint from the exterior or interior surfaces of the Premises, so long as such generation, storage, transportation, use, and disposal are in compliance with all applicable Environmental Laws at all times. Tenant shall give immediate written notice to City of: (a) any action, proceeding or inquiry by any governmental authority (including, without limitation, the California State Department of Health Services, the State or any Regional Water Quality Control Board, the Bay Area Air Quality Management district or any local governmental entity) against Tenant with respect to the presence or Release or suspected presence or Release of Hazardous Material on the Premises, or the migration thereof from or to other property; (b) all demands or claims made or threatened by any third party against Tenant or the Premises relating to any loss or injury resulting from any Hazardous Materials; (c) any Release of Hazardous Material on or about the Premises has occurred that may require any Investigation or Remediation; and (d) all matters of which Tenant is required to give notice pursuant to Section 25359.7 of the California Health and Safety Code.

**25.3 Tenant's Environmental Indemnity.** If Tenant breaches any of its obligations contained in this Section, or, if any act or omission of Tenant, its Agents or Invitees, results in any Release of Hazardous Material in, on, under or about the Park, Premises or any other part of the Building(s) in violation of any applicable Environmental Laws, including but not limited to Chapter 36 of the San Francisco Building Code, then, without limiting Tenant's Indemnity contained in Section 18.2, Tenant shall, on behalf of itself and its successors and assigns, Indemnify the Indemnified Parties, and each of them, from and against all Claims (including, without limitation, damages for decrease in value of the Park, premises or the Building(s), the loss or restriction of the use of rentable or usable space or of any amenity of the Park, Premises or the Building(s) and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, costs incurred in connection with activities undertaken to Investigate and Remediate Hazardous Material and to restore the Park or Premises, as applicable to its prior condition, fines and penalties assessed for the violation of any applicable Environmental Laws, including but not limited to Chapter 36 of the San Francisco Building Code, and any natural resource damages. Without limiting the foregoing, if Tenant or any of its Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Park or the Premises, Tenant shall immediately and at no expense to City take any and all appropriate actions to return the Park, Premises or the Buildings affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by the City and continues at all times thereafter. Tenant shall afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

**25.4 Survival of Obligation.** Tenant's obligations under this Section 25 shall survive the Expiration Date or other termination of this Lease.

**25.5 Hazardous Substance Disclosure.** California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals,

such as formaldehyde. Further, there are or are likely to be Hazardous Materials located on the Premises, including but not limited to copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

**26. HOLDING OVER.** Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease.

## **27. GENERAL PROVISIONS**

**27.1 Notices** Any notice given under this Lease shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant, (i) at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or (b) City, at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by email to the email address set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile. Tenant shall promptly provide City with copies of any and all notices received regarding any alleged violation of laws or insurance requirements or any alleged unsafe condition or practice.

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

**27.3 Amendments.** Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and

condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, the General Manager, or his or her designee shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Tenant, and City's agreement may be made upon the sole approval of the General Manager, or his or her designee; provided, however, material amendments or modifications to this Lease (i) changing the legal description of the Premises, (ii) increasing the Term, (iii) increasing the Rent, (iv) changing the general use of the Premises from the use authorized under this Lease, and (v) any other amendment or modification which materially increases the City's liabilities or financial obligations under this Lease shall additionally require the approval of the Recreation and Park Commission and, where applicable, the City's Board of Supervisors.

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

**27.5 Parties and Their Agents; Approvals.** The words "City" and "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party, and the term "Invitees" when used with respect to Tenant shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of Tenant. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through City unless otherwise provided in this Lease, subject to applicable law.

**27.6 Successors and Assigns.** Subject to the provisions of this Lease relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Premises as owner or lessee, including any transfer by operation of law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

**27.7 Brokers.** Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

**27.8 Governing Law.** This Lease shall be construed and enforced in accordance with the laws of the State of California and the City's Charter. This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco and applicable City ordinances and regulations.

