

**LEASE AGREEMENT**

BY AND BETWEEN

**CITY OF ALAMEDA,**

a charter city and municipal corporation  
AS LANDLORD

and

**ALAMEDA POINT REDEVELOPERS, LLC**

a California limited liability company  
AS TENANT

MS

TABLE OF CONTENTS

	<u>PAGE</u>
<b>1. DEMISE</b> .....	<b>1</b>
1.1 Demise .....	1
1.2 Inspection Contingency .....	1
<b>2. PREMISES</b> .....	<b>2</b>
2.1 Premises .....	2
2.2 Land and Parking .....	2
2.3 [INTENTIONALLY OMITTED].....	2
2.4 Possession .....	3
2.5 [INTENTIONALLY OMITTED].....	3
<b>3. TERM</b> .....	<b>3</b>
3.1 Term .....	3
3.2 Delay and Delivery .....	3
3.3 Options to Renew.....	3
3.4 Early Termination Right .....	6
<b>4. RENT</b> .....	<b>6</b>
4.1 Base Rent .....	6
4.2 Additional Rent.....	8
4.3 Late Charge.....	8
4.4 Interest.....	8
<b>5. TAXES</b> .....	<b>8</b>
5.1 Definitions.....	8
5.2 Determination and Payment of Taxes.....	10
<b>6. USE; COMPLIANCE WITH LAWS</b> .....	<b>10</b>
6.1 Use .....	10
6.2 Compliance with Laws .....	10
6.3 Compliance with Restrictions .....	11
6.4 Use Permit.....	11
<b>7. SECURITY DEPOSIT</b> .....	<b>11</b>
<b>8. UTILITIES</b> .....	<b>12</b>
8.1 Payments for Utilities and Services .....	12

**TABLE OF CONTENTS**  
**(CONTINUED)**

	<u>PAGE</u>
8.2 No Liability of Landlord .....	12
<b>9. PERSONAL PROPERTY AND POSSESSORY INTEREST TAXES. ....</b>	<b>13</b>
9.1 Tenant’s Tax Obligation .....	13
9.2 Personal Property Taxes .....	13
9.3 Possessory Interest Taxes .....	13
9.4 Payment.....	13
<b>10. ALTERATIONS. ....</b>	<b>13</b>
10.1 Landlord Consent Required .....	13
10.2 Alterations.....	14
10.3 Excavations .....	15
10.4 Liens.....	15
<b>11. MAINTENANCE AND REPAIR OF PREMISES.....</b>	<b>16</b>
11.1 [INTENTIONALLY OMITTED].....	16
11.2 [INTENTIONALLY OMITTED].....	16
<b>12. ENVIRONMENTAL PROTECTION PROVISIONS.....</b>	<b>16</b>
12.1 Hazardous Materials .....	16
12.2 Reportable Uses Required Consent .....	16
12.3 Remediation Obligations .....	17
12.4 Environmental Permits.....	18
12.5 Landlord’s Inspection Right .....	18
12.6 Hazardous Materials Handling Plan .....	18
12.7 Hazardous Materials Indemnity .....	19
<b>13. ASSIGNMENT AND SUBLETTING. ....</b>	<b>19</b>
13.1 Landlord Consent Required .....	19
13.2 [INTENTIONALLY OMITTED].....	20
13.3 [INTENTIONALLY OMITTED].....	20
13.4 [INTENTIONALLY OMITTED].....	20
13.5 Tenant Affiliates .....	20
13.6 No Release .....	21
13.7 Expenses and Attorneys’ Fees .....	21

RIS

**TABLE OF CONTENTS**  
**(CONTINUED)**

	<u>PAGE</u>
13.8	Limitations on Transfer Reasonable .....21
13.9	Non-Disturbance and Attornment.....21
<b>14.</b>	<b>INDEMNITY AND WAIVER OF CLAIMS. ....21</b>
14.1	Tenant Indemnification.....21
14.2	Waiver of Claims .....22
14.3	Survival/No Impairment .....22
<b>15.</b>	<b>INSURANCE. ....22</b>
15.1	Tenant’s Insurance.....22
15.2	Requirements For All Policies.....24
15.3	Certificates of Insurance .....24
15.4	Landlord’s Insurance .....24
<b>16.</b>	<b>DAMAGE OR DESTRUCTION. ....24</b>
16.1	Definitions.....24
16.2	Partial Damage.....25
16.3	Total Destruction .....25
16.4	Abatement of Rent .....25
<b>17.</b>	<b>CONDEMNATION.....25</b>
<b>18.</b>	<b>DEFAULT.....26</b>
18.1	Events of Default .....26
18.2	Remedies.....26
18.3	No Waiver.....27
18.4	Waiver of Redemption, Reinstatement, or Restoration .....27
18.5	Remedies Cumulative .....28
18.6	Landlord’s Right to Perform Tenant’s Obligations .....28
18.7	Severability .....28
<b>19.</b>	<b>LIMITATION OF LIABILITY.....28</b>
<b>20.</b>	<b>SURRENDER OF PREMISES.....29</b>
<b>21.</b>	<b>HOLDING OVER.....29</b>
<b>22.</b>	<b>MORTGAGES.....29</b>
22.1	Landlord Mortgage Protection.....29

RTS

**TABLE OF CONTENTS**  
**(CONTINUED)**

	<u>PAGE</u>
22.2 Leasehold Mortgage.....	30
22.3 Rights of Leasehold Mortgagee .....	31
<b>23. TENANT’S ESTOPPEL CERTIFICATE. ....</b>	<b>35</b>
<b>24. [INTENTIONALLY OMITTED]. ....</b>	<b>36</b>
<b>25. NOTICE. ....</b>	<b>36</b>
<b>26. LABOR PROVISIONS.....</b>	<b>36</b>
26.1 Equal Opportunity.....	36
26.2 Convict Labor .....	36
26.3 Prevailing Wages .....	37
<b>27. MISCELLANEOUS. ....</b>	<b>37</b>
27.1 Governing Law .....	37
27.2 Severability .....	37
27.3 Attorneys’ Fees .....	38
27.4 Force Majeure .....	38
27.5 Sale.....	38
27.6 Signs.....	38
27.7 Brokers.....	38
27.8 Access by Landlord.....	39
27.9 Waiver of Right to Jury Trial.....	39
27.10 Recordation .....	39
27.11 Article and Section Titles.....	39
27.12 Authority .....	40
27.13 Quiet Possession .....	40
27.14 Asbestos Notification for Commercial Property Constructed Before 1979 .....	40
27.15 Lead Warning Statement.....	40
27.16 OFAC Certification.....	40
27.17 Certified Access Specialist Disclosure .....	40
27.18 Time of the Essence .....	41
27.19 Entire Agreement .....	41
27.20 Rules and Regulations.....	41

*KJS*

**TABLE OF CONTENTS**  
**(CONTINUED)**

	<u>PAGE</u>
27.21 Financial Statement.....	41
27.22 Relocation Benefits.....	41
27.23 Alameda NAS Historic District .....	41
27.24 Subdivision and Development of Property .....	42
27.25 Environmental and Planning Documents.....	42
27.26 Telecommunications Equipment .....	42
27.27 LIFOC .....	43
27.28 Counterparts.....	44
<b>28. OPTION TO PURCHASE. ....</b>	<b>44</b>
28.1 Option .....	44
28.2 Term .....	45
28.3 Purchase Price .....	45
28.4 Exercise of Option .....	45
28.5 Condition of Option Property and Risk of Loss .....	46
28.6 Title.....	47
28.7 Closing .....	47
28.8 Infrastructure Financing.....	49
28.9 Infrastructure Improvements.....	50
28.10 Brokers Commission.....	51
28.11 Termination of Option upon Default .....	51
28.12 Exchange.....	51
28.13 Conveyance of LIFOC Parcel .....	51
<b>29. RIGHT OF FIRST OFFER. ....</b>	<b>51</b>

RTS

## INDEX OF EXHIBITS

### *Exhibit*

- A PREMISES
- A-1 LAND
- A-2 PARKING AREA
- A-3 LIFOC PARCEL
- B COMMENCEMENT LETTER
- C RENEWAL NOTICE
- D ACKNOWLEDGMENT OF RECEIPT
- E ENVIRONMENTAL QUESTIONNAIRE
- F RULES AND REGULATIONS
- G TENANT WORK LETTER
- H OPTION PROPERTY
- I PERMITTED USE
- J RENOVATION WORK
- K DRAFT TENTATIVE MAP

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**LEASE AGREEMENT**

**BASIC LEASE INFORMATION**

<i>Lease Date:</i>	Dated as of February __, 2016 for reference purposes only
<i>Landlord:</i>	City of Alameda, a charter city and municipal corporation
<i>Landlord's Address:</i>	City of Alameda Alameda City Hall 2263 Santa Clara Ave Alameda, CA 94501 Tel: (510) 748-4509 Attn: City Manager  Notice Copy to: PM Realty Group, L.P., as Agent for City of Alameda 101 W. Atlantic Avenue Alameda, CA 94501 Tel: (510) 749-0304
<i>Tenant:</i>	Alameda Point Redevelopers, LLC, a California limited liability company
<i>Tenant's Address:</i>	Alameda Point Redevelopers LLC 1475 Powell Street, Suite 201 Emeryville, CA 94608 Attn: Kenneth J. Schmier
<i>Premises:</i>	Those certain premises located at 2350 Saratoga Street (Building 8) consisting of approximately two hundred seventy thousand (270,000) rentable square feet as depicted on <b>Exhibit A</b> . Tenant shall also have a license to use the Land and Parking Area, including the "LIFO Parcel" all as defined at Section 2.2.
<i>Building:</i>	Building 8
<i>Length of Term:</i>	One hundred twenty (120) months
<i>Estimated Commencement Date:</i>	April 1, 2016
<i>Estimated Expiration Date:</i>	March 31, 2026

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<i>Extension Option:</i>	Two (2) options to extend the Term for periods of ten (10) years each	
<i>Base Rent:</i>	<i>Months</i>	<i>Monthly Base Rent</i>
	1 – 18	\$47,034.00*
	19 – 24	\$47,034.00*
	25 – 36	\$65,846.00*
	37 – 48	\$98,770.00*
	49 – 60	\$126,991.00
	61 – 72	\$132,070.64
	73 – 84	\$137,353.46
	85 – 96	\$142,847.59
	97 – 108	\$148,561.49
	109 – 120	\$154,503.94
	*Months 1 – 18 are subject to abatement pursuant to Section 4.1(b) below, and Months 25 – 36 and 37 – 48 are subject to potential upward adjustments pursuant to Section 4.1(c) below.	
<i>Taxes and Utilities:</i>	Tenant shall pay all costs for services and utilities to the Premises, as defined in the Lease. Tenant shall pay all taxes (including possessory interest taxes) levied on or against the Premises or its personal property.	
<i>Tenant's Share:</i>	100%	
<i>Security Deposit:</i>	\$47,034	
<i>Permitted Use:</i>	Creative Entrepreneurship and Maker Center, as permitted by Alameda Municipal Code Section 30-4.24 and as identified in <b>Exhibit I</b> .	

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<i>Parking:</i>	Tenant shall have the right, on an exclusive basis, to have its employees and visitors park in the paved areas adjacent to the Buildings as identified as the Parking Areas on <b>Exhibit A-2</b> attached hereto, as further set forth in Section 2.2 herein below
<i>Brokers:</i>	Cushman & Wakefield represents Landlord and Cassidy Turley Commercial Real Estate Services Inc. represents Tenant.

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** is made and entered into by and between CITY OF ALAMEDA, a charter city and municipal corporation (“**Landlord**”) and ALAMEDA POINT REDEVELOPERS, LLC, a California limited liability company (“**Tenant**”) (each a “**Party**” and collectively the “**Parties**”). The Basic Lease Information, the Exhibits and this Lease Agreement are and shall be construed as a single instrument and are referred to herein as the “**Lease**”.

### 1. DEMISE.

1.1 Demise. In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be performed by Tenant in this Lease, and subject to City Council approval, Landlord does hereby lease to Tenant and Tenant does hereby hire and take from Landlord, the Premises described below, upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

1.2 Inspection Contingency. Subject to the terms and conditions of this Lease and provided Landlord has received the pre-paid Base Rent required by Section 4.1 below, and the Security Deposit pursuant to Article 7 and all evidence of insurance required by Article 15, Tenant shall, pursuant to a right of entry agreement to be executed by Landlord and Tenant, be permitted to enter the Premises from and after the date that it signs this Lease until one business day before the Commencement Date (the “**Inspection Period**”) and at Tenant’s sole risk, solely for the purpose of inspecting the Premises to determine its suitability for Tenant’s Permitted Use. Such inspection may include the roof and structural elements of the Building. Landlord may withdraw such permission to enter the Premises prior to the Commencement Date at any time that Landlord reasonably determines that such entry by Tenant is causing a dangerous situation. Such early entry shall be subject to all the terms and provisions of this Lease, except that Tenant shall have no obligation to pay Rent or other charges during such early access period. Notwithstanding anything to the contrary set forth in this Lease, Tenant shall indemnify, defend and protect Landlord and hold Landlord harmless from and against any and all claims, proceedings, losses, costs, damages, causes of action, liability, injury or expenses arising out of or related to claims of injury to or death of persons or damage to property occurring or resulting directly or indirectly from the presence in the Premises or the Building of Tenant or Tenant’s contractors, agents, employees or representatives or the activities of the same in or about the Premises or Building during such Inspection Period, such indemnity to include, without limitation, the obligation to provide all reasonable costs of defense against such claims. If as a result of such inspection Tenant discovers structural or other conditions in the Building that it determines are unacceptable, it may, before the expiration of the Inspection Period, deliver to landlord a written notice of its termination of this Lease. No such notice shall be effective to terminate this Lease unless received by Landlord before the Commencement Date of this Lease. If such notice is timely delivered by Tenant, then this Lease shall be deemed terminated and Tenant shall immediately vacate the Premises and Landlord shall return any remaining Security Deposit and any prepaid rent within thirty (30) days thereof.

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## 2. PREMISES.

2.1 Premises. The Premises demised by this Lease are as specified in the Basic Lease Information. Said Premises are located on property commonly referred to as the former Naval Air Station Alameda (“**Property**”). The Premises have the address and contain the square footage specified in the Basic Lease Information; provided, however, that any statement of square footage set forth in this Lease is an approximation which Landlord and Tenant agree is reasonable and no economic terms based thereon shall be subject to revision whether or not the actual square footage is more or less.

2.2 Land and Parking. Landlord grants to Tenant a nonexclusive license to use the land area appurtenant to the Premises as generally depicted on **Exhibit A-1** (“**Land**”). Landlord further grants Tenant an exclusive license for Tenant and its employees, agents, suppliers, customers and patrons the right to use those portions of the land appurtenant to the Premises designated on **Exhibit A-2** for parking purposes (the “**Parking Area**”). Tenant acknowledges that an approximately 0.60 acre portion of Land to the North of the Building adjacent to West Ranger Avenue as depicted on **Exhibit A-3** is not owned by Landlord, but is under Landlord’s possession pursuant to the Lease in Furtherance of Conveyance (“**LIFOC**”) as further described in Section 27.27 below (the “**LIFOC Parcel**”). Tenant may also use the Parking Area for the loading and unloading of trucks shipping items to and from the Premises. Landlord shall not be required to enforce Tenant’s rights to use any parking spaces on the Parking Area. Except during construction of the Renovation Work, as defined in the Tenant Work Letter. Under no circumstances may the Land or Parking Area be utilized for the storage (beyond 72 hours), repair or maintenance of any vehicles. Should Tenant or its agents, employees or invitees use the Land or Parking Area or any portion thereof in violation of this Section 2.2, Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to tow away any vehicle involved and charge the cost of towing and storage to Tenant, which cost shall be immediately payable upon demand by Landlord as Additional Rent. Neither Landlord nor any Landlord Related Party (as defined in Section 14.1 below) shall be liable for: (a) loss or damage to any vehicle or other personal property parked or located upon or within the Land or Parking Area, whether pursuant to this license or otherwise and whether caused by fire, theft, explosions, strikes, riots, or any other cause whatsoever; or (b) injury to or death of any person in, about or around any parking spaces or any portion of the Land or Parking Area or any vehicles parked thereon whether caused by fire, theft, assault, explosion, riot or any other cause whatsoever and Tenant hereby waives any claims for, or in respect to, the above. Tenant shall not assign any of its rights under this Section 2.2 except in connection with an assignment of Tenant’s interests in the Lease or a sublease in accordance with Article 13 below and in the event an attempt to assign is made, it shall be void. Landlord shall have no maintenance obligations for the Land or Parking Area and all provisions of this Lease concerning Tenant’s rights and obligations governing its use and occupancy of the Premises that are not inconsistent with this Section 2.2 shall be applicable to the Land and Parking Area. In addition to the foregoing, if Tenant desires storage rights or other such uses of the Parking Area, Tenant shall provide a narrative written description and plans showing such uses for Landlord’s review and approval, which approval shall not be unreasonably withheld or delayed. If Tenant obtains Landlord’s approval for outside storage or other uses, the same shall be properly screened.

### 2.3 [INTENTIONALLY OMITTED].

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2.4 Possession. Landlord shall deliver possession of the Premises free from any existing tenancy. Tenant accepts the Premises in "AS IS" "WITH ALL FAULTS" condition and configuration without any representations or warranties by Landlord, and subject to all matters of record and all applicable laws, ordinances, rules and regulations, with no obligation of Landlord to make alterations or improvements to the Premises, remove fixtures or equipment left by the Government (as defined in Section 27.27 below). Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the suitability of the Premises, Building or infrastructure for the conduct of Tenant's business. Landlord shall not be liable for any latent or patent defects in the Building or Premises. Tenant shall be responsible for requesting an inspection and obtaining a Certificate of Occupancy from the City of Alameda. This shall include, but is not limited to any necessary fire sprinkler upgrades, electrical service upgrades, compliance with the ADA (as defined at Section 6.2 below), and any other requirements mandated by the Certificate of Occupancy inspection.

2.5 [INTENTIONALLY OMITTED].

### 3. TERM.

3.1 Term. The term of this Lease ("**Term**") shall be for the period specified in the Basic Lease Information, commencing on the later of (a) the Estimated Commencement Date or (b) one (1) day after this Lease has been approved by the City Council, the date of which approval shall be deemed to be the effective date of an ordinance approving this Lease as required by the City Charter ("**Commencement Date**"). This Lease shall terminate at midnight on the last day of the one hundred twentieth (120th) full calendar month following the Commencement Date ("**Expiration Date**"), unless sooner terminated or extended as hereinafter provided. Promptly following the Commencement Date, Landlord and Tenant shall enter into a letter agreement substantially in the form attached hereto as **Exhibit B**, specifying and confirming the Commencement Date and the Expiration Date; if Tenant fails to execute and deliver such letter agreement to Landlord within ten (10) business days after Landlord's delivery of the same to Tenant, said letter agreement will be deemed final and binding upon Tenant.

3.2 Delay and Delivery. If for any reason Landlord has not delivered to Tenant possession of the Premises by the Estimated Commencement Date set forth in the Basic Lease Information, this Lease shall remain in effect and Landlord shall not be liable to Tenant for any loss or damage resulting therefrom. If Landlord fails to deliver possession by the Commencement Date (as defined in Section 3.1), this Lease shall not be void or voidable, but the commencement of the Term shall be delayed until Landlord delivers possession of the Premises to Tenant.

3.3 Options to Renew.

(a) Renewal Options. Tenant shall have two (2) options to extend the Term (each a "**Renewal Option**") for a period of ten (10) years each (each a "**Renewal Term**"). A Renewal Option may be exercised only by the entity identified as the Tenant in the Basic Lease Information or an assignee that is a Tenant Affiliate and may not be exercised by any other sublessee or assignee or by any other successor or assign. A Renewal Option shall be effective only if Tenant is not in Default under this Lease, either at the time of

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exercise of the Renewal Option or the time of commencement of the Renewal Term. Tenant shall exercise each Renewal Option, if at all, by written notice (“**Election Notice**”) from Tenant to Landlord, in a form substantially the same as **Exhibit C**, given not more than eighteen (18) months nor less than twelve (12) months prior to expiration of the initial Term, or the then current Renewal Term. Any such notice given by Tenant to Landlord shall be irrevocable. If Tenant fails to exercise a Renewal Option in a timely manner as provided for above, said Renewal Option shall be void and Tenant shall have no further Renewal Options.

(b) Terms and Conditions. If Tenant exercises the first Renewal Option, the Term shall be extended for an additional period of ten (10) years upon the same terms and conditions as the initial Term except that (i) there shall be but one further Renewal Option available to Tenant at the expiration of the Renewal Term, (ii) Tenant shall continue to occupy the Premises in its “as-is” condition without any tenant improvement allowance from Landlord, and (iii) the Base Rent during the Renewal Term (the “**Renewal Rate**”) shall be increased six percent (6%) over the Base Rent in effect at the end of the initial Term. If Tenant exercises the second Renewal Option, the Term shall be extended for an additional period of ten (10) years upon the same terms and conditions of the then current Renewal Term except that (i) there shall be no further Renewal Options available to Tenant at the expiration of the second Renewal Term, (ii) Tenant shall continue to occupy the premises in its “as-is” condition without any tenant improvement allowance from Landlord and (iii) the Base Rent during the second Renewal Term (the “**Renewal Rate**”) shall be an amount equal to the greater of (A) the “Fair Market Rent” prevailing at the commencement of the second Renewal Term or (B) the Base Rent in effect at the end of the first Renewal Term.

Tenant shall be responsible for all brokerage costs and/or finder’s fees associated with Tenant’s exercise of the Renewal Option made by parties claiming through Tenant. Landlord shall be responsible for all brokerage costs and/or finder fees associated with Tenant’s exercise of the Renewal Options made by parties claiming through Landlord.

(c) Renewal Rate. For purposes of this Section 3.3, “**Fair Market Rent**” means the prevailing rental rate per square foot then being obtained by landlords for comparable buildings or spaces located in the cities of Alameda, Oakland or San Leandro taking into account (in either case) applicable base years, tenant improvement allowances, free rent periods and other tenant concessions, existing improvements and configuration of the space, any additional rent and all other payments and escalations payable hereunder and by tenants under leases of such comparable spaces as determined by the following process:

(i) Within thirty (30) days after Landlord’s receipt of an Election Notice for the second Renewal Term or as soon as thereafter as is reasonably practicable, Landlord shall notify Tenant in writing of the Renewal Rate (“**Renewal Rate Notice**”).

(ii) Tenant shall have twenty (20) days (“**Response Period**”) after receipt of the Renewal Rate Notice to advise Landlord whether or not Tenant agrees with Landlord’s determination of the Renewal Rate. If Tenant does not respond to Landlord in writing within the Response Period, then Tenant shall be deemed to have accepted the Renewal Rate specified by Landlord in the Renewal Rate Notice. If Tenant agrees or is



deemed to have agreed with Landlord's determination of the Renewal Rate, then such determination shall be final and binding on the parties.

(iii) If Tenant notifies Landlord in writing during the Response Period that Tenant disagrees with Landlord's determination of the Renewal Rate, then within twenty (20) days after Landlord's receipt of Tenant's written notice, Landlord and Tenant shall each retain a licensed commercial real estate broker with at least ten (10) years' experience negotiating commercial lease transactions in the cities of Alameda, Oakland and San Leandro, California and Fair Market Rent shall be determined as follows:

A. If only one broker is appointed by the parties during such period, then said broker shall, within twenty (20) days after his or her appointment, determine the Fair Market Rent.

B. If Landlord and Tenant each appoint a broker during such period, then the brokers shall meet and confer during the thirty (30) day period commencing on the date on which the last of the brokers has been appointed ("**Broker Negotiation Period**") to attempt to mutually agree upon Fair Market Rent.

C. If the brokers cannot agree upon Fair Market Rent as of the expiration of the Broker Negotiation Period, the two brokers shall, within twenty (20) days thereafter, attempt to select a third broker meeting the qualifications stated in this Section.

D. If the two brokers are unable to agree on the third broker, either Landlord or Tenant, by giving fifteen (15) days written notice to the other party, can apply to then Presiding Judge of the Superior Court of Alameda County for the selection of a third broker who meets the qualifications stated in this paragraph.

E. Landlord and Tenant shall each bear one half (1/2) cost of appointing the third broker and paying the third broker's fees.

F. The third broker, however selected, shall be a person who has not previously acted in any capacity for either Landlord or Tenant. The third broker shall, within twenty (20) days after his or her appointment, make a determination of Fair Market Rent. The determinations of Fair Market Rent prepared by all three (3) brokers shall be compared and the Renewal Rent Rate shall be whichever of the determinations by Landlord broker or Tenant's broker is closer to the determination of the third broker (and if they are equally close, the Renewal Rate shall be the determination of the third broker). Such determination shall be final and binding upon the parties. Promptly following determination of a Renewal Rate pursuant to this Section, the parties shall execute an amendment to this Lease memorializing such Renewal Rate.

(d) Month Base Rent Increase. The Monthly Base Rent for the first Renewal Term shall increase at the annual rate of four percent (4%) throughout the first Renewal Term. After the Renewal Rate has been determined for the first year of the second Renewal Term, the Monthly Base Rent for the Premises shall increase at the annual rate of four percent (4%) throughout said Renewal Term.

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3.4 Early Termination Right. In addition to Tenant's Inspection Contingency, as set forth at Section 1.2 above, Tenant may, before the expiration of the one hundred eightieth (180<sup>th</sup>) calendar day after the Commencement Date (the "**Early Termination Period**"), deliver to landlord a written notice of its termination of this Lease. No such notice shall be effective to terminate this Lease unless received by Landlord before the expiration of the Early Termination Period. If such notice is timely delivered by Tenant, then this Lease shall be deemed terminated and Tenant shall immediately vacate the Premises and Landlord shall return any remaining Security Deposit and any prepaid rent within thirty (30) days thereof. Upon such early termination, this Lease shall be deemed terminated and the parties shall have no further rights or obligations hereunder except for those which, by their express terms, survive the expiration or early termination of this Lease.

#### 4. RENT.

##### 4.1 Base Rent.

(a) Generally. From and after the Commencement Date, Tenant shall pay to Landlord, in advance of the first day of each calendar month, without any setoff or deduction and without further notice or demand, the monthly installments of rent specified in the Basic Lease Information ("**Base Rent**"). One full installment of Monthly Base Rent shall be due and payable on the date of execution of this Lease by Tenant and shall be held as the Security Deposit (as defined by Article 7 below) for the first eighteen (18) months of the Term and thereafter any remaining balance shