



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

LEASE

between

CITY AND COUNTY OF SAN FRANCISCO, Landlord

and

iHangar, Lessee

For the Lease and Management of a portion of the

**Palace of Fine Arts
San Francisco, California**

_____, 2014

**CITY AND COUNTY OF SAN FRANCISCO
Edwin M. Lee, Mayor**

**SAN FRANCISCO RECREATION and PARK COMMISSION
Mark Buell, President
Allan Low, Commissioner
Gloria Bonilla, Commissioner
Tom Harrison, Vice President
Meagan Levitan, Commissioner
Eric McDonnell, Commissioner**

Philip A. Ginsburg, General Manager



**RECREATION AND PARK DEPARTMENT
LEASE
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EXHIBITS

- EXHIBIT A – Depiction of Premises, including designation of Public Restrooms and Atrium Area
- EXHIBIT B – Department Rules and Regulations (link to online San Francisco Park Code)
- EXHIBIT C – Special Events Percentage Rent Rate
- EXHIBIT D – Accommodated Public Events
- EXHIBIT E – Carryover Improvements to Remain at Surrender
- EXHIBIT F – Sublease Conditions; Form of Indemnity

RECREATION AND PARK DEPARTMENT

LEASE

THIS LEASE (this "Lease") dated for reference purposes only as of July 1, 2014 is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Recreation and Park Commission (the "Commission"), and iHangar, a 501 c3 not for profit organization ("Lessee").

City and Lessee hereby agree as follows:

1. BASIC LEASE INFORMATION

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

Lease Reference Date: July 1, 2014

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

Lessee: iHangar,
a California 501 c3 corporation

Building: The Palace of Fine Arts Building (the "Building"), located on Lyon Street in San Francisco, California, which is owned by the City and under the jurisdiction of its Recreation and Park Department (the "Department").

Premises (Section 3.1): That portion of the Building generally depicted on the attached **Exhibit A**. The Premises do not include the Palace of Fine Arts Theatre or its lobby or any outdoor areas including the rotunda area.

Term (Section 4): The term of this Lease shall be July 1, 2014 through March 31, 2016, as described in **Section 4.1(a)**.

Estimated Commencement Date: July 1, 2014.

Expiration Date: March 31, 2016.

Monthly Base Rent (Section 5.1): \$42,000 per month, payable in monthly installments as provided in **Sections 5.1.**, and subject to the credit set forth in **Section ___**.

Percentage Rent (Section 5.1 and Section 5.5): In addition to the monthly Base Rent specified above, Lessee shall pay monthly Percentage Rent in the amount of the aggregate of the following percentages of the respective categories of Gross Receipts. See **Section 5.1** and **Section 5.5**.

<u>Type of Sale</u>	<u>Percentage</u>
Special Events	See Exhibit C
Food and Beverage Sales	10%
Merchandise sales	10%
Playground fees	10%
Other entry fees	10%
Other revenue generating items (tours, classes, etc.)	10%

Rent Credit for Basic Utilities (Section 5.2 and Section 10.1): Tenant shall pay for all utilities provided to the Premises in accordance with the provisions of **Section 10.1**, provided that Lessee shall receive a credit against the Base Rent payable hereunder in the amount of Basic Utilities paid by Lessee, not to exceed \$4,000 in any calendar month. See **Section 5.2** and **Section 10.1**.

Condition (Section 3.4): Except to the extent otherwise expressly provided in **Section 3.4**, Lessee shall accept the Premises in its “as is” condition as of the date of this Lease.

Use (Article 7, Section 7.1): Exhibitions and activities celebrating the centennial of the Panama-Pacific International Exposition, with a theme of “Then, Now and Tomorrow” (the “Exhibition Theme”) and a focus on providing exhibit space telling the stories of (i) the Panama-Pacific International Exposition, (ii) what the world is doing now with innovation and (iii) what the future looks like. Lessee shall have the right to use portions of the Premises for the operation of a visitor serving café and museum store and to host limited special events ancillary to the primary use as more particularly described in **Article 7**.

Curated Exhibit (Section 7.5(b)): Lessee shall cooperate with the Maybeck Foundation and the California Historical Society to develop and present a curated exhibit commemorating the Panama-Pacific International Exposition (the “Curated Panama-Pacific International Exposition Exhibit”).

Free Public Access to Atrium Area (Section 7.4(a)): The Atrium Area designated on **Exhibit A** shall be open to the general public without charge during regular business hours, except to the extent otherwise provided in **Section 7.4(a)** below. Lessee and its Subtenants and licensees may charge admission to other portions of the Premises.

Sublessees; Anchor Occupants; Rotating Exhibits (Section 7.5): City and Lessee anticipate that portions of the Premises will be subject to Subleases with entities that will provide programs or exhibits consistent with the Exhibition Theme. Lessee anticipates that some Subleases will be long-term (up to the

duration of the Term) and others will be used for rotating exhibits or programs of short duration. Unless otherwise approved by the General Manager, at least one program or exhibit space shall be targeted to K-12 youth programs.

Alterations (Section 8.1): Except as otherwise approved by the General Manager in his or her sole discretion, all alterations to the Premises shall be free standing.

Security Deposit (Section 23): \$84,000

Notice Address of City (Section 26.1): Recreation and Park Department
Property Management
McLaren Lodge Annex
501 Stanyan Street
San Francisco, California 94117
Re: Palace of Fine Arts

with a copy to: Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Real Estate/Finance Team

Key Contact for City: Cassandra Costello
Property Manager
Recreation and Park Department

Telephone No.: 415-831-2791

Email address: cassandra.costello@sfgov.org

Notice Address for Lessee (Section 26.1): 1806 Belles Street
Suite 8A
The Presidio
San Francisco, CA 94129

with a copy to: Lessee at the Premises, Attn: _____, after the Commencement Date

Key Contact for Lessee: Dan Shine

Telephone No.: 415-326-6007

Email address: dan@ihangar.org

Brokers (Section 26.8): _____

Other Noteworthy Provisions:

Accommodated Public Events (Section 7.6(b)): Lessee shall use good faith efforts to accommodate the Accommodated Public Events listed in **Exhibit D**, in accordance with the provisions of **Section 7.6(b)**.

Dedicated Parking Privileges (Section 7.9) **See Section 7.9**

2. DEFINITIONS

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

"Accommodated Public Events" has the meaning set forth in **Section 7.6(b)** hereof.

"Additional Charges" means any and all real and personal property taxes, possessory interest taxes, insurance premiums and other costs, impositions and expenses (other than Base Rent) described in or otherwise payable by Lessee under this Lease.

"Affiliate of Lessee" means any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under the common control with, Lessee. As used above, the words "control," "controlled" and "controls" mean the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or earnings of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

"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 by or on behalf of Lessee to any Improvements or to the Premises, including but not limited to any interior alterations or renovations, but excluding any items constituting Lessee's Personal Property.

"Assignment" means the sale, assignment, encumbrance, pledge or other transfer of all or any part of Lessee's interest in or rights with respect to the Premises (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Lessee), but does not include an Event Sublicense pursuant to **Section 7.4(b)** or **7.4(c)**, as applicable.

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

"Base Rent" means the monthly Base Rent specified in the Basic Lease Information and described in **Section 5.1** hereof.

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

"**Café**" has the meaning set forth in **Section 7.1** hereof.

"**Carryover Improvements**" has the meaning set forth in **Section 8.5** hereof.

"**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 Lessee 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, public restrooms (including the Public Restrooms), sidewalks, exterior landscaping and lagoon, plazas and street improvements, but excluding the Premises itself within the boundaries delineated in the depiction of the Premises on **Exhibit A**.

"**Effective Date**" means the date on which this Lease becomes effective pursuant to **Section 4.4** 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 16.1** hereof.

"**Event Sublicense**" has the meaning set forth in **Section 16.1(c)** hereof.

"**Exploratorium**" or "**The Exploratorium**" means The Exploratorium, a California nonprofit public benefit corporation.

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

"General Manager" means the General Manager of the Recreation and Park Department.

"Gross Receipts" means all amounts received and receivable from all sales and business conducted in, from or attributable to the Premises by Lessee, 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 Premises as a sublessee, licensee, concessionaire, contractor or subcontractor of Lessee, 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. The following items shall be excluded from Gross Receipts for purposes of calculating the Percentage Rent: (a) returns and refunds and (b) the amount of any sales tax, parking tax, or similar tax or imposition, imposed on all sales or charges where such sales tax, similar tax or imposition is billed to the purchaser as a special item.

"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 Lessee, 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 Lessee 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, but excluding any items constituting Lessee's Personal Property.

"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.

"**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 Lessee means the clients, customers, invitees, guests, members and licensees, assignees and sublessees of Lessee.

"**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.

"**Lessee**" means the Party identified as Lessee in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Lessee shall also refer to the successors and assigns of Lessee's interests under this Lease, provided that the rights and obligations of Lessee'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.

"**Lessee's Personal Property**" means the personal property of Lessee described in **Section 8.3** hereof.

"**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.

"**Museum Store**" has the meaning set forth in **Section 7.3** hereof.

"**Official Records**" means the official records of the county(ies) in which the Premises are located.

"**Party**" means City or Lessee; "**Parties**" means both City and Lessee.

"**Percentage Rent**" means a sum equal to the stated percentage of Lessee's Gross Receipts for the stated categories made from or upon the Premises during each calendar month of the Term in the respective percentage amount set forth in the Basic Lease Information.

"**Permitted Uses**" has the meaning given in **Section 7.1** hereof.

"**Premises**" has the meaning given in **Section 3.1** hereof. The Premises shall include any existing or permitted Improvements, together with any additions, modifications or other Alterations thereto permitted hereunder. Notwithstanding anything to the contrary in this Lease, the Premises do not include any Department Facilities, nor any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises.

"**Public Event**" has the meaning set forth in **Section 7.6(b)** hereof.

"**Public Restrooms**" has the meaning set forth in **Section 3.1(a)** hereof.

"**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 Lessee, 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 Base Rent and the Percentage Rent, together with any and all Additional Charges, whether or not any such amounts are specifically characterized as rent.

"**Special Events**" has the meaning set forth in **Section 7.6(a)** hereof.

"**Sublease**" has the meaning given in **Section 16.1** hereof.

"**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.

"**Term**" means the term of this Lease as determined under **Section 4.1** hereof.

"**Transfer**" means any Assignment or Sublease.

"**Town School**" means Town School for Boys, a California nonprofit public benefit corporation, a former tenant of the Premises.

"**Transferee**" means any recognized assignee of any part of Lessee'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 Lessee 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

3.1. Leased Premises. Subject to the terms, covenants and conditions of this Lease, City leases to Lessee and Lessee leases from City for the Term of this Lease, that portion of the Building shown outlined and labeled "Premises" on **Exhibit A**, attached hereto, together with the Improvements thereon (the "Premises"). The Premises include the mezzanine and the public restrooms (the "Public Restrooms," labeled as such for identification purposes on **Exhibit A** attached hereto).

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) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

(c) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in such manner as not to damage the surface of the Premises or to interfere with the permitted use thereof by Lessee, without Lessee's prior written consent;

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct any Department Facilities, provided that City shall use reasonable efforts to conduct such activities in a manner that does not materially interfere with Lessee's access to or use of the Premises hereunder; and provided further that to the extent such material interference is not reasonably avoidable, the Parties agree to negotiate in good faith regarding reasonable steps to minimize the extent and duration of such interference;

(e) 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 not materially interfere with Lessee's access to or use of the Premises hereunder; provided further that to the extent any such material interference is unavoidable, the Parties agree to negotiate in good faith regarding reasonable steps to minimize the extent and duration of such interference; 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 Lessee for damage to its property that Lessee may sustain hereunder as a result of the grantee's use of such easement or right of way;

(f) Without limiting the generality of **Section 3.2(e)** 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 Lessee's access to or use of the Premises hereunder; provided further that to the extent any such material interference is unavoidable, the parties agree to negotiate in good faith regarding reasonable steps to minimize the extent and duration of such interference; 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 Lessee for damage to its property that Lessee may sustain hereunder as a result of the grantee's use of such easement or right of way; and

(g) All rights of access provided for in **Article 20** below.

3.3. Subject to Public and Municipal Uses and Rules. Lessee acknowledges that the property of which the Premises are a part, including without limitation the Department Facilities exterior to and generally surrounding the Premises, constitutes a portion of City's public park system, which City holds for public and municipal use. Lessee shall comply with the Department's rules and regulations relating to the Department Facilities and park property exterior to the Premises, set forth in the San Francisco Park Code (which is part of the San Francisco Municipal Code), as such rules and regulations may change from time to time (the "Rules and Regulations"). A copy of the San Francisco Park Code constituting the current Rules and Regulations can be downloaded from the web address provided in the attached **Exhibit B**.

3.4. As Is Condition of Premises.

(a) **Inspection of Premises.** Lessee represents and warrants that Lessee has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Lessee's own choosing, of the Premises and the suitability of the Premises for Lessee's intended use. Lessee is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

(b) **As Is; Disclaimer of Representations.** Lessee acknowledges and agrees that the Premises are being leased and accepted in their "**AS IS, WITH ALL FAULTS**" condition as of the date of this Lease, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Lessee acknowledges and agrees that except as expressly set forth in **Section 3.4(c)** below, neither City, the Department, nor any of their Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Lessee's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Lessee's use and permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. Department staff and Lessee's representative have conducted or will conduct a joint tour of the Premises on or about the date of this Lease and have prepared or will prepare a narrative description along with photographs of the condition of the Premises as of the date of such inspection (the "Inspection Documentation"). On or about the date Lessee takes possession of the Premises Department staff and Lessee's representative shall tour the Premises,

and if Lessee disputes whether the Premises are in the condition required hereunder, Lessee's representative shall immediately notify Department staff thereof, and City and Lessee shall thereupon endeavor in good faith to resolve any dispute regarding the condition of the Premises, referring as required to the Inspection Documentation. Except as otherwise specifically agreed by the General Manager at the time Lessee accepts delivery of the Premises, Lessee's acceptance of delivery of the Premises shall serve as an acknowledgement that Lessee accepts the Premises in their then as-is condition.

(c) Notwithstanding the provisions of **Sections 3.4(a)** and **3.4(b)** above, the City shall cause the following to be true at the time possession of the Premises is delivered to Lessee on the Commencement Date: (i) the Building systems (electrical, plumbing, sanitary sewer, HVAC and any other applicable utilities and systems) serving the Premises will be in reasonable operating condition reasonably adequate for the ordinary use and occupancy of the Premises; and (ii) the Premises will be "broom-clean" with all trash, debris and personal property of the preceding tenant(s) removed therefrom. In addition, to the extent any interim tenants will be occupying or using the Premises or any portion thereof between the date of this Lease and the Commencement Date, the City agrees not to authorize any such tenants to modify or remove any of the Carryover Improvements as defined in **Section 8.5**.

(d) **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. Lessee is hereby advised that the Premises have not been inspected by a CASp.

(e) **Energy Consumption.** Lessee acknowledges and agrees that City has delivered a Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and Facility Summary (all as defined in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1680) for the Premises no less than 24 hours prior to Lessee's execution of this Lease. **[NOTE TO RECPARK: Since this lease is for the entire building that is more 10,000 square feet or more, RecPark will need to create an account, or update an existing account, for the building on the EPA's Energy Star program Portfolio Manager website at least 31 days before executing the lease, and provide certain energy efficiency disclosures to the lessee at least 24 hours before executing the lease. This note should be removed prior to the execution of the Lease.]**

4. TERM

4.1. Term of Lease; Commencement Date and Expiration Date. The Premises are leased for a term (the "Term") commencing on the date specified in the Basic Lease Information as the estimated commencement date, subject to **Sections 4.2** and **4.3** below (if applicable) and subject to this Lease becoming effective pursuant to **Section 4.4** below. The Term of this Lease shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease. The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date."

4.2. Delay in Delivery of Possession. If City is unable to deliver possession of the Premises to Lessee on or before the scheduled Commencement Date, then the validity of this Lease shall not be affected thereby and City shall not be liable to Lessee for any Losses resulting

therefrom. Lessee waives all provisions of any Laws to the contrary. Notwithstanding the foregoing, Landlord agrees to use commercially reasonable good faith efforts to deliver possession of the Premises to Lessee on the scheduled Commencement Date. In the event of any such delay in delivery of possession, then (a) the Term and Lessee's obligation for payment of utilities shall not commence until City delivers possession of the Premises to Lessee, and (b) except to the extent otherwise provided in **Section 4.3** below (if applicable), Lessee's obligation for regular payment of Base Rent shall not commence until the date City delivers possession of the Premises to Lessee. If the Term commences later or earlier than the scheduled Commencement Date in accordance with the terms hereof, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions of this Lease.

4.3. Delays Caused by Lessee. Notwithstanding anything to the contrary above, if City's inability to deliver possession of the Premises on the scheduled Commencement Date results from the acts or omissions of Lessee or any of Lessee's Agents, then the period of any such delay attributable to the acts or omissions of Lessee or any of Lessee's Agents shall be excluded from the calculation of any extension under **Section 4.2** above with respect to the commencement of Lessee's obligations for payment of Base Rent and Additional Rent.

4.4. Effective Date. This Lease shall become effective on the date (the "Effective Date") upon which (i) the Commission passes a resolution approving this Lease, and (ii) the Parties hereto have duly executed and delivered this Lease.

5. RENT

5.1. Base Rent. Lessee shall pay to City monthly during the Term of this Lease, beginning on the Rent Commencement Date specified in the Basic Lease Information, the monthly Base Rent specified in the Basic Lease Information. Base Rent shall be payable monthly on the first day of each month, without prior demand and without any deduction, setoff or counterclaim whatsoever, other than the Basic Utility Service Credit described in **Section 5.2** below.

5.2. Credit for Payment of Basic Utility Services. Lessee shall furnish to City together with its monthly payments of Base Rent the official bills from the applicable utility companies for Basic Utility Service (as defined in **Section 10.1**) to the Premises indicating the charges for Basic Utility Service for the Premises and the period covered by such bill, and Lessee shall receive a credit (the "Basic Utility Service Credit") against the Base Rent for such month equal to the lesser of the charges for Basic Utility Services as indicated on such bills (not previously credited against Base Rent) or \$4,000. At City's election, in addition to the regular Basic Utility Service Credit, City shall credit against the Base Rent for the final month of the Term the amount City reasonably estimates will be the charges for Basic Utility Services not yet reflected on bills presented by Lessee for credit (the "Final Basic Utility Service Credit"), provided such Final Basic Utility Service Credit shall not exceed \$4,000.

5.3. Monthly Gross Receipts Statements; Payment of Percentage Rent Payable. On or before the tenth (10th) day of each full calendar month of the Lease Term and the tenth (10th) day of the calendar month immediately following the expiration or termination of this Lease, Lessee shall deliver to City a statement certified as correct by an officer or owner of Lessee and otherwise in form satisfactory to City, showing the Gross Receipts during the last preceding calendar month broken down by the categories listed in the Basic Lease Information (if applicable), as required to determine the Percentage Rent payable for such calendar month (a "Monthly Gross Receipts Statement"). Percentage Rent (as shown in the Basic Lease Information) shall be calculated for such calendar month based on the Monthly Gross Receipts Statement and such Percentage Rent

shall be payable together with such Monthly Gross Receipts Statement, without prior demand and without any deduction, setoff or counterclaim whatsoever.

5.4. Payment; Generally. Rent shall be paid in lawful money of the United States, at Revenue Unit, Recreation and Park Department, McLaren Lodge Annex, 501 Stanyan Street, San Francisco, California 94117, or such other place as City may designate in writing. If Lessee pays by check and such check is not honored, then City may require Lessee to make all future payments in cash or by cashier's check. If the Rent commencement date occurs on a day other than the first day of a calendar month, or if the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month. City reserves the right to direct Lessee, upon 30 days written notice, to deposit all payments required under this Lease from Lessee's account into the City designated revenue account by bank or wire transfer. If Lessee voluntarily requests the ability to make payments required under this Lease by wire transfer or other electronic funds transfer, City will provide Lessee with appropriate instructions to facilitate such payments.

5.5. Cash Register Requirements; Online Sales Reporting Requirements; All Gross Receipts to be Recorded by Lessee.

(a) Lessee shall install at least one cash register in the Museum Store and at least one cash register in the Café premises. Other than sales from the Café operations or otherwise specifically approved in writing by the General Manager, all sales and transactions from all operations on the Premises, whether made by Lessee or any Subtenant or other party, shall be made from the Museum Store and no payments shall be made or received elsewhere. Lessee shall 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 from all operations, 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 Lessee's business at the Premises, and City shall not perform such inspection unless a manager of Lessee's business is present. Lessee shall make a manager available to City for such inspection during business hours upon request (which may be oral) by City.

(b) 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 greater, 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).

(c) 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 Lessee 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 Lessee's identification thereon. 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, Lessee 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.

(d) Upon the installation or removal of any cash register (including computerized cash registers or other similar electronic devices) used on the Premises, Lessee 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.

(e) Online Sales. With the express written approval of the General Manager, Lessee and Lessee's Subtenants may from time to time sell tours, tickets to Special Events, or other items from a website operated by Lessee (directly or with the assistance of another entity), provided that (i) Lessee shall maintain accurate records of the sales and revenue from website, (ii) all such records shall be made available to City in a manner approved by the General Manager, and (iii) Gross Receipts from such online sales shall be properly reported as required by this Lease. Prior to commencing any online sales Lessee shall provide the General Manager with a written description of items to be sold through the website, the manner in which Gross Receipts from the online sales will be recorded and reported, and the manner in which City can effectively audit such sales in the future. If the General Manager approves such online sales in writing, Lessee may commence such online sales, provided that if at any time the General Manager believes that online sales have not been completely and properly reported, the General Manager may revoke Lessee's right to make sales online (through Lessee's website or otherwise) by written notice to Lessee.

5.6. Reporting; Books and Records; Audits.

(a) Monthly Reporting. Along with each monthly rent payment, Lessee shall be responsible for submitting via email to the City contact listed in the Basic Lease Information section a copy of a "Concessionaires' Payment Statement", detailing a true and factual accounting of all Gross Receipts, taxes paid and rent figures calculated for that month.

(b) Books and Records. Lessee agrees to keep accurate books and records according to generally accepted accounting principles. For purposes herein "books and records" shall include, but not be limited to, daily sales journals, cash register tapes, pre-numbered receipts, guest checks, sales tickets, monthly sales summaries summarizing daily sales, general ledgers, income statements, sales tax returns, income tax returns and any other bookkeeping documents Lessee utilizes in its business operations. Lessee shall not co-mingle personal funds with business funds. Lessee shall 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.

(c) Annual Gross Receipts Report; Annual Income and Operations Report. On or before the date which is ninety (90) days following the close of each Lease Year during the Term and ninety (90) days following the end of the Term, Lessee shall deliver to City a statement

(the "Annual Gross Receipts Statement"), certified as correct by an officer or owner of Lessee, certified or audited by an independent certified public accountant, and otherwise in form satisfactory to City. The Annual Gross Receipts Statement shall set forth the Gross Receipts, as defined above and shown on Lessee's books, for the Lease Year just concluded broken down by category. Further, on or before the date which is ninety (90) days following the close of each fiscal year during the Term and ninety (90) days following the end of the Term, Lessee shall deliver to City an itemized income statement for such year, certified as correct by an officer or owner of Lessee, with (i) supporting tables that include Gross Receipts by department, distributed departmental expenses and undistributed expenses, and (ii) a cash flow table that itemizes expenditures on capital improvements and personal property and indicates which of the improvements and acquisitions represent replacements.

(d) Audit. Lessee agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City, including, without limitation, records of online transactions, for the purpose of examining such books and records to determine the accuracy of Lessee's earnings from Lessee's business. 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 Lessee has understated its Gross Receipts, Lessee shall pay City, promptly upon demand, the difference between the amount Lessee has paid and the amount it should have paid to City. If Lessee understates its Gross Receipts by three percent (3%) or more, the cost of the audit shall be borne by Lessee. If Lessee understates its Gross Receipts with knowledge of such understatement or by reason of gross negligence, then, in addition to paying for the cost of the audit, on the first such occasion Lessee shall pay City ten (10) times the amount of the difference between the amount City should have received and amount City actually received. A second such understatement made with knowledge of or by reason of gross negligence shall be considered an Event of Default.

(e) Patrons Audit. Lessee 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 Lessee.

5.7. Late Charge. If Lessee fails to pay any Rent by the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to five percent (5%) of the amount due, in each instance. The late payment charge has been agreed upon by City and Lessee, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Lessee, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Lessee shall promptly pay such charge to City together with such unpaid amount.

5.8. Default Interest. If any Rent is not paid on the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. However, interest shall not be payable on late charges incurred by Lessee nor on any amounts on which late charges are paid by Lessee to the extent this interest would cause the total interest to be

in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Lessee.

5.9. Net Lease. This Lease is a "net lease." Accordingly, Lessee shall pay to City all Rent (including the Base Rent, Additional Charges and any other payments hereunder) free of any charges, assessments or deductions of any kind, without prior demand and without abatement, counterclaim or setoff. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to Lessee's use or occupancy of the Premises and any permitted Improvements under this Lease, except as may otherwise be expressly set forth herein. Without limiting the foregoing, except as may otherwise be expressly set forth in this Lease, Lessee shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable by reason of its estate or interests in the Premises and any Improvements, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any permitted Improvements, or any portion thereof. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Lessee from any of its obligations under this Lease, or shall give Lessee any right to terminate this Lease in whole or in part. Lessee waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

6.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) Payment Responsibility. Lessee shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Lessee's Personal Property, the leasehold estate or any subleasehold estate, or Lessee's use of the Premises or any Improvements. Lessee shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Lessee's right to contest the validity of such charge pursuant to **Section 6.1(c)**. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, Lessee shall reimburse City for payment of such sums immediately upon demand.

(b) Taxability of Possessory Interest. Without limiting the foregoing, Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes levied on such interest. City acknowledges that Lessee's intention is to take all steps reasonably necessary to establish that Lessee, as a nonprofit corporation and as the holder of an Organizational Clearance Certificate from the State Board of Equalization, is exempt from possessory interest or other property taxes.

(c) No Liens. Lessee shall not allow or suffer a lien for any taxes payable by Lessee hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Lessee may have a reasonable

opportunity to contest the validity of any such taxes provided Lessee, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of City. The bond shall insure payment of any judgment that may be rendered should Lessee be unsuccessful in any such contest. Lessee shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) Reporting Requirement. Lessee agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

6.2. Other Expenses. Lessee shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for Lessee's use.

6.3. Evidence of Payment. Lessee shall, upon City's request, furnish to City within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

7. USE; COVENANTS TO PROTECT PREMISES AND DEPARTMENT FACILITIES

7.1. Lessee's Permitted Use. Lessee shall continuously use the Premises and Improvements for the uses set forth in this **Article 7** (collectively the "Permitted Uses"), and for no other use or purpose. Lessee shall use the Premises for the purpose of providing exhibitions and activities celebrating the centennial of the Panama-Pacific International Exposition, with a theme of "Then, Now and Tomorrow" and a focus on providing exhibit space and activities related to the Panama-Pacific International Exposition, what the world is doing now with innovation and what the future looks like. Lessee shall have the right to use portions of the Premises to operate a visitor serving café (the "Café") and museum store(as described in **Section 7.3** below), for exhibition space and classroom space, for a children's play area, and shall have the right to provide guided tours, lectures and workshops, and to host limited special events, all as ancillary to the primary use for exhibitions and activities consistent with the Theme. Lessee shall obtain all permits as may be required under applicable Law for Lessee's use of the Premises. Some or all of the Permitted Uses may be performed by Subtenants or licensees, in compliance with the provisions of this **Article 7** and **Article 16** below. The Premises (including subleased space and "garage space" described below) shall not be used for storage, office space, manufacturing, or sales by the exhibitors (other than the sales permitted at the Museum Store).

7.2. Food and Beverage Service. Lessee shall sell food and beverages from the Café to serve visitors to the Premises, and may operate a coffee bar in the Premises. All food and beverages sold on the 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. Lessee shall operate the Café in a manner which offers quality food and beverage to the public, serving menu items approved in advance by the General Manager or his or her designee. Any changes to the minimum hours of operation or the menu or pricing of the Café must be approved in advance by the General Manager. The sale of alcohol is permitted subject to Lessee obtaining and keeping in force

all required alcoholic beverage sales licenses. Lessee shall carefully supervise and control the food and beverage operations, and shall employ a competent and adequate staff therefor, all of whom shall be Lessee's employees and none of whom shall be deemed for any purpose whatsoever to be City's employees. Lessee shall keep the Café and any adjacent seating areas free of debris and in a neat, clean, orderly and attractive condition at all times and shall, as necessary, provide and empty garbage, compost and recycling receptacles serving the Café. Lessee shall actively operate the Café premises and use its best business efforts to further the operations thereof and maximize its potential revenue and to serve the public. The minimum hours of operation shall be as follows:

7.3. Museum Store. Lessee shall operate a visitor serving shop within the Premises (the "Museum Store") in accordance with the provisions of this **Section 7.3**. Items for sale from the Museum Store shall focus on materials and souvenirs related to the Panama-Pacific International Exposition or the Exhibition Theme, and may include items such as Maybeck books, Panama-Pacific International Exposition books, artwork, games, magnets, craft kits, and children's educational books. Lessee will carry on its business diligently and continuously at the Museum Store throughout the Term. Lessee shall carefully supervise and control the operation of its business in the Museum Store and shall employ or contract for a competent and adequate staff therefor, all of whom shall be Lessee's employees and none of whom shall be deemed for any purpose whatsoever to be City's employees. The general appearance of the Museum Store, including advertising matter, signs, merchandise and fixtures, and the arrangement thereof, shall be attractive, dignified and uncluttered and shall be maintained in a first-class manner in keeping with the character and standards of the Building. In order to appeal to a wide range of visitors, Lessee shall offer merchandise in a range of prices.

7.4. Atrium Area Public Exhibition Space; Public Restroom Access.

(a) Atrium Area Public Exhibition Space. Lessee shall keep that portion of the Premises shown outlined and labeled "Atrium Area" on **Exhibit A** (the "Atrium Area") open to the public on the days and during the business hours of the exhibitions and programs in the Premises or such other hours as are from time to time mutually agreed upon by Lessee and the City (but generally consistent with Department policies regarding park facilities) (the "Public Hours"), provided that with the written approval of the General Manager Lessee may restrict access to the Atrium Area during Special Events and Public Events, as described below. A portion of the Curated Panama-Pacific International Exposition Exhibit shall be installed in or visible from the Atrium Area, but Lessee shall not otherwise be required to create or maintain any exhibits or installations in the Atrium Area. During the Public Hours the public may use the Atrium Area to view exhibits and installations visible from the Atrium Area, and to access the Café, the Museum Store, and the Public Restrooms.

(b) Public Restroom Access. The Public Restrooms shall be open to the public during the Public Hours and the public may use the Atrium Area for access to the Public Restrooms during the Public Hours.

7.5. Exhibits and Program Space; Curated Exhibit; Play Area.

(a) Operation Plan; Exhibits and Program Space. Prior to the Commencement Date Lessee shall submit to City an operation plan describing Lessee's proposal for operations, exhibits, programs, and events at the Premises, including programs to be conducted in portions of the Premises to be subject to Subleases. If the General Manager has reasonable concerns that the operation plan is not consistent with the Permitted Uses or will not realistically

allow Lessee to comply with the requirements of this Lease, City shall provide Lessee with written notice of such concerns, and Lessee will consult with and carefully consider the views of the General Manager or his her designee regarding such concerns, shall revise the operation plan accordingly, and shall submit the revised operation plan to the General Manager for approval. Unless otherwise approved by the General Manager, at least one program or exhibit space shall be targeted to K-12 youth programs and at least one exhibit shall be a Curated Panama-Pacific International Exposition Exhibit. Lessee anticipates that Lessee will have a major long-term subtenant operating an innovative play area in a portion of the Premises, another major long-term subtenant operating an interactive exhibit space in a portion of the Premises, and a number of short-term exhibitors using “garage” spaces within the Premises for the purposes of rotating exhibits or presentations. Lessee shall provide classes, lectures, or other presentations consistent with the Exhibition Theme in the existing classroom space from time to time during the Term. Unless otherwise approved by the General Manager, at least one program or exhibit space shall be targeted to K- 6th grade youth programs

(b) Curated Exhibit. Lessee shall cooperate with the Maybeck Foundation and the California Historical Society to develop and present a curated exhibit commemorating the Panama-Pacific International Exposition (the “Curated Panama-Pacific International Exposition Exhibit”). A portion of the Curated Panama-Pacific International Exposition Exhibit shall be installed in or visible from the Atrium Area, and other components of the Curated Panama-Pacific International Exposition Exhibit may at the election of Lessee, the Maybeck Foundation and the California Historical Society be located elsewhere in the Premises.

(c) Play Area. Lessee may enter into a Sublease for an innovative children’s play area in accordance with the provisions of **Article 16** below. The children’s play area shall not be a childcare center. Lessee shall ensure that the children’s play area is properly staffed at all times. Children using the children’s play are must be accompanied by an adult at all times. Use of the children’s play area shall be subject to such additional terms and conditions as the General Manager may reasonably impose.

7.6. Special Events; Public Events.

(a) Generally; Minor Subtenant Hosted Events. To the extent Lessee can do so without using the Premises in a manner that is more intensive than the prior use of the Premises by The Exploratorium, Lessee shall have the right to host or to enter into a limited number of events in the Premises or portions thereof for private recreational, cultural or other similar uses that would not be open to the public (“Special Events”) from time to time during the Term during or after Public Hours, or to enter into a limited number of Event Sublicenses (pursuant to the provisions of **Article 16** below) with nonprofit organizations or other private organizations or individuals for hosting Special Events. Lessee acknowledges that the use of the Premises for Special Events is not the primary purpose of this Lease. Lessee may charge reasonable fees to Special Event participants or to the hosts of Special Events, as applicable. All Special Events and related Event Sublicenses, if applicable, shall be subject to the prior written to the party hosting or conducting the Special Event approval of the General Manager or his or her designee, which approval shall not be unreasonably withheld or delayed, provided that the General Manager may, in his or her discretion, elect to grant a categorical written approval for Special Events and related Event Sublicenses falling within criteria or parameters established and mutually approved by Lessee and the General Manager, and provided further that the General Manager may, in his or her sole discretion, disapprove a proposed Special Event if the General Manager reasonably determines that the proposed Special Event (taken by itself or in combination with other Special Events) would result in

a more intensive use of the Premises than the prior use of the Premises by The Exploratorium. Without limiting the foregoing, Lessee may allow Lessee's Subtenants to host to up to five (5) limited Special Events per month (total for all Subtenants) in the Premises during normal business hours (such as luncheons, wine and cheese receptions, special lectures, and the like) provided the Atrium Area (including the Café) shall not be closed to the general public during such Special Events and such events do not disrupt normal programming in the Premises.

(b) Accommodated Public Events. The Parties acknowledge that (i) City has an interest in promoting the use of suitable portions of the Premises for a meaningful number of various community centered public uses ("Public Events") from time to time during the Term, (ii) Lessee shares such interest and wishes to explore opportunities to promote and implement such Public Events, (iii) Lessee needs to be able to maintain reasonable security in the Premises and to safeguard the Alterations, Improvements and the Personal Property of Lessee and its subtenants that will be present in the Premises during the Term, and (iv) Lessee desires to defray in part or in whole the significant costs for security and related services that Lessee anticipates would be incurred in making the Premises open and available from time to time for Public Events. Lessee will attempt to accommodate requests for Public Events with priority given to those from the Department and the City of San Francisco. The Parties presently contemplate that such Public Events would include, at a minimum, those events listed on the attached **Exhibit D** (the "Accommodated Public Events"). Lessee anticipates that the Public Events would be hosted or conducted by City or by third party sponsors pursuant to a an Event Sublicense, and that Lessee would charge a reasonable fee, where appropriate, to the party hosting or conducting the Public Event to help defray Lessee's costs for security, janitorial service and related services. If City is the Public Event Sponsor, City will reimburse Lessee for Lessee's actual cost of labor and janitorial services provided by Lessee for City's event promptly following receipt of Lessee's invoice detailing such charges. Lessee shall make the Premises available for the Accommodated Public Events on the dates shown on the attached **Exhibit D** and shall not schedule competing Special Events or other activities on such dates. Lessee shall use diligent good faith efforts to accommodate the Accommodated Public Events and to reach agreement with the event sponsors on the details of the use of the Premises for such events. Notwithstanding the foregoing, the Parties acknowledge that the use of the Premises for Public Events is not the primary purpose of this Lease.

(c) Advance Notice of Special Events; Sound Monitoring; Valet Parking; Other Special Requirements. Lessee shall provide the Department with at least thirty (30) days advance written notice of proposed Special Events (except to the extent the General Manager consents in writing to a shorter notice period), together with a description of the proposed Special Event and a proposed operation plan for such Special Event. The operation plan shall specify the proposed days and hours of the Special Event, the number of participants, a parking and traffic plan, whether amplified sound will be used, and whether food and beverage or alcohol will be served. A minimum of one San Francisco Park Ranger must be on duty at the Premises during each Special Event. The Park Ranger will use a sound monitor to ensure that the sound from such Special Event does not exceed 90 decibels. The total number of Department staff required for a Special Event shall be determined by the Department upon review of the applicable operations plan. Lessee shall reimburse City for the cost of the Park Ranger(s) as well as any and all other City costs, at the rate established by the Department from time to time, within ten (10) days of receipt of the Department's invoice therefor. Parking for Special Events and exiting from the adjacent driveways and parking areas shall comply with the provisions of **Section 7.9** below.

7.7. No Use of Palace of Fine Arts Building Open Space or Little Marina Green. Lessee acknowledges that areas outside of the Building, including the landscaped areas, open space,

and lagoon adjacent to the Palace of Fine Arts Building and Little Marina Green, are not included in the Premises and are not available for use by Lessee.

7.8. Days and Hours of Operation; Additional Exhibition Hours and Special Events. Lessee's hours of operation shall generally be as follows: 8 AM-7 PM, weekdays and weekends. At Lessee's written request, exhibits may be open and programs may be held until 9 PM and Lessee may hold occasional Special Events that extend beyond 9 PM, on the terms and conditions set forth below. Lessee shall provide reasonable prior notice to the General Manager or his or her designee of any programs that extend after 7 PM and Special Events that are expected to extend beyond 9 PM, and the General Manager or his or her designee may reasonably disapprove the schedule for such Special Events if the General Manager reasonably determines that the proposed schedule for the Lessee's Special Event (taken by itself or in combination with other Special Events) would result in a more intensive use of the Premises than the prior use of the Premises by The Exploratorium. Further, approved Public Events described in **Section 7.4(b)** and approved Private Events described in **Section 7.4(c)** may extend beyond 9 PM or occur on weekends to the extent such schedule was approved by the General Manager or his or her designee as part of their approval of the applicable Public Event or Private Event. The foregoing schedule is approved by the Commission and may not be altered in any manner without prior written approval from the General Manager.

7.9. Parking; Valet Parking; Event Exiting Requirements. Lessee (a) shall have the right to use the existing parking area on the property on a first-come first-served non-exclusive basis in common with others ("General Parking") except to the extent and during the times some or all of such spaces are reserved from the Recreation and Park Department Permits and Reservations Division, and (b) shall have the right to reserved parking for ten (10) vehicles during the Public Hours in spaces assigned by City near the north entrance to the Building (the "Reserved Parking Spaces"). No parking spaces are assigned to Lessee. The ADA accessible spaces in the circular lot are not assigned to Lessee and will remain available to the public (including eligible Agents and Invitees of Lessee if applicable) as ADA accessible spaces. Such spaces are clearly marked. Lessee shall have the right from time to time, at Lessee's sole cost and expense, to install signage identifying the Reserved Parking Spaces and the applicable hours, provided that such signage shall be subject to the prior written approval of the General Manager, which shall not be unreasonably withheld or delayed. The parking rights set forth in this **Section 7.9** are non transferrable, are personal to the Lessee originally named herein, and shall not inure to the benefit of any successor, assignee or subtenant of Lessee. Without limiting the foregoing, Lessee shall not assign its rights to the parking spaces provided hereunder or any interest therein, or sublease or otherwise allow the use of all or any part of the parking spaces to or by any other person, except with the General Manager's prior written consent, which may be granted or withheld by the General Manager, in his or her sole and absolute discretion. In the event of any separate assignment or sublease of parking space rights that is approved by the General Manager, City shall be entitled to receive one hundred percent (100%) of any profit received by Lessee in connection with such assignment or sublease. City does not guarantee the availability of the Reserved Parking Spaces or General Parking spaces at all times against the actions of other tenants of the Building and members of the public, and City shall have no obligation to enforce any parking restrictions. Without limiting the foregoing, in no event shall this Lease be void or voidable, nor shall City be liable to Lessee for any loss or damage, nor shall there be any abatement of rent hereunder, by reason of any reduction in Lessee's parking rights hereunder by reason of fire, flood or other casualty, acts of God or any other cause beyond the control of City acting in its proprietary capacity. Lessee acknowledges that Lessee must obtain a permit from the Recreation and Park Department Permits and Reservations Division for any valet parking provided in connection with any Special Events or other activities in the Premises. In

addition to any requirements imposed by such permit, the valet counter must be indoors at the end of the evening with the guests retrieve their cars. All vehicles must exit along the Palace Drive only.

7.10. Special Rates. Classes and programs offered by Lessee for children and youth shall be offered to low income individuals for free or at reduced prices, generally consistent with eligibility for the Department's scholarship program for recreation programs offered by the Department.

7.11. Signage. Lessee shall be allowed temporary signage, subject to approval by the General Manager, which approval shall not be unreasonably withheld, conditioned or delayed.

7.12. Covenants Regarding Use. As a material inducement to City to enter into this Lease, Lessee covenants with City as follows:

(i) No Unlawful Uses or Nuisances. Lessee shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy. Lessee shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder.

(ii) Covenant Against Waste. Lessee shall not cause or permit any waste, damage or injury to the Premises.

(iii) Covenant Regarding Premises and Department Facilities. At all times during the Term of this Lease, Lessee shall exercise reasonable care to protect the Premises and the Department Facilities in the vicinity of the Premises (including Little Marina Green) from any damage, injury or disturbance by Lessee or any of its Agents or Invitees. If Lessee or any of its Agents or Invitees damages, injures or disturbs the Premises or any of the Department Facilities in the vicinity of the Premises, or any portion thereof, Lessee shall promptly notify City of that occurrence. Without limiting any of its other rights hereunder, City may immediately take all actions it deems proper to repair at Lessee's sole expense any damage caused to the Department Facilities by Lessee or its Agents or Invitees.

(iv) Covenant Against Dumping; Waste Disposal. Lessee shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment. Lessee shall use its best efforts to reduce the amount of trash and waste generated from the Premises, to acquire products for use on the Premises which reuse or recycle packaging, and to recycle all materials used on the Premises to the extent reasonably possible.

(v) Covenant to Protect Trees or Other Native Vegetation. Lessee shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the prior written approval of the General Manager.

(vi) No Tree Planting. Lessee shall not plant any trees on the Premises, nor shall Lessee plant any other vegetation on the Premises without the prior written approval of the General Manager.

(vii) Covenant Against Hunting. Lessee shall not engage in or permit any hunting or, trapping on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by the General Manager in writing, provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Lessee shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may Lessee use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

(viii) Pesticides Prohibition. Lessee shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Lessee to submit to the Department an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Lessee may need to apply to the Premises during the terms of this Lease, (b) describes the steps Lessee will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Lessee's primary IPM contact person with the City. In addition, Lessee shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively.

(ix) Weed Control. Lessee shall not introduce any noxious weeds on or about the Premises.

(x) Covenant Against Burning. Lessee shall not burn any weeds, debris or other substances on or about the Premises.

(xi) Sewerage System. Subject to the provisions of **Section 9.1** below, and provided that Landlord has delivered the existing sewerage system in reasonable operating condition as contemplated in **Section 3.4(c)** above, Lessee shall maintain at its sole cost and expense, and in accordance with the direction and to the satisfaction of the General Managers of the Recreation and Park Department and the SFPUC, the sewerage system now installed on the Premises and shall not permit any sewage or fouled waste water to be disposed of on the Premises, except as provided for and as customary per such sewerage system.

(xii) Soil Erosion. Lessee shall not cause any material erosion of soil on or around the Premises. Lessee shall not engage in any activity that causes a material change, disturbance, fill, alteration or impairment to the topography of the Premises by placing on it any soil, dredging, spoils, landfill, or other material, nor shall Lessee engage in any activity that would change, disturb, alter or impair the significant relatively natural ecological features and values of the Premises, without the prior written approval of the General Manager.

(xiii) Operating Covenants. Lessee shall use the Premises for the permitted use specified in the Basic Lease Information and shall not allow the Premises to remain unoccupied or unused (other than during holidays and customary school breaks) without City's prior written consent, which City may give or withhold in its sole discretion. Lessee shall use and operate its business on the Premises in a first class and professional manner.

(xiv) 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 in 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 26.42**) 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 lessee." 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). Lessee shall develop a program to work toward a zero waste goal. At the request of the General Manager or his or her designee, Lessee shall submit a recycling plan to City.

(xv) Americans with Disabilities Act. Lessee 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. Lessee further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Without limiting the provisions of **Section 8.1** and **Article 11** below, Lessee 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. City shall bear all responsibility and cost for mandated physical changes to the Property resulting from disability access laws, except to the extent triggered by Lessee's Alterations or Improvements.

8. ALTERATIONS AND IMPROVEMENTS

8.1. Construction of Alterations and Improvements; Generally Free Standing Installations. Lessee shall not construct, install or otherwise place any Improvements or make or permit any Alterations in, to or about the Premises, without the General Manager's prior written consent in each instance, which the General Manager shall not unreasonably withhold, condition or delay. Subject to the General Manager's consent as provided above, any permitted Improvements or Alterations shall be done at Lessee's sole expense (i) in strict accordance with designs, plans and specifications approved in advance by the General Manager in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the General Manager, (iii) in a good and professional manner, (iv) in strict compliance with all Laws (including, without limitation, all health, disabled access and building codes and ordinances), and (v) subject to all other conditions that the General Manager or the Commission may reasonably impose, including, without limitation, provision of such completion security as is acceptable to City. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of Department Facilities (if any), or any portion thereof, or the Department's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, Lessee, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to City. No material change from the plans and specifications approved by City may be made without City's prior written consent. City and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Lessee shall furnish City with a complete set of final as-built plans and specifications. Lessee shall require from each contractor

and subcontractor performing any work on or about the Premises a policy of commercial general liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 19.2**. City and Lessee anticipate that most installations, Alterations and Improvements made by Lessee or any Subtenant shall be free standing. Lessee acknowledges that even temporary and free standing structures shall be performed in accordance with the provisions of this **Section 8.1**.

8.2. Ownership of Improvements. Any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Lessee shall be and remain Lessee's property during the Term. Upon the Expiration Date or any earlier termination hereof, Lessee shall, upon City's request, remove all such Improvements and Alterations from the Premises in accordance with the provisions of **Section 22.1** hereof, unless City, at its sole option and without limiting any of the provisions of **Section 8.1** above, specifies at the time of City's approval of any such Improvements or Alterations that such Alterations or Improvements may remain on the Premises following the expiration or termination of this Lease.

8.3. Lessee's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Lessee that can be removed without structural or other material damage to the Premises (all of which are herein called "Lessee's Personal Property") shall be and remain the property of Lessee and may be removed by it subject to the provisions of **Section 22.1** hereof. At least ten (10) days prior to delinquency, Lessee shall pay all taxes levied or assessed upon Lessee's Personal Property and shall deliver satisfactory evidence of such payment to City, subject to Lessee's right to contest the validity of such charge in accordance with the provisions of **Section 6.1(c)**.

8.4. Proposed Improvements. To the extent Lessee determines that it wishes to make any Alterations or Improvements in order to prepare the Premises for Lessee's use and occupancy, Lessee shall prepare appropriate designs, plans and specifications for such Alterations and Improvements (the "Proposed Improvements," if applicable) for review and approval by the General Manager, subject to the provisions of **Section 12.2** below and in accordance with the provisions of **Section 8.1** above. In order to facilitate Lessee's planning for any such Alterations and Improvements and/or for installation of items of Lessee's Personal Property, City agrees to provide reasonable access to the Premises to Lessee and its architects, contractors and other professionals, for inspection and planning purposes (but not for the purpose of performing any construction or installation), during the period between the Effective Date and the Commencement Date. Lessee will provide reasonable prior notice of its desire for such access to the Premises, and Lessee acknowledges and agrees recognizes that such access may require coordination with any short-term tenants occupying the Premises or portions thereof from time to time between the Effective Date and the Commencement Date, and shall be subject to such other conditions as City may reasonably impose.

8.5. Demolition of Certain Structures. Town School for Boys ("Town School), a prior tenant of the Premises, has the obligation under its lease to demolish and remove certain alterations and temporary improvements from the Premises prior to or following surrender of its leased premises to the City. City, as an accommodation to Lessee, will allow Town School to leave behind for Lessee's use during the Term certain of such alterations and temporary improvements that would otherwise have been demolished upon the departure of Town School. If City and Lessee reach an agreement in the future regarding additional Carryover Improvements that will be permitted to remain in the Premises upon Lessee's surrender, they shall memorialize such

agreement in one or more written agreements. City shall have no obligation to enter into any such agreement that results in increased costs or lost revenue to City. As provided in **Section 3.4(c)** above, City has agreed not to authorize any interim tenants occupying or using the Premises or any portion thereof between the date of this Lease and the Commencement Date to modify or remove any of the Carryover Improvements.

9. REPAIRS AND MAINTENANCE

9.1. Responsibility for Maintenance and Repair.

(a) Except as provided in **Sections 9.1(d), (e) and (f)** below, City shall not under any circumstances be responsible for the performance of any Alterations or Improvements to the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises), nor shall City be liable for any portion of the cost thereof.

(b) Except as provided in **Sections 9.1(d), (e) and (f)** below, Lessee shall maintain the Premises and any existing and permitted Improvements at all times in clean, safe, attractive and sanitary condition and in good order and repair, to City's reasonable satisfaction. If any portion of the Premises or any of the Department Facilities located in the vicinity of the Premises is damaged by any of the activities conducted by Lessee or its Agents or Invitees hereunder, Lessee shall immediately, at its sole cost, repair any and all such damage and restore the Premises or Department Facilities, as applicable, to their previous condition.

(c) Except as provided in **Sections 9.1(d), (e) and (f)** below, Lessee shall keep all fixtures and equipment on the Premises clean, neat, safe, sanitary and in good order at all times. Lessee shall remove all waste, trash, rubbish, papers, cartons and refuse from the Premises, pick up trash and debris in the immediate vicinity of the Premises and dispose of trash in containers provided by Lessee that are large enough to adequately serve the needs of the facility.

(d) Public Restrooms. Lessee shall be responsible for the regular cleaning of the Public Restrooms during days on which the Premises are open for business. During this time, the Public Restrooms shall be kept clean, neat, orderly and functioning properly at all times of scheduled public access. Landlord shall be responsible for any repairs required for the Public Restrooms, except for repairs required due to the misconduct or misuse by Lessee or its agents or invitees. Lessee, at its own expense, shall provide all necessary restroom supplies and consumables for the Public Restrooms, including, but not limited to, toilet tissue, paper towels, seat covers and hand soap. Lessee shall provide, at its sole expense, all cleaning materials and supplies necessary to maintain the Public Restrooms in the condition as described above. The Public Restrooms shall be thoroughly cleaned daily and inspected for supplies and neatness a minimum of two (2) times during each day by Lessee during days on which the Premises are open for business. Lessee will provide Landlord with at least one (1) month's prior notice of any weekdays when the Premises will not be open for business so that Landlord can make alternative arrangements for public access to and maintenance of the Public Restrooms on those days.

(e) Cap on Major Repair Obligations. The Parties acknowledge that because of Lessee's short-term occupancy of the Premises and Landlord's uncertainty about its long-term plans for the Building and the Premises after the Expiration Date, each Party has an interest in not being compelled to incur substantial expenses for major repairs or replacements involving the Building systems, structural elements or other existing Improvements comprising the Premises and the Building. At the same time, it is important to Lessee that it be able to conduct its operations in

the Premises during the contemplated Term, and it is important to Landlord that the Building and Improvements be preserved and maintained in reasonable condition pending decisions about Landlord's long-term plans for the Building and the Premises. Accordingly, with due regard to these respective interests, the Parties have agreed as follows:

(i) Landlord's maximum aggregate obligation for repairs and replacements under clause (ii) of **Section 9.1(e)** above during the Term shall be \$50,000. To the extent the estimated cost of repairs and replacements for which Landlord would otherwise be responsible under such clause (ii) exceeds \$50,000 and Landlord declines to waive the cap and proceed with such repairs and replacements, Lessee in its discretion may (but shall not be required to) elect to fund the cost of such repairs and replacements in excess of \$50,000, in which event Landlord shall proceed with the required repairs and replacements using its own funds (up to the cap) and Lessee's funds for the excess over the cap, provided that Lessee and Landlord reach agreement on the terms and conditions under which Lessee will pay for the excess repair cost.

(ii) Lessee's maximum aggregate obligation for major repairs and replacements of Building systems, Alterations and Improvements in the Premises under **Sections 9.1(b)** and **(c)** above during the Term (as opposed to ordinary and routine cleaning and maintenance and minor repairs, none of which are subject to this subparagraph) shall be \$50,000. To the extent the estimated cost of major repairs and replacements for which Lessee would otherwise be responsible under such **Sections 9.1(b)** and/or **(c)** exceeds \$50,000 and Lessee declines to waive the cap and proceed with such repairs and replacements, Landlord in its discretion may (but shall not be required to) elect to fund the cost of such repairs and replacements in excess of \$50,000, in which event Lessee shall proceed with the required repairs and replacements using its own funds (up to the cap) and Landlord's funds for the excess over the cap, provided that Lessee and Landlord reach agreement on the terms and conditions under which Landlord will pay for the excess repair cost (including by rent credit, if applicable).

(iii) To the extent either Party is faced with repairs or replacements that would cause it to exceed its applicable cap under the preceding two subparagraphs and the other Party does not elect to fund the cost of such repairs or replacements in excess of the cap, then (A) the Parties agree to negotiate diligently, reasonably and in good faith to determine whether there is a feasible interim solution, achievable within the Parties' respective cost parameters, that would enable Lessee to continue to conduct its operations safely and lawfully in the Premises during the remainder of the Term, provided that neither Party shall be obligated to agree to expend any sum that it is not otherwise obligated to expend under this Lease; and (B) if the Parties are unable to arrive at such an interim solution within not less than 30 days of such diligent, reasonable and good faith negotiation, and if the failure to make the required repairs or replacements substantially impairs Lessee's ability to conduct its operations in the Premises, then Lessee shall have the right to terminate this Lease by written notice to Landlord, effective upon Lessee's surrender of the Premises in the condition required by this Lease.

9.2. [Intentionally omitted.]

9.3. No Right to Repair and Deduct. Lessee expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Lessee 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 Lessee'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, Lessee expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Lessee to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Lessee to make repairs or replacements and deduct the cost thereof from Rent.

10. UTILITIES

10.1. Utilities and Services. Lessee shall pay for water, gas and electricity to the Premises ("Basic Utilities") when due, provided that City shall provide a credit against monthly Base Rent in the amount of Basic Utilities payable by Lessee, up to a total of \$4,000 per month, in accordance with the provisions of **Section 5.** above. If Lessee desires any upgrades to water, gas or electricity services in connection with the operation of Lessee's business at the Premises, such upgrades shall be subject to City's prior written consent, and shall be made at Lessee's sole cost and expense. Lessee shall pay for sewer charges billed to Lessee by the Water Department, charges for garbage and recycling disposal and all telephone, fax and internet connection charges, including the cost of bringing any such service(s) to locations in the Premises.

10.2. Water and Energy Conservation; 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 Property 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 City is required or elects to make alterations to any part of the Improvements on the Premises in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Lessee to any damages, relieve Lessee of the obligation to pay the full Base Rent and Additional Charges reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Lessee.

10.3. Antennae. No antennae or telecommunication dish may be installed on the Premises without the advance written approval of City. No such antennae or telecommunications dishes shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of City. Lessee agrees, at the request of City, to permit City to install, at City's sole cost, transmission equipment for City's emergency or 800 MHz City wide radio system communications facilities (or its successor) at a location on top of the Improvements acceptable to Lessee.

11. LIENS

Lessee shall keep the Premises and all of City's property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Lessee. In the event Lessee does not, within ten (10) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Lessee upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and

protection of the Premises and City's property, from mechanics' and materialmen's liens. Lessee shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Lessee shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Lessee has failed to do so within ten (10) days after final determination of the validity thereof. Lessee shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

12. COMPLIANCE WITH LAWS

12.1. Compliance with Laws. Lessee shall promptly, at its sole expense, maintain the Carryover Improvements, any Alterations and Improvements constructed by or for the account of Lessee, and Lessee's Personal Property installed on or used in the Premises, and conduct Lessee's use and operations in the Premises, in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Except as provided in the preceding sentence, Lessee shall not be responsible for any alterations, improvements or other physical changes required to cause the existing Building, Premises, Alterations and Improvements as delivered to Lessee on the Commencement Date to comply with any present or future Laws, except to the extent (and only to the extent) that Lessee's particular use of the Premises or the Carryover Improvements or Lessee's construction of Alterations or Improvements or installation of Lessee's Personal Property in the Premises creates the need for such alterations, improvements or other physical changes in the existing Building, Premises, Alterations or Improvements in order to comply with such present or future Laws. However, for the same reasons articulated in **Section 9.1(f)** above with respect to liability of the Parties for major repairs and replacements, the Parties agree that any physical changes to the Building, Premises, Alterations or Improvements required to be made by either Party under this **Section 12.1** in order to comply with applicable Laws shall be deemed to constitute a major repair or replacement by the applicable Party and to be governed by the provisions of **Section 9.1(f)**, for which purpose the physical changes required under this **Section 12.1** shall be aggregated with all other repairs and replacements covered by **Section 9.1(f)** to determine whether and when the applicable Party has reached its cap under **Section 9.1(f)** and the consequences of such cap being reached.

12.2. Regulatory Approvals

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

(b) City Acting as Owner of Real Property. Lessee 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 Lessee'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 Lessee'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.

12.3. Compliance with City's Risk Management Requirements. Lessee 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. Lessee 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.

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

13. FINANCING; ENCUMBRANCES; SUBORDINATION

13.1. Encumbrance of City's Fee Interest. The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) Encumbrance by City. To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Lessee to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder.

(b) Encumbrance By Lessee. Lessee shall not under any circumstances whatsoever Encumber in any manner City's estate in the Premises or any adjoining property, or City's interest under this Lease, or any portion thereof.

13.2. Leasehold Encumbrances. Without limiting **Article 15** hereof, Lessee shall not Encumber this Lease or Lessee's interest in this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

14. DAMAGE OR DESTRUCTION

14.1. Damage or Destruction to the Improvements. If the Premises or the Improvements are damaged by fire or other casualty, then City shall repair the same (subject to the

provisions of **Section 14.2** below) provided that funds for such repairs are appropriated by City's Board of Supervisors, in its sole discretion, for such purpose and provided further that such repairs can be made, to the extent necessary to allow Lessee to resume or continue its operations in the Premises, within sixty (60) days after the date of such damage (the "Repair Period"). In the event such conditions are satisfied, this Lease shall remain in full force and effect except that Lessee shall be entitled to a proportionate reduction of Base Rent during the period of such repairs based upon the extent to which such damage and the making of such repairs materially interferes with Lessee's use or occupancy of the Premises (except to the extent that the damage or destruction was caused by the negligence or intentional misconduct of Lessee or its Agents and except as provided below). City shall use good faith efforts to notify Lessee within thirty (30) days after the date of such damage whether or not such repairs can be made to the required extent within the Repair Period, and City's determination thereof shall be binding on Lessee. If City determines that such repairs cannot be made to the required extent within the Repair Period, then either City or Lessee may terminate this Lease by giving written notice to the other Party of its election to do so within forty (40) days after the date of the occurrence of such damage, provided that Lessee may exercise such termination right only if the damage or destruction substantially impairs Lessee's use of the Premises for Lessee's purposes. In case of such termination, the Base Rent shall be reduced to the extent provided above, and Lessee shall pay such reduced Base Rent up to the date of termination. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice. If neither Party so terminates, then this Lease shall remain in full force and effect, Lessee shall be permitted to continue its operations in the Premises, City shall diligently repair the damage to the extent necessary to render the Premises safe and compliant with applicable Laws to the extent required for Lessee required to continue its operations in the Premises, subject to the Board of Supervisors' appropriation of all necessary funds, and the City may otherwise elect in its discretion whether to repair any other elements of damage or leave them unrepaired until the Expiration Date. Notwithstanding the foregoing, at the request of either Party made at any time following a casualty that would lead to a termination right by either Party hereunder, the Parties shall explore in good faith (a) what reasonable steps, if any, may be taken to minimize the extent of the required repairs and the extent and duration of interference to the operation of Lessee's business in the Premises, and (b) the extent, if any, to which Lessee would be willing to pay part or all of that portion of the repair cost exceeding \$50,000 and/or to forgo part or all of the Base Rent abatement that Lessee would be entitled to receive for the balance of the Term in exchange for City's agreement to refrain from exercising its termination right hereunder.

14.2. Lessee's Obligations. Notwithstanding anything to the contrary in this Lease, City shall have no obligation to repair the Premises or the Improvements in the event the damage or destruction is attributable to any act or omission of Lessee or its Agents. In no event shall City be required to repair any damage to Lessee's Personal Property or to the Carryover Improvements or to any Improvements or Alterations installed or made on the Premises by or at the expense of Lessee. With respect to any damage to or destruction by fire or any other casualty to the Carryover Improvements or to any Alterations or Improvements permitted hereunder made by or on behalf of Lessee during the Term hereof, Lessee shall, at its sole cost, restore, repair, replace or rebuild such Carryover Improvements, Alterations or Improvements to the condition such Carryover Improvements, Alterations or Improvements were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of **Section 8.1** above, unless this Lease is terminated as provided in **Section 14.1** above. If this Lease is terminated as provided in **Section 14.1** above, then at City's written request Lessee shall promptly, at its sole cost, demolish such damaged Carryover Improvements (to the extent Lessee is required to remove them under **Exhibit E** and **Section 22.1** below) and such damaged Improvements or Alterations that were

installed or made on the Premises by or at the expense of Lessee and remove them (including all debris) from the Premises in compliance with the provisions of **Section 22.1** below.

14.3. Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Improvements, and City and Lessee each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

15. EMINENT DOMAIN

15.1. General. If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties hereunder shall be determined pursuant to this Section. City and Lessee intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

15.2. Total Taking; Automatic Termination. If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

15.3. Partial Taking; Election to Terminate.

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety if all of the following exist: (i) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Lessee, (ii) 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 (iii) Lessee elects to terminate.

(b) City shall have the right to terminate this Lease in the event of a partial Taking of any portion of the Building, even if the Taking does not directly affect the Premises.

(c) A Party entitled to and electing to terminate under the provisions of this **Article 15** shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

15.4. Rent; Award. Upon termination of this Lease pursuant to an election under **Section 15.3** above, then: (i) Lessee's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in **Section 15.5** below for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Lessee shall have no claim against City for the value of any unexpired term of this Lease, provided that Lessee may make a separate claim for compensation, and Lessee shall receive any Award made specifically to Lessee, for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

15.5. Partial Taking; Continuation of Lease. If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 15.3** above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (i) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Lessee shall have no claim against City for the value of any unexpired Term of this Lease, provided that Lessee may make a separate claim for compensation. Lessee shall retain any Award made specifically to Lessee for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

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

16. ASSIGNMENT AND SUBLETTING

16.1. Assignment and Subletting.

(a) Generally; Consent of City. Except as otherwise specifically permitted hereunder, Lessee shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Lessee), 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, any Improvements or its leasehold estate hereunder ("Assign" or an "Assignment"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon ("Sublet" or a "Sublease"), without the General Manager's or the Commission's prior written consent in each instance.

(b) Assignment. Lessee may not Assign all or any portion of its rights under the Lease without the prior written consent of the Commission, which it may withhold in its sole and absolute discretion. If City rejects a proposed assignment, City shall provide Lessee with written notice of its reasons for doing so.

(c) Sublease. The Parties agree that an important component of Lessee's operating budget will derive from Lessee subletting facilities within the Premises. Lessee shall have the right to sublet all or a portion of the Premises at any time, provided, however, (i) Lessee shall have provided prior written notice to City of a proposed Sublease, and City shall have the right to reasonably object to such Sublease within forty-five (45) days of receipt of notice, and (ii) the proposed use of the sublet space shall be consistent with the Permitted Uses. The rent charged to each subtenant shall be determined by Lessee, in its sole and absolute discretion, and shall accrue solely to Lessee, except as otherwise specifically provided herein.

(d) Event Sublicenses. The Parties agree that a component of Lessee's operating budget will derive from Lessee renting facilities within the Premises for Special Events. Subject to the provisions of **Section 7.6(a)** above, Lessee shall have the right to rent any facility within the Premises for short term Special Events upon obtaining the written consent of the General Manager, provided such Special Event complies with City's then-current event permitting requirements, which include obtaining the approvals from the San Francisco Fire, Police, and Alcoholic Beverage Control Departments as well as any specialized licenses. Lessee shall also obtain a Dance Hall Keeper Permit from the San Francisco Police Department when required. Lessee shall develop a template for the written agreement to be used by Lessee for such Special Events (the "Event Sublicense"), and shall submit such template to the City for the approval or reasonable disapproval of the General Manager or his or her designee prior to entering into any Event Sublicenses. The provisions of **Section 16.2** below shall apply to such rentals as if they were subleases.

16.2. Conditions to Assignment or Sublet.

Any Assignment of this Lease or Sublease or Event Sublicense is further subject to the satisfaction of the following conditions precedent (or written waiver thereof by the General Manager, which waiver may be withheld in the sole discretion of the General Manager), each of which is hereby agreed to be reasonable as of the date hereof:

(a) any assignee, by instrument in writing reasonably approved by the General Manager (in consultation with the City Attorney), for itself and its successors and assigns, and expressly for the benefit of City, must agree to be subject to all of the conditions and restrictions to which Lessee is subject and must expressly assume all of the obligations of Lessee under this Lease, and any subtenant, by instrument in writing reasonably approved by the General Manager (in consultation with the City Attorney) must agree to be subject to all of the applicable conditions and restrictions of this Lease as they relate to the subtenancy. It is the intent of this Lease, to the fullest extent permitted by Law and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit City of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and the construction of the Improvements that City would have had, had there been no such transfer or change;

(b) all instruments and other legal documents involved in effecting the transfer shall have been submitted to City for review, including the agreement of sale, transfer, Sublease, Event Sublicense or equivalent, and City shall have approved such documents, or, with the express written consent of the General Manager, and with respect to an Event Sublicense, the form of the permit and other legal document shall have been approved by City and Lessee shall have the right to make commercially reasonable modifications to such form in the course of negotiations with the applicable assignee so long as such modification does not materially adversely affect City's rights);

(c) there shall be no Event of Default or Unmatured Event of Default on the part of Lessee under this Lease;

(d) in the event of an Assignment, the proposed transferee has the qualifications and has demonstrated to City's reasonable satisfaction that it is capable, financially and otherwise, of performing each of Lessee's obligations under this Lease and any other documents to be assigned;

(e) any assignee, subtenant or permittee is subject to the jurisdiction of the courts of the State of California;

(f) the proposed Assignment is not in connection with any transaction for the purposes of syndicating the Lease, such as a security, bond or certificates of participation financing as determined by City in its sole discretion;

(g) the permitted uses are consistent with this Lease, including without limitation, the Permitted Uses;

(h) the Subtenant and the Sublease or the permittee and the Event Sublicense, as applicable, are expressly subject to all applicable terms and provisions of this Lease;

(i) the Subtenant or permittee under an Event Sublicense indemnifies City for any loss or damage arising in connection with the Sublease in form set forth in **Exhibit F**;

(j) the Subtenant or permittee under an Event Sublicense provides liability and other insurance reasonably requested by City, naming City as an additional insured, in form and amounts reasonably approved by City; and

(k) the Sublease includes the provisions set forth in **Exhibit F**.

16.3. Pre-Execution Deliveries to City. Prior to executing a Sublease that requires City's consent, Lessee shall submit a summary of the key terms of the proposed Sublease (i.e., location, proposed use, square footage of the demised premises, length of term, rental rate, tenant improvement allowances and leasing concessions) to City for review by the City for conformance with Permitted Uses and the sublease requirements attached hereto as **Exhibit F**.

16.4. Effect of Transfer. No Sublease or Assignment by Lessee shall relieve Lessee, or any guarantor, of any obligation to be performed by Lessee under this Lease. Any Assignment or non-permitted Sublease shall constitute a material Event of Default by Lessee under this Lease. The acceptance of any Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Lessee or other transferor to comply with this Section.

16.5. Indemnity for Relocation Benefits. Without limiting **Section 16.4**, Lessee shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Lessee shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

17. DEFAULT; REMEDIES

17.1. Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Lessee hereunder:

(a) **Rent.** Any failure to pay any Rent or other sums as and when due, provided Lessee shall have a period of five (5) days from the date of written notice of such failure from City within which to cure any default in the payment of Rent or other sums; provided, however, that City shall not be required to provide such notice regarding Lessee's failure to make such payments when due more than twice during any calendar year, and any such failure by Lessee after Lessee has received two such notices in any calendar year from City shall constitute a default by Lessee hereunder without any requirement on the part of City to give Lessee notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) Covenants, Conditions and Representations. Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided Lessee shall have a period of fifteen (15) days from the date of written notice from City of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Lessee shall have a reasonable period to complete such cure if Lessee promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Lessee uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two (2) defaults of the same obligation City shall not be required to provide any notice regarding Lessee's failure to perform such obligation, and any subsequent failure by Lessee after Lessee has received two such notices shall constitute a default by Lessee hereunder without any requirement on the part of City to give Lessee notice of such failure or an opportunity to cure;

(c) Vacation or Abandonment. Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days (other than during holidays); and

(d) Bankruptcy. The appointment of a receiver to take possession of all or substantially all of the assets of Lessee, or an assignment by Lessee for the benefit of creditors, or any action taken or suffered by Lessee 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.

17.2. Remedies. Upon the occurrence of an Event of Default by Lessee, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

(a) Terminate Lease and Recover Damages. 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 Lessee's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Lessee 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 Lessee's breach of this Lease shall not waive City's rights to recover damages upon termination.

(b) Continue Lease and Enforce Rights. The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Lessee's right to possession, if Lessee has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Lessee'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 Lessee 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 in its sole

discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Lessee shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges 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 Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 17.2(b)** shall be deemed a waiver of any default by Lessee and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) Appointment of Receiver. The right to have a receiver appointed for Lessee 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.

17.3. City's Right to Cure Lessee's Defaults. If a default occurs with respect to the performance of any of Lessee's obligations under this Lease other than the payment of Base Rent, and Lessee does not cure such default by the earlier of fifteen (15) days after the date any such payment or performance is due or the expiration of any applicable grace or cure period with respect to such payment or performance (unless waiting for such period to expire would jeopardize the health, safety or quiet enjoyment of the Building by its tenants and occupants or cause further damage or loss to Lessee, the Building, the Department Facilities or the public), then, City may at any time thereafter with five (5) business days prior oral or written notice (except in the event of an emergency as determined by City), remedy such default for Lessee's account and at Lessee's expense. Lessee shall pay to City, as Additional Rent, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Lessee's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Lessee is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Lessee's default shall not constitute a waiver of Lessee's default or any rights or remedies of City on account of any Event of Default.

18. WAIVER OF CLAIMS; INDEMNIFICATION

18.1. Waiver of Claims. Lessee covenants and agrees that City shall not be responsible for or liable to Lessee for, and, to the fullest extent allowed by Law, Lessee hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever. Nothing herein 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. Without limiting the foregoing:

(a) Lessee expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the Improvements or Lessee's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Lessee expressly assumes the risk with respect thereto. Accordingly, without limiting

any indemnification obligations of Lessee or other waivers contained in this Lease and as a material part of the consideration for this Lease, Lessee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Lessee pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents.

(b) In connection with the foregoing releases, Lessee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

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

Lessee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Lessee realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Lease.

18.2. Lessee's Indemnity. Lessee, on behalf of itself and its successors and assigns, shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, including, without limitation, Agents and Invitees of Lessee, or loss of or damage to property, howsoever or by whomsoever caused, occurring in or on the Premises; (b) any default by Lessee in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Lessee's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Lessee, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Improvements or the Department Facilities; (d) the condition of the Premises or any Improvements constructed by or on behalf of Lessee, or Lessee's failure to properly repair or maintain any Improvements on the Premises to the extent Lessee is required to do so under this Lease; (e) any construction or other work undertaken by Lessee on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Lessee, its Agents or Invitees, in, on or about the Premises or any Improvements; 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 Losses as are caused exclusively by the gross negligence and intentional wrongful acts and omissions 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 Loss. Lessee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties 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

Lessee by City and continues at all times thereafter. Lessee's obligations under this Section shall survive the expiration or sooner termination of the Lease.

19. INSURANCE

19.1. Lessee's Insurance. Lessee, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows.

(i) Commercial general liability insurance with limits not less than Five Million Dollars (\$5,000,000) 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, and products and completed operations. If the operation of Lessee's business includes food sales, 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 Lessee's business 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.

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

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

(iv) Sexual Molestation and Abuse: Lessee shall maintain sexual molestation and abuse coverage with minimum limits of \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Coverage may be held as a separate policy or included by endorsement in the Commercial General Liability or Errors and Omissions policy.

(v) Property Insurance: Lessee shall also maintain Property Insurance, including Extra Expense coverage, in sufficient amounts to cover Lessee's Personal Property and trade fixtures, the Carryover Improvements and any alterations by Lessee to the Premises at full replacement cost. Said policy shall protect Lessee against loss from fire, vandalism, malicious mischief, and such other perils as may be included in a standard "All Risk" policy.

(vi) Business Interruption Insurance insuring that the Rent will be paid to City for a period of at least one (1) year if Lessee is unable to operate its business at the Premises. To calculate Rent during any such interruption of business, the Rent for the 12-month period immediately preceding the incident causing the business interruption shall be used.

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

19.2. General Requirements. All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

(a) Should any of the required insurance be provided under a claims-made form, Lessee shall maintain such coverage continuously throughout the term hereof 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:

(i) Name Lessee as the insured and the City and County of San Francisco, its officers, agents and employees, as additional insureds, as their respective interests may appear hereunder.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds 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.

(iii) 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.

(d) Each insurance policy required hereunder shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

19.3. Proof of Insurance. Lessee shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Lessee shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Lessee shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Lessee, and the cost thereof shall be paid to City within five (5) days after delivery to Lessee of bills therefor.

19.4. Review of Insurance Requirements. Lessee 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 Lessee with respect to risks comparable to those associated with the Premises, then, at City's option, Lessee shall increase at its sole cost the amounts or coverages carried by Lessee to conform to such general commercial practice.

19.5. No Limitation on Indemnities. Lessee's compliance with the provisions of this Section shall in no way relieve or decrease Lessee's indemnification obligations under **Sections 18.2** and **23.2** hereof, or any of Lessee's other obligations or liabilities under this Lease.

19.6. Lapse of Insurance. Notwithstanding anything to the contrary in this Lease, City may elect, in City's sole and absolute discretion, to terminate this Lease upon the lapse of any required insurance coverage by written notice to Lessee.

19.7. Lessee's Personal Property and Alterations and Improvements. Lessee shall be responsible, at its expense, for separately insuring Lessee's Personal Property, the Carryover Improvements, and Alterations and Improvements made by or on behalf of Lessee.

19.8. City's Self Insurance. Lessee acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise.

19.9. Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Lessee 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 other City property and their contents, or any portion thereof, for any loss or damage covered by property insurance maintained by such other party with respect to the Premises, other City Property 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 or other City property carried by Lessee does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Lessee 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.

20. ACCESS BY CITY

20.1. Access to Premises by City.

(a) General Access. City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours oral or written notice to Lessee (except in the event of an emergency) for any of the following purposes, subject to the provisions of **Section 20.1(e)** below:

To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

To determine whether Lessee is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of **Section 17.3** hereof;

To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder; and

To show it to any prospective purchasers, brokers, Encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" or "coming soon" signs in connection therewith.

(b) Emergency Access. In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises and alter or remove Lessee's Personal Property on or about the Premises. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Lessee from the Premises or any portion thereof.

(c) No Liability. City shall not be liable in any manner, and Lessee hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Lessee, its Agents or Invitees.

(d) No Abatement. Lessee shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

(e) Minimize Disruption. City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this **Article 20** in a manner that, to the extent practicable, will minimize any disruption to Lessee's use hereunder. Moreover, recognizing that Lessee will be conducting operations on the Premises and needs to exercise reasonable security precautions for the protection of its students, City agrees that except in cases of emergency, (i) City will provide Lessee with advance notice (which may be made via telephone or email) of the name of each person intending to access the Premises pursuant to the exercise of the City's rights under this **Article 20**; (ii) Lessee will have the right to request reasonable identification from each such person and to exclude any person who fails to produce reasonably satisfactory identification; and (iii) Lessee may, in its discretion, require that any City Agents or representatives accessing the Premises pursuant to the exercise of the City's rights under this **Article 20** be accompanied by a representative of Lessee while such Agents or other City representatives are on the Premises.

20.2. Department Facilities and Utility Installations. Without limiting **Section 20.1** above, City shall have the right at all times, to enter upon the Premises upon forty eight (48) hours advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove any utility installations or other equipment or facilities serving the Building or the surrounding Department Facilities or public park areas or utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions or negligence of Lessee, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Lessee's use of the Premises occasioned by any such facility installations or other activities.

20.3. Roadways. City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City desires.

20.4. [Intentionally omitted.]

21. ESTOPPEL CERTIFICATES

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (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) that there are no known defaults under this Lease (or 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 reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge and deliver any such certificates of the City.

22. SURRENDER

22.1. Surrender of the Premises. Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Lessee shall surrender to City the Premises, in good condition, order and repair, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Lessee. On or before the Expiration Date or any earlier termination hereof, or later upon City's request, Lessee shall, at its sole cost, remove any and all of Lessee's Personal Property from the Premises and demolish and remove from the Premises (i) any and all Improvements and Alterations made by Lessee and requested by City to be removed (except for any Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above), and (ii) any and all Carryover Improvements, other than those Carryover Improvements identified on **Exhibit E** or in any future written agreement between Lessee and City as not being required to be removed by Lessee as of the Expiration Date. In addition, Lessee shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items removed by Lessee and restore the Premises to their condition immediately prior to the presence of any Improvements or Alterations; provided, however, that in recognition of the fact that City is likely to either convert the Premises to a cold shell or substantially renovate the Premises some time after the Expiration Date in anticipation of whatever longer-term use will be conducted in the Premises after the Term, the General Manager shall consider whether City, in the sole discretion of the General Manager, can reasonably grant a waiver of Lessee's repair or restoration obligation with respect to minor damage elements that are not likely to survive City's proposed conversion or renovation work and are not likely to increase City's costs for such conversion or renovation work, unless City anticipates entering into other interim use agreements prior to such conversion or renovation work and Department staff believes the Premises would be more desirable to prospective users if such minor damage elements were corrected. In connection therewith, Lessee shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Lessee's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Lessee's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 *et seq.* of the California Civil Code or in any other manner allowed by Law. If Lessee fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Lessee shall Indemnify City against all Losses resulting therefrom, including, without

limitation, Losses made by a succeeding Lessee resulting from Lessee's failure to surrender the Premises.

22.2. Automatic Reversion. Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Lessee or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Lessee shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Lessee's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above.

23. HAZARDOUS MATERIALS

23.1. No Hazardous Materials. Lessee covenants and agrees that neither Lessee 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 any Improvements or transported to or from the Premises or any Improvements, other than (i) ordinary and customary commercial office and cleaning products in reasonable quantities and used in a manner consistent with the permitted uses under this Lease and in compliance with all applicable Environmental Laws, and (ii) materials brought onto the Premises for use in science classes or similar activities, under teacher supervision, in reasonable quantities and used in a manner complying with all applicable Environmental Laws, provided that any proposed use of such Hazardous Materials pursuant to this clause (ii) shall first have been disclosed to and approved by the General Manager. Lessee shall immediately notify City if and when Lessee learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Lessee to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Lessee shall promptly provide all such information. Without limiting **Article 20** hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Lessee (except in the event of an emergency).

23.2. Lessee's Environmental Indemnity. If Lessee breaches any of its obligations contained in **Section 23.1** above, or, if any act or omission or negligence of Lessee or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City property, without limiting Lessee's general Indemnity contained in **Section 18.2** above, Lessee, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if Lessee or any of Lessee's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Lessee shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the

condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Lessee shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

24. SECURITY DEPOSIT

Lessee shall pay to City prior to or upon execution of this Lease the sum specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms, covenants and conditions of this Lease. Lessee agrees that City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises, the Improvements, or the Department Facilities (if any) caused by Lessee, its Agents or Invitees, or any failure of Lessee to perform any other terms, covenants or conditions contained in this Lease, without waiving any of City's other rights and remedies hereunder or at Law or in equity. Should City use any portion of the security deposit to cure any Event of Default by Lessee hereunder, Lessee shall immediately replenish the security deposit to the original amount, and Lessee's failure to do so within five (5) days of City's notice shall constitute a material Event of Default under this Lease. If the Base Rent is increased pursuant to any of the provisions of this Lease, Lessee shall increase the amount of the security deposit accordingly. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Lessee shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Lessee's liability for the performance of any of its obligations under this Lease. Within forty-five (45) days after the expiration of the Post-Term Storage Period and the complete surrender of the Premises by Lessee, City shall return the remaining balance of the security deposit to Lessee, less any amounts properly deducted from such security deposit by City pursuant to this Lease and applicable Laws. On or about the Expiration Date or at any time thereafter, either Party may request a joint walkthrough and inspection of the Premises for the purpose of confirming the condition of the Premises and identifying any appropriate deductions or charges against the security deposit, and the other Party shall cooperate reasonably and in good faith with any such request.

25. 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 at a monthly Base Rent equal to one hundred ten percent (110%) of the amount set forth in **Section 5.1** hereof, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over after the expiration of the Term without City's consent (an "Unauthorized Holdover") shall constitute a default by Lessee 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. Further, and without limiting the foregoing, any Unauthorized Holdover shall be at a monthly rental rate equal to one hundred fifty percent (150%) of the rate in effect for the lease of the Premises at the end of the Term of this Lease, provided that in recognition of the higher daily set-up fees and daily rental fees City sometimes charges for use of the Premises for special events, if (i) City anticipates entering into other interim use agreements following the Expiration Date and (ii) City provides Lessee with a written demand to vacate, Lessee shall pay a daily rental rate of \$10,000 for each day commencing on the later of (A) the date immediately following the Expiration Date, and (B) five (5) business

days after City's written demand to vacate. The demand to vacate on or after the Expiration Date may be given prior to the Expiration Date.

26. GENERAL PROVISIONS

26.1. Notices. Except as otherwise expressly provided in this Lease, any notice given hereunder 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 reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Lessee (i) at Lessee's address set forth in the Basic Lease Information, if sent prior to Lessee's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Lessee's taking possession of the Premises, or (iii) at any place where Lessee or any Agent of Lessee may be found if sent subsequent to Lessee'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 Lessee 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) business days after the date when it is mailed if sent by first-class or certified mail, one business day after the date it is turned over to a commercial overnight courier for next business day delivery (with delivery charges paid), or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this **Section 26.1** and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither Party may give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

26.2. No Implied Waiver. No failure by City to insist upon the strict performance of any obligation of Lessee 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, 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. The consent of City given in any instance under the terms of this Lease shall not relieve Lessee of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

26.3. Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto. Whenever this Lease requires or permits the giving by City of its consent or approval, the General Manager of the Department 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 Lessee, and City's agreement may be made upon the sole approval of the General Manager of the Department provided such amendment or modification does not (i) decrease the amount of rental income payable by Lessee to

City, (ii) materially increase City's liabilities or financial obligations under this Lease, (iii) materially increase the size of the Premises, (iv) change the Term of this Lease, or (v) materially change the permitted uses of the Premises. Any proposed amendment which falls into the above specified categories shall require the approval of the Commission, and, if required under the City's Charter or Administrative Code, the Mayor, and the Board of Supervisors.

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

26.5. Joint and Several Obligations. The word "Lessee" as used herein shall include the plural as well as the singular. If there is more than one Lessee, the obligations and liabilities under this Lease imposed on Lessee shall be joint and several.

26.6. Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of City is required to be obtained by Lessee hereunder, City may give or withhold such consent in its sole and absolute discretion. All such consents may be made by the General Manager acting alone, unless stated to the contrary herein.

26.7. Successors and Assigns. Subject to the provisions of **Article 16** hereof relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Lessee 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.

26.8. Brokers. Neither Party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except 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 other broker or finder perfects a claim

for a commission or finder's fee based upon any such contact, dealings or communication, the Party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other Party from any and all Losses incurred by the indemnified Party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

26.9. 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.

26.10. Governing Law. This Lease shall be subject to, and construed and enforced in accordance with, the Laws of the State of California and the City's Charter and Administrative Code.

26.11. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. 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 of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Lessee hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Lessee by implication or otherwise unless expressly set forth herein.

26.12. Attorneys' Fees. In the event that either City or Lessee 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.

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

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

26.15. Survival of Indemnities. Termination of this Lease shall not affect the right of either Party to enforce any and all indemnities, waivers 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. Lessee specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Lessee has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be

groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Lessee by City and continues at all times thereafter.

26.16. Relationship of Parties. City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Lessee's business, or joint venturer or member in any joint enterprise with Lessee. Neither Party shall act as the agent of the other Party in any respect hereunder, and neither Party shall have any authority to commit or bind the other Party without such Party's consent as provided herein. 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. The granting of this Lease by City does not constitute authorization or approval by City of any activity conducted by Lessee on, in or relating to the Premises.

26.17. Transfer by City. If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and Lessee shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Lessee shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Lessee, with regard to any future sale or other disposition of the Premises, or any portion thereof.

26.18. Recording. Lessee agrees that it shall not record this Lease in the Official Records.

26.19. 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 Lessee, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Lessee, its successors and assigns, or for any obligation of City under this Lease or otherwise.

26.20. Wages and Working Conditions. With respect to the construction of any Improvements or Alterations, any employee performing services for Lessee shall be paid not less than the highest prevailing rate of wages, 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 the City and County of San Francisco. Lessee shall require any contractor to provide, and shall deliver to City every calendar month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements or Alterations on the Premises.

26.21. Prevailing Wages for Theatrical Workers. Pursuant to San Francisco Administrative Code Section 21.25-3, unless excepted, Contracts, Leases, Franchises, Permits, and Agreements awarded, let, issued or granted by the City and County of San Francisco for the use of property owned by the City and County of San Francisco shall require any Employee engaged in theatrical or technical services related to the presentation of a Show to be paid not less than the Prevailing Rate of Wages. Employees engaged in theatrical and technical services include, without limitation, those engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services. Capitalized terms in this Section that are not defined in this Lease shall have the meanings provided in Administrative Code Section 21.25-3. Lessee agrees to comply with and be fully bound by, and to require its Subcontractors to comply with and be fully bound by, the provisions of Administrative Code Section 21.25-3, including, without limitation, the payment of any penalties for noncompliance and other remedies

available to the City. The provisions of Administrative Code Section 21.25-3 are hereby incorporated by reference and made a part of this Lease. Lessee shall cooperate fully with the Labor Standards Enforcement Officer and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Administrative Code Section 21.25-3, including, without limitation, any investigation of noncompliance by Lessee or its Subcontractors. Lessee agrees that the City may inspect and/or audit any workplace or job site involved in or related to the performance of this Lease, including, without limitation, interviewing Lessee's and any Subcontractor's employees and having immediate access to employee time sheets, payroll records, and paychecks for inspection. Lessee may obtain a copy of the current Prevailing Rate of Wages from City by contacting its Office of Labor Standards Enforcement. Lessee acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Lessee and any Subcontractors shall be bound by and shall fully comply with any such amendments by the Board of Supervisors.

26.22. Intellectual Property; Music Broadcasting Rights. Lessee shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property on the Premises, including, but not limited to musical or other performance rights. (Note to Lessee: To obtain the appropriate music performance license, you may contact the BMI Licensing Executive toll free at 1-877-264-2137 Monday – Friday, 9-5 p.m. (Central Time) and the American Society of Composers, Authors and Publishers (“ASCAP”) at 1-800-505-4052 Monday – Friday, 9-5 p.m. (Eastern Time).)

26.23. Supervision of Minors.

(a) Records Request. If any person applies for employment or for a volunteer position with Lessee, or any sublessee or subcontractor, in which such applicant would have supervisory or disciplinary power over a minor or any person under such applicant's care, then Lessee, and any sublessee or subcontractors providing services at the Premises, shall request from the California Department of Justice records of all convictions or any arrest pending adjudication of such applicant involving the offenses listed in Welfare and Institution Code Section 15660(a), in accordance with the procedures established in California Penal Code Section 11105.3.

(b) Restriction on Hires for Recreational Sites. If Lessee, or any sublessee or subcontractor, is providing services under this Lease at a City park, playground, recreational center or beach (separately and collectively, “Recreational Site”), Lessee shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position to provide supervisory or disciplinary power over a minor or any person under his or her care if that person has been convicted of any offense listed in Welfare and Institution Code Section 15660(a).

(c) Notice Required for Sites Other Than Recreational Sites. If Lessee, or any of its sublessees or subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code Section 11105.3(c), then Lessee shall comply, and cause its sublessees and subcontractors to comply, with Penal Code Section 11105.3(c) and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Lessee shall provide, or cause its sublessees or subcontractors to provide, City with a copy of any such notice at the same time that it provides notice to any parent or guardian, to the extent permitted by law.

(d) General Requirements. Lessee shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this Section of

the Lease as a condition of its contract with the subcontractor. Lessee acknowledges and agrees that failure by Lessee or any of its subcontractors to comply with any provision of this Section of this Lease shall constitute an Event of Default. Lessee further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Lease, partially or in its entirety, to recover from Lessee any amounts paid under this Lease, and to withhold any future payments to Lessee. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

26.24. Employee Signature Authorization Ordinance. City has enacted an ordinance at Chapter 23, Article VI of its Administrative Code, commencing at Section 23.50 (the "Ordinance"), which may apply to employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees. The terms of the Ordinance are expressly incorporated herein by reference. To the extent Lessee or its successors or assigns employs employees in a hotel or restaurant in the Premises within the scope of the Ordinance, Lessee hereby agrees as a material condition of this Lease to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent Lessee's employees, if and as required by the Ordinance, and to otherwise fully comply with the requirements of the Ordinance. Lessee recognizes that, if the Ordinance applies to Lessee's operations on the Premises, Lessee must enter into a Card Check Agreement with a Labor Organization(s) as specified by the Ordinance before executing this Lease, and that being party to such a Card Check Agreement(s) is a condition precedent of rights or obligations under this Lease.

26.25. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Covenant Not to Discriminate. In the performance of this Lease, Lessee 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, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, 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 Lessee, in any of Lessee's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Lessee.

(b) Subleases and Other Subcontracts. Lessee shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Sublessee or other subcontractor in substantially the form of subsection (a) above. In addition, Lessee 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 sublessees and other subcontractors to comply with such provisions. Lessee's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits. Lessee does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the

domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Condition to Lease. As a condition to this Lease, Lessee shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Lessee 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, Lessee 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 Lessee and/or deducted from any payments due Lessee.

26.26. No Relocation Assistance; Waiver of Claims. Lessee acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Lessee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) 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.

26.27. 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. Lessee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

26.28. Conflicts of Interest. Through its execution of this Lease, Lessee 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 such provisions, and agrees that if Lessee becomes aware of any such fact during the term of this Lease Lessee shall immediately notify City.

26.29. Tropical Hardwood and Virgin Redwood Ban. Lessee shall not permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in or on the Premises or otherwise in the performance of this Lease. 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. In the event Lessee fails to comply in good faith with any of the provisions of Section 12I of the San Francisco Administrative Code, Lessee shall be liable for liquidated damages for each violation in any amount equal to Lessee's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Lessee acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Lessee from any contract with the City and County of San Francisco.

26.30. Tobacco Product Advertising Prohibition. Lessee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Lease. This 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 prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

26.31. First Source Hiring Ordinance. 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, Lessee shall enter into a First Source Hiring Agreement with the City, on or before the effective date of the Lease. Lessee 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.

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

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

26.34. Vending Machine/Non-alcoholic Beverage Contract. Lessee hereby agrees to abide by any and all provisions of any contract entered into by City for the purpose of the sales of non-alcoholic beverages at City-owned facilities. No such contract is in place as of the date of this Lease.

26.35. No Light, Air or View Easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises shall in no way affect this Lease or impose any liability on City as landlord under this Lease.

26.36. City's Inability to Perform. If City is unable to perform or is delayed in performing any of City's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Lessee's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby.

26.37. Notification of Limitations on Contributions. Through its execution of this Lease, Lessee 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 or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, 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. Lessee 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. Lessee further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Lessee's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Lessee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Lessee. Additionally, Lessee acknowledges that Lessee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Lessee further agrees to provide to City the name of the each person, entity or committee described above.

26.38. Public Transit Information. Lessee shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Lessee 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, all at Lessee's sole expense.

26.39. Drug-Free Workplace. Lessee 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. Lessee agrees that any violation of this prohibition by Lessee, its Agents or assigns shall be deemed a material breach of this Lease.

26.40. Preservative-Treated Wood Containing Arsenic. As of July 1, 2003, Lessee 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. Lessee 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 Lessee 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.

26.41. Resource Efficiency. Lessee acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient buildings and resource-efficient pilot projects. Lessee hereby agrees that it shall comply with all applicable provisions of such code sections.

26.42. Food Service Waste Reduction Requirements. Lessee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, 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. This provision is a material term of this Lease. By entering into this Lease, Lessee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Lessee agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is 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 amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Lessee's failure to comply with this provision.

26.43. No Smoking in City Parks. Lessee 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."

26.44. Prohibition of the Sale of Lottery Tickets. The selling of any lottery tickets on the Premises is expressly prohibited.

26.45. 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. Lessee shall remove all graffiti from the exterior of the Premises within forty eight (48) hours of the earlier of Lessee's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. Lessee shall not be responsible for any graffiti on the exterior of the Palace of Fine Arts Theatre portion of the Building unless such graffiti was placed there by Agents or Invitees of Lessee. 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 Lessee to comply with this Section of this Lease shall constitute an Event of Default of this Lease.

27. [Intentionally Deleted]

28. [Intentionally Deleted]

29. SIGNS AND ADVERTISING.

Lessee hereby agrees not to erect or maintain, nor permit to be erected or maintained, upon any part of the Premises, any signs without obtaining City's written consent in advance.

[No further text this page.]

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LESSEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL A RESOLUTION OF THE COMMISSION SHALL HAVE BEEN DULY PASSED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON PASSAGE OF SUCH A RESOLUTION, AND THIS LEASE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL THE COMMISSION APPROVES THIS LEASE, IN ITS SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.

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

LESSEE:

**iHangar,
a California corporation**

By: _____

By: _____

CITY:

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

By: _____
PHILIP A. 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 _____
Deputy City Attorney

EXHIBIT A- PREMISES MAP

[Attached]

EXHIBIT B- DEPARTMENT RULES AND REGULATIONS

The Department Rules and Regulations consist of the San Francisco Park Code, which is part of the San Francisco Municipal Code.

Please see following link for San Francisco Recreation and Park Department Park Code

[http://www.amlegal.com/nxt/gateway.dll/California/park/parkcode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$sync=1](http://www.amlegal.com/nxt/gateway.dll/California/park/parkcode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)

EXHIBIT C- SPECIAL EVENTS PERCENTAGE RENT RATE

Percentage Rent shall be payable at the following rates on account of Special Events:

During each month Lessee shall pay City Percentage Rent on account of Gross Revenue from Special Events in an amount equal to the aggregate of (a) 10% of Gross Revenue from Special Events until Lessee shall have received Net Revenues (as defined below) from such Special Events in an amount exceeding \$42,000, and (b) 25% of Gross Revenue from Special Events received by Lessee thereafter.

As used herein, "Net Revenues" means Gross Receipts from Special Events *minus* the costs directly incurred by Lessee in connection with such Special Events and not separately reimbursed by a third party, such as expenses for printing tickets and posters, catering costs, janitorial costs (reasonably allocated if applicable), and other expenses, but not including an allocation for Base Rent.

EXHIBIT D- ACCOMMODATED PUBLIC EVENTS

Public Event	Date
Mayor's opening party for the Pan Pacific International Exposition (historic opening day of the Panama-Pacific International Exposition)	Friday, February 20, 2015
Community opening celebration for the Panama-Pacific International Exposition	Saturday, February 21, 2015
Greater and Greener 2015 International Parks Conference party	Sunday, April 12, 2015
US Conference of Mayors	June 19-22, 2015
Party for the Parks	September 19, 2015

EXHIBIT E- CARRYOVER IMPROVEMENTS TO REMAIN AT SURRENDER

The following items are Carryover Improvements (see Section 8.5 of the Lease) that will be left in place in the Premises by Town School for use by Lessee, and are not required to be removed by Lessee at the expiration of the Term (*i.e.*, may be left in place at the time of Lessee's surrender of the Premises) under Section 22.1 of the Lease:

Bathrooms located within the Premises

Mezzanine structure

Structures under the Mezzanine

Plumbing and HVAC systems

Electrical wiring (provided that wiring associated with removed improvements, alterations or personal property shall be capped at junction boxes, but such electrical wires do not need to be removed beyond junction boxes)

EXHIBIT F- SUBLEASE CONDITIONS: FORM OF INDEMNITY

Except as otherwise approved by the City in writing, each Sublease shall include the following provisions:

1. **Subject to Lease.** A provision describing this Lease and providing that (a) the leasehold of the Subtenant is subject to this Lease, (b) the Subtenant shall not perform, or cause to be performed, any act in violation of this Lease, and (c) if any provision of the Sublease is inconsistent with any provision of this Lease, this Lease shall control.
2. **City as Beneficiary.** A provision providing that City shall be a third-party beneficiary of the Sublease.
3. **Indemnification and Release.** An indemnification clause and release of claims provision identical to that set forth in Article 18, provided that references to Lessee shall be changed to Subtenant, references to the Premises shall be changed to refer to the subleased premises, and references to Subtenant shall be changed to refer to sub-subtenants.
4. **Insurance.** A provision requiring the Subtenant to provide liability and other insurance in form and amounts reasonably approved by City's Risk Manager from time to time, with a clause requiring the Subtenant to cause to be named as additional insureds under all liability and other insurance policies "The City and County of San Francisco, and its Officers, Agents, Employees and Representatives" and acknowledging City's rights to demand increased coverage to normal amounts consistent with the Subtenant's business activities on the subleased premises. Lessee shall submit the insurance provision of Lessee's standard Sublease form to City for approval by the Risk Manager prior to entering into any Subleases using such form, and Lessee shall submit such insurance provision annually to City for approval or revision by the Risk Manager.
5. **Effect of Master Lease Termination.** A provision stating that if for any reason whatsoever this Lease is terminated, such termination shall at City's election operate to terminate the Sublease, except as otherwise provided in any non-disturbance agreement executed by City.
6. **Payment of Rent on Default.** A provision directing Subtenant to pay the Sublease rent and other sums due under the Sublease directly to City upon receiving written notice from City that a Lessee Event of Default has occurred.
7. **Waiver of Relocation Assistance.** A provision in which the Subtenant expressly waives entitlement to any and all relocation assistance and benefits in connection with this Lease.
8. **City Entry Rights.** A provision similar to Article 20, requiring the Subtenant to permit City to enter the subleased premises for the purposes specified in Article 30 and acknowledging and agreeing that City shall have all of the rights of access to the subleased premises described in this Lease.
9. **Sublease and Assignment Profit Sharing.** A provision requiring profit sharing between Lessee and the Subtenant in the event of an assignment of the Sublease or a sub-sublease.
10. **Other Transfer Provisions.** A provision requiring the Subtenant to reimburse Lessee upon demand for Lessee's and City's reasonable attorneys' fees and administrative expenses incurred in connection with the review, processing and/or preparation of any documentation in connection with any requested transfer, and a provision in which the transferee, assignee, sub-subtenant, licensee, or concessionaire expressly waives entitlement to any and all relocation assistance and benefits in connection with this Lease, the Sublease or the subject sub-sublease, as applicable.

11. Estoppel Certificate for City. A provision requiring the Subtenant to execute, acknowledge and deliver to City, within fifteen (15) business days after request, a certificate stating to the best of the Subtenant's knowledge after diligent inquiry (a) the Sublease is unmodified and in full force and effect (or, if there have been modifications, that the Sublease is in full force and effect, as modified, and stating the modifications or, if the Sublease is not in full force and effect, so stating), (b) the dates, if any, to which any rent and other sums payable under the Sublease have been paid, (c) that no notice has been received by the Subtenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, and (d) that Lessee is not then in default under the Sublease (or if Lessee is then in default, describing such default).
12. Intentionally omitted.
13. Non-Discrimination. A provision incorporating the requirements of Section 26.25 of this Lease, regarding non-discrimination.
14. Prohibition on Tobacco and Alcohol Advertising. A provision substantially as follows:

Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including property which is the subject of this Sublease. 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 or, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes or/and tobacco products, or to (ii) encourage people not to smoke or to stop smoking.

[NOTE: INCLUDE THE FOLLOWING SECTION EXCEPT FOR WHEN THE SUBLEASED PREMISES IS USED FOR THE OPERATION OF A RESTAURANT OR OTHER FACILITY OR EVENT WHERE THE SALE, PRODUCTION OR CONSUMPTION OF ALCOHOL IS PERMITTED: Subtenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the premises. 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. 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.]
15. No Personal Liability of City Personnel. A provision stating that no elective or appointive board, commission, member, officer, employee or other agent of City shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by City under the Lease or Sublease, or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of City under the Lease or Sublease.
16. MacBride Principles – Northern Ireland. A clause identical to that set forth in Section 26.27, provided that references to Lessee shall be changed to Subtenant.
17. Tropical Hardwood/Virgin Redwood Ban. A clause identical to that set forth in Section 26.29, provided that references to Lessee shall be changed to Subtenant and references to the Premises shall be changed to the subleased premises.

18. Card Check Ordinance. A clause identical to that set forth in Section 30.4, provided that references to Lessee shall be changed to Subtenant, the reference to subtenants shall be changed to sub-subtenants, and the reference to the Premises shall be changed to the subleased premises.
19. Resource-Efficient Building Ordinance. A clause identical to that set forth in Section 11.17, provided that the reference to Lessee shall be changed to Subtenant and the reference to the Premises shall be changed to the subleased premises.
20. Drug-Free Workplace. If any federal grants apply to the subleased premises, a clause identical to that set forth in Section 32.5, provided that the reference to Lessee shall be changed to Subtenant and the reference to the Lease shall be changed to the Sublease.
21. Preservative Treated Wood Containing Arsenic. A clause identical to that set forth in Section 11.16, provided that references to Lessee shall be changed to Subtenant.
22. Food Service Waste Reduction Ordinance. A provision substantially as follows:

Subtenant 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, with respect to food sold or produced that the premises which are the subject of this Sublease, 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 Sublease as though fully set forth herein. This provision is a material term of this Sublease. By entering into this Sublease, Subtenant agrees that if it breaches this provision, Landlord, as tenant under the Master Lease, will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting Landlord's other rights and remedies, Subtenant 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 Landlord, as tenant under the Master Lease, will incur based on the violation, established in light of the circumstances existing at the time this Sublease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by Landlord, as tenant under the Master Lease, because of Subtenant's failure to comply with this provision.
23. Conflicts of Interest. A provision substantially as follows:

Subtenant certifies that it has made a complete disclosure to Landlord and City of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the City presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for termination of this Sublease.