**27.9 Attorney's Fees.** the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

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

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

**27.12 Survival of Indemnities.** Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof.

**27.13 Relationship of the Parties.** City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

**27.14 No Recording.** Tenant shall not record this Lease or any memorandum hereof in the public records.

**27.15 Options Personal.** Any right or option to extend the Term of this Lease or renew this Lease in favor of Tenant is personal to the original Tenant and may be exercised only by the original Tenant while occupying the Premises who does so without the intent of thereafter making any Assignment of this Lease or Sublease of the Premises, or any portion thereof, and may not be exercised by or assigned, voluntarily or involuntarily, by or to any person or entity other than Tenant. The options, if any, herein granted to Tenant are not assignable separate and apart from this Lease, nor may any option be separated from this Lease in any manner, either by reservation or otherwise.

**27.16 Non-Liability of City Officials, Employees and Agents.** No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement.

**27.17 No Relocation Assistance; Waiver of Claims.** Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and

Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking. Tenant shall include a provision specifically incorporating the forgoing waiver in any Sublease of part or all of the Premises.

**27.18 Exercise of City's Rights.** All rights, powers and privileges of City under this Lease, except as otherwise specified in this Lease, may be exercised, on behalf of City, by the General Manager, or his or her designee, without the approval or consent of the Recreation and Park Commission, or any other board, commission or officer of the City and County of San Francisco, except when such approval or consent is expressly required by the Charter or an ordinance of the City and County of San Francisco, this Lease or by other applicable law. Any designee of the General Manager must be specified in writing. Copies of such written designation shall be kept on file by the General Manager.

**27.19 Successors.** The terms, covenants and conditions contained in this Lease shall be binding on and inure to the benefit of the parties and their successors, except as provided in Section 20.

**27.20 Status of Parties on Termination.** If a party elects to terminate this Lease as allowed herein, the parties shall be released from further liabilities and obligations on the date the Lease terminates provided, however that the Tenant may expend funds from the Revenue and Capital Account to pay for the cost of any winding up or dissolution of the Tenant.

**27.21 Surrender of Premises; Quitclaim Deed.** Upon the expiration date or other termination of the Term of this Lease, Tenant shall peaceably quit and surrender to City the Premises together with the Alterations or Capital Improvements approved by City in good order and condition, except for normal wear and tear after Tenant's having made the last necessary repair required on its part under this Lease, and further except for any portion of the Premises condemned and any damage and destruction for which Tenant is not responsible hereunder. The Premises shall be surrendered free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by City. Notwithstanding anything to the contrary in this Lease, City can elect at any time prior to the expiration date of this Lease or within five (5) days after termination of this Lease, to require Tenant to remove, at Tenant's sole expense, all or part of the Alterations or Capital Improvements, or equipment constructed or installed by or at the expense of Tenant. Tenant shall promptly remove such items and shall repair any damage to the Premises resulting from such removal. Such removal and repair shall be considered a Tenant cost. Tenant's obligations under this Section 27.21 shall survive the expiration date or other termination of this Lease.

Tenant shall make an inventory of all its personal property and shall surrender to City all such personal property within the time periods stated in this Section 27.21.

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

Upon the expiration or earlier termination of this Lease all funds in the accounts shall be transferred to City or City's designee.

## **28. INTERPRETATION OF LEASE**

**28.1 Effective Date.** This Lease shall become effective on the date (the "Effective Date" that is the later of (1) the date upon which Recreation and Park Commission, and the City's Board of Supervisors, in their respective sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable laws (ii) the date this Lease is duly executed and delivered by the parties hereto.

**28.2 Amendments.** Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by both parties hereto.

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

**28.4 Interpretation of Certain Phrases and Terms.** The words "City" and "Tenant" as used herein shall include the plural as well as the singular. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non limitation, such as "without limitation" or similar words, are used. When required by the context of this Lease, the singular shall include the plural.

**28.5 Captions and Subheadings.** The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease.

**28.6 Arm's Length Transaction.** This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. Neither party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.

Notwithstanding anything to the contrary contained in this Lease, Tenant acknowledges and agrees that no officer or employee of City has authority to commit City to this Lease unless and until the Recreation and Park Commission (and if required the San Francisco Board of Supervisors) shall have duly adopted a resolution approving this Lease and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a resolution, and this Lease shall be null and void if the Recreation and Park Commission (or the Board of Supervisors, if required) do not approve this Lease, in its/their sole discretion. Approval of this Lease by the General Manager shall not be deemed to imply that such resolution will be enacted, nor will any such approval create any binding obligations on City.

**28.7 Severability.** If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

**28.8 Entire Agreement.** This instrument, including the exhibits hereto, which are made apart of this Lease, contains the entire agreement between the parties and all prior written or oral negotiations, understandings and agreements are merged herein. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises, the Buildings or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

**28.9 Survival of Indemnities.** Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof.

**28.10 Relationship of the Parties.** City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

**28.11 Non Liability of City Officials, Employees and Agents.** No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement.

**28.12 Provisions are Covenants and Conditions.** All provisions, whether covenants or conditions, on the part of Tenant shall be deemed to be both covenants and conditions.

**28.13 Joint and Several Obligations..** The term "party" shall mean City or Tenant; and if more than one person or entity is City or Tenant, the obligations imposed on that party shall be joint and several.

**28.14 Counterparts.** This Lease may be executed in two or more counter parts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[Remainder of this page intentionally left blank.]

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

<p>TENANT:</p> <p>CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION</p> <hr/> <p>Sidney Goodwill President</p>	
-----------------------------------------------------------------------------------------------------------------------	--

**CITY:**

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

By: \_\_\_\_\_  
PHILIP GINSBURG, General Manager  
Recreation and Park Department

**APPROVED BY  
RECREATION AND PARK COMMISSION  
PURSUANT TO RESOLUTION NO. \_\_\_\_\_ DATED: \_\_\_\_\_**

\_\_\_\_\_  
Margaret McArthur, Commission Liaison

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA, City Attorney**

By \_\_\_\_\_  
Anita L. Wood, Deputy City Attorney

## **EXHIBIT A**

### **Garage Premises**

That certain garage building located in the City and County of San Francisco, commonly known as the Union Square Garage, bordered by Geary Street, Powell Street, Post Street, and Stockton Street (the "Improvements"), together with all right, title and interest in and to the land lying under the Improvement (the "Footprint"), together with a non-exclusive easement for ingress and egress over all land now or hereafter owned by the Landlord bordered by and fronting on Geary Street, Powell Street, Post Street and Stockton Street, in the City and County of San Francisco (the "Easement"). The Improvements, the Footprint, and the Easement are collectively referred to herein as the ("Garage Premises").

The Garage Premises are located on real property located in the City and County of San Francisco, more particularly described as follows:

Parcel No. 4 COMMENCING at a point formed by the intersection of the Southerly line of Post Street with the Easterly line of Powell Street, running thence Easterly and along said Southerly line of Post Street 412 feet 6 inches to the Westerly line of Stockton Street; thence at right angles Southerly and along said Westerly line of Stockton Street 275 feet to the Northerly line of Geary Street; thence at right angles Westerly and along said Northerly line of Geary Street 412 feet 6 inches to the Easterly line of Powell Street; thence at right angles Northerly and along said Easterly line of Powell Street 273 feet to the Southerly line of Post Street and to the point of commencement.

BEING that block of land known as Union Square.

**EXHIBIT B**

**Café Premises**  
[Attached]

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

**Part I: Garage Premises and Garage Operations**

Garage Premises and Garage Operations insurance coverage shall include the following:

(a) Property insurance on an all risk form, excluding earthquake and flood, but including sprinkler leakage, in the amount of one hundred percent (100%) of the replacement value of the Garage Premises which value is estimated at Fifty-Seven Million Dollars (\$57,000,000). Such policy shall also insure against business interruption, including coverage for the City, in an amount not less than one hundred percent (100%) of Garage Gross Receipts for thirty six (36) months. Any deductible under such policy shall not exceed \$10,000 for each occurrence. The policy shall contain a standard replacement cost endorsement providing for full replacement and no deduction for depreciation and a stipulated amount endorsement. Such policy shall include the City as named insured. Upon request by the City, Tenant shall obtain earthquake coverage under such property insurance policy, the cost thereof to be a Garage Operating Expense.

(b) Boiler and machinery insurance, comprehensive form, in an amount of \$1,000,000 with respect to loss of or damage to insured objects, and \$7,500 expediting expense insuring ventilating and electrical equipment and any other equipment or machinery typically insured under such a policy, with any deductible not to exceed \$10,000 for each loss. Such policy shall include the City as named insured.

(c) Commercial general liability insurance with limits not less than \$5,000,000 each occurrence, combined single limit for bodily injury and property damage, or in such greater amount and limits as the City may reasonably require from time to time, including coverage for contractual liability, personal injury, broad form property damage, products and completed operations. Any deductible under such policy shall not exceed \$10,000 for each occurrence. This requirement can be met with the use of an excess/and or umbrella insurance policy.

(d) Business automobile liability insurance with limits not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles, as applicable. Any deductible under such policy shall not exceed \$10,000 for each occurrence.

(e) Garage keeper's legal liability insurance with limits not less than \$2,000,000 for each occurrence combined single limit for loss and damage to vehicles in Tenant's care, custody or control caused by fire, explosion, theft, riot, civil commotion, malicious

mischief, vandalism or collision, with any deductible not to exceed \$1,000 for each occurrence, and coverage for non-automobile property customarily left in the custody of a garage with a limit of \$5,000.

(f) Worker's Compensation Insurance in amounts as required by State law, and Employers' Liability Insurance, with limits not less than \$1,000,000 for each accident, covering all employees employed in or about the Garage Premises to provide statutory benefits as required by the laws of the State of California. Said policy/ies shall be endorsed to provide that the insurer waives all rights of subrogation against the City.

(g) Director and Officer Liability Insurance with limits not less than \$1,000,000.

(h) Crime Policy covering all officers and employees of Tenant employed at the Garage Premises, with a limit of \$1,000,000 and any deductible not to exceed \$10,000 for each loss.

## **Part II: Café Premises and Café Operations**

Café Premises insurance coverage shall include the following:

(a) Property insurance as follows:

(i) Loss of damage by such perils as are included in the standard "All Risks Form" of property damage insurance, in amounts sufficient to prevent City or Tenant from becoming a co-insurer within the terms of the applicable policies, and, in any event, in an amount equal to 100% of the full replacement value of the improvements on the Café Premises;

(ii) Boiler and machinery insurance, comprehensive form, in an amount of \$1,000,000 with respect to loss of or damage to insured objects, and \$7,500 expediting expense insuring ventilating and electrical equipment and any other equipment or machinery typically insured under such a policy, with any deductible not to exceed \$10,000 for each loss;

(iii) Such other risks in such amounts as City's Risk Manager may reasonably require.

"Full replacement value" shall mean the actual replacement cost of the improvements, including those which are included in the Café Premises (excluding foundation and excavation costs but without deduction for physical depreciation). It shall be determined at such time as City's Risk Manager may request by an appraiser or appraisal company selected and paid by Tenant and

reasonably acceptable to City, provided, however, that City's Risk Manager shall have the right, at any time, to ascertain the full replacement value at its own expense, except that in the event such full replacement value as determined by City shall exceed by at least ten percent (10) of the existing amount of insurance coverage procured by Tenant, Tenant shall pay the expense of determining the full replacement value.

(b) Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU). Such coverage shall include Food Products Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence. If the operation of the Café Premises includes the sale of alcoholic beverages, such coverage shall include legal liquor liability coverage with limits not less than One Million Dollars (\$1,000,000) each occurrence.

(c) Business automobile liability insurance with limits not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles, as applicable. Any deductible under such policy shall not exceed \$10,000 for each occurrence.

(d) Worker's Compensation Insurance in amounts as required by State law, and Employers' Liability Insurance, with limits not less than \$1,000,000 for each accident, covering all employees employed in or about the Garage Premises to provide statutory benefits as required by the laws of the State of California. Such policy/ies shall be endorsed to provide that the insurer waives all rights of subrogation against the City.

(e) Time element coverage for business interruption insuring that Rent will be paid to City for the Café Premises for a period of at least one (1) year if Tenant or Café Subtenant is unable to operate its business at the Café Premises. Such insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion. To calculate Café Rent during any such interruption of business, the Café Rent for the 12-month period immediately preceding the incident causing the business interruption shall be used.

(f) Such other risks in such amounts as City's Risk Manager may from time to time reasonably require.

**EXHIBIT E**  
**Standard Commercial Real Estate Business Terms**

All subleasing terms listed below shall be considered by Tenant when negotiating use of the Café Premises or commercial space within the Garage Premises. City reserves the right to approve, disapprove, alter or re-negotiate any and all terms or portions thereof.

1. Lessee
2. Lease Term
3. Rent (base and percentage)
4. Escalation
5. Renewal Options, if applicable
6. Rent Credits and Allowances
7. Tenant Improvements (TI's)
8. Insurance
  - a) Worker's Compensation
  - b) Commercial General Liability
  - c) Business Automobile Liability
  - d) Professional Liability, if applicable
9. Utilities
10. Broker Fees
11. Appraisal Fees
12. Fair Market Value Appraisal
13. Late Charges
14. Remedies in the Event of Default

Additional business terms for cellular phone sites:

1. Interference
2. Second-tier Sublease Rent

**EXHIBIT F**  
**Supplemental Park Maintenance Services**

As provided by Section 9.9 of the Lease to which this Exhibit is attached, Tenant shall provide certain supplemental maintenance and services to the Park, in order to maintain and preserve the Park in a first class condition, which supplemental maintenance and services will be in addition to maintenance services performed by City at the Park. Capitalized terms not defined in this Exhibit F will have the meanings given in the Lease.

1. SCOPE OF SERVICES

Tenant's maintenance and service rights and responsibilities detailed in this Exhibit F shall be subject to the terms and conditions set forth below:

(a) Work Plan. Not less than ninety (90) days prior to the beginning of each Fiscal Year, Tenant shall submit to the Recreation and Park Department (the "Department") for approval, a proposed work plan for the Park (the "Annual Supplemental Park Work Plan"), which, at a minimum, shall include the proposed basic scope of work for the upcoming Fiscal Year. Each proposed Annual Supplemental Park Work Plan shall set forth a plan for the additional maintenance services and services to be performed by Tenant for the Park. Upon approval by the Department, each proposed Annual Supplemental Park Work Plan shall be the work plan for the next Fiscal Year. The Commission has approved the Annual Supplemental Park Work Plan for the 2015-2016 Fiscal Year.

(b) Supplemental Park Maintenance Services. Subject to annual appropriations by the Board of Supervisors, the City shall continue to provide janitorial, gardening, landscaping and other maintenance services to the Park at least to the same extent as it had provided prior to the Commencement Date of the Lease, which services consists of one (1) gardener and one (1) janitor. To the extent funds are available and subject to cost limitations contained in any Annual Supplemental Park Budget (as defined below), Tenant shall provide to the Park the additional janitorial, gardening, landscaping, engineering and other maintenance services and other services such as coordination of events and other activities, safety and support services, all as described in any Annual Supplemental Park Work Plan approved by the Commission (the "Supplemental Park Maintenance Services"), to the reasonable satisfaction of the Department. When entering into contracts, issuing purchase orders or otherwise arranging for goods or services for the Supplemental Park Maintenance Services, Tenant shall attempt to secure the best price reasonably obtainable.

(c) Subcontracting. Tenant may employ one or more professional operator(s), person(s), firm(s) or corporation(s) with staff experienced in the management and operation of public parks, public open spaces and/or plazas, and/or property management to perform some or all of the Supplemental Park Maintenance Services. Tenant's selection of such operator(s) shall be subject to the prior approval by the Commission of: (i) the identity of the operator, (ii) the qualifications of the operator, (iii) the manner in which such operator is selected, by bid or otherwise, and (iv) the terms of the contract engaging such operator. Without limiting the foregoing, the agreement with the approved operator will contain all of the subcontracting provisions required by the terms of the Lease, and shall require the operator to carry insurance and to provide a waiver of claims and an indemnity in favor of City in a form approved by the Department. Tenant shall not amend the approved agreement with such operator, or permit any assignment of any interest therein, without obtaining City's written consent. The San Francisco Board of Supervisors, by approving this Lease, authorizes the Commission to approve or reject the above matters without the need for further Board action, provided the term of the operating

agreement, including any renewal periods, must not exceed nine (9) years. Neither Tenant, its manager, nor any member of its board of directors shall have any proprietary, pecuniary or other beneficial interest in the Supplemental Park Maintenance Services operator or in those persons or entities that have a controlling interest in the Supplemental Park Maintenance Services operator.

Notwithstanding the foregoing, City hereby consents to a subcontract between Tenant and MJM Management Group, Inc. ("MJM") in the form of the Existing Supplemental Services Subcontract. Prior the expiration of the Existing Supplemental Services Subcontract, which will be August 15, 2017, Tenant will have entered into a new Supplemental Park Maintenance Services Agreement. The new agreement will ensure that there is no service gap. Tenant's failure to enter into a new Supplemental Park Maintenance Services subcontract by August 15, 2017 without the prior written consent of the General Manager to extend such deadline may at the election of the General Manager be a default under this Lease. As used herein the "Existing Supplemental Services Subcontract" is that certain Management Agreement, dated August 15, 2002, between Tenant and MJM (as successor to KTB Realty Partners, Inc.).

(d) General Operating Standards. Tenant shall be responsible for ensuring that the Supplemental Park Maintenance Services are conducted to the highest standards and in a first-class, professional manner. In performing its obligations hereunder, Tenant shall create and maintain a positive image for the Park and the City and shall coordinate closely with Department staff.

## 2. FINANCIAL

(a) Annual Supplemental Park Budget. Incorporated as part of each Annual Comprehensive Budget to be provided under the Lease (Section 10.2), Tenant shall prepare and submit a budget line item setting forth in reasonable detail the contemplated expenditures to be made by Tenant in performing the Supplemental Park Maintenance Services for the succeeding Fiscal Year or portion thereof (each, an "Annual Supplemental Park Budget"). Each Annual Supplemental Park Budget shall include proposed costs and expenses to be incurred by or on behalf of Tenant in providing the Supplemental Park Maintenance Services described in an Annual Supplemental Park Work Plan. These costs may include, without limitation, the costs of park ambassadors and maintenance personnel, and associated management and other comparable fees, as applicable. One (1) copy of each proposed Annual Supplemental Park Budget shall be filed with the Department, and one (1) copy shall be filed with the San Francisco Municipal Transportation Agency (the "SFMTA"). The Department and the SFMTA shall review each proposed Annual Supplemental Park Budget and make recommendations with respect thereto and shall deliver copies of such recommendations to Tenant. Tenant shall revise each proposed Annual Supplemental Park to conform to any such recommendations.

(b) Disbursements. To the extent funds are available under the Lease, Tenant shall make disbursements from the "Garage and Revenue Account" (as defined in the Lease under Section 10.3(c) and 10.3(f)) to pay those costs of operation and maintenance of the Park (the Supplemental Park Maintenance Expenses") described in an Annual Supplemental Park Budget approved by the Department and SFMTA as provided in Section 2(a) of this Exhibit F. Tenant shall also disburse directly to the City any and all revenues collected or generated by Tenant, including revenues collected by Tenant on behalf of the City, from the use or operation of the Park hereunder, including, without limitation, any permit fees collected in connection with the use of the Park or any revenues generated from a lease or license (or sublease or sublicense) of part or all of the Park other than the Café Premises ("Park Revenues").

(c) Audit Rights and Reports. Tenant shall, within twenty (20) days of the end of each calendar month during the Term, render to the Department and SFMTA a correct, detailed

and complete statement, showing all Park Revenues and Supplemental Park Maintenance Expenses during such month (a "Monthly Report"). Each Monthly Report shall be signed and verified under oath and forwarded to the Department and SFMTA. Tenant further agrees to keep full, true and accurate books, records and accounts related to Tenant's performance of Supplemental Park Maintenance Services as the Department or SFMTA may reasonably require (the "Books and Records"), and the Department and Controller shall at all times have the right to inspect, examine and audit such Books and Records. On or about May 30th of each year of the Term, Tenant shall render an annual accounting to the Department and SFMTA, and file with the Department and SFMTA a complete financial statement covering the performance of its rights and responsibilities under this Exhibit for such year and the disbursement of all funds and collection of all Park revenues related thereto.

### 3. TERMINATION OF SUPPLEMENTAL PARK MAINTENANCE SERVICES RIGHTS AND OBLIGATIONS

(a) Termination for Cause. City shall have the right to terminate Tenant's rights and obligations with respect to the Supplemental Park Maintenance Services after written notice to Tenant and after the expiration of any cure period provided below, upon the occurrence of any material event of default under the provisions of this Exhibit F, including but not limited to the following:

(i) Failure of Tenant to perform any covenant or obligation set forth in this Agreement.

(ii) Failure of Tenant to collect, account for and pay or cause to be paid any and all taxes required by law with respect to the Supplemental Park Maintenance Services or make any other payment required hereunder unless subject to a bona fide dispute in respect of any such obligation.

(iii) Performance, cessation or deterioration of Supplemental Park Maintenance Services in a manner which adversely and materially affects the condition of the Park.

(iv) Abandonment, discontinuance or assignment by Tenant, without the prior written consent of City, of any or all of the managerial, operational or supervisory services or operations required hereunder.

(v) Filing by or against Tenant of any petition in bankruptcy, any assignment by Tenant for the benefit of creditors, the levy of a writ of attachment or execution against any of Tenant's property or the appointment of a receiver for Tenant or any of Tenant's property.

(vi) Failure by Tenant to correct a breach or meet the standards set forth herein or in any Annual Supplemental Park Work Plan after being twice requested by City to correct the problem in any twelve (12) month period, unless City caused such problem or breach.

(vii) Failure by Tenant to pay Supplemental Park Maintenance Expenses or any other expenses required to be paid under this Exhibit F, unless subject to a bona fide dispute in respect of the obligation to pay any such expenses or caused by the City.

(viii) Failure by Tenant to submit in a timely manner any report required under this Exhibit F.

(ix) Failure by Tenant to comply with all applicable laws, rules, regulations, orders or requirements of any federal, state or local government agency with respect to its services or obligations under this Exhibit F.

(x) An event of default by Tenant under the Lease.

Tenant shall not be in default hereunder unless Tenant shall fail to correct such failure to perform for a period of thirty (30) days after written notice given by City to Tenant identifying the default. Notwithstanding the foregoing, if a default cannot be cured within such thirty (30)-day period, Tenant shall not be in default hereunder if and for so long as Tenant shall, diligently and in good faith, have commenced to remedy the default within such thirty (30)-day period and shall subsequently prosecute to completion with diligence and continuity the remedying of default and shall remedy such default within a reasonable time to City's satisfaction.

(b) Effective Date of Termination. Termination under this Section 3 shall be effective immediately upon City's giving notice to Tenant and after the expiration of any applicable cure periods during which no cure shall have occurred. Upon such termination, all rights, powers, privileges and authority granted to Tenant with respect to the Supplemental Park Maintenance Services or use of portions of the Park other than the Café Premises and Garage Premises under this Lease shall cease, and Tenant shall thereupon have the duties provided in Section 3(d) below.

(c) Non-exclusive Remedies. City's right to terminate the Lease with respect to the Supplemental Park Maintenance Services under this Section 3 is not its exclusive remedy but is in addition to all other remedies provided to it by law, in equity, or under the provisions of the Lease.

(d) Duties Upon Termination of Supplemental Park Maintenance Services Obligations. Upon termination of the Lease with respect to the Supplemental Park Maintenance Services, Tenant shall promptly pay or cause to be paid to City, as soon as is determinable after the effective date of termination, any revenues due City under the terms of this Exhibit F and shall deliver to the City, at City's expense, copies of all documents pertaining to maintenance and operation of the Park, any insurance policies, and any and all other Books and Records pertaining to the Park, whether or not enumerated herein, which are requested by City or necessary or desirable for the maintenance and operation of the Park, which are then in possession of Tenant. Tenant further agrees to do all other things reasonably necessary to cause an orderly transition of the maintenance and operation of the Park without detriment to the right of City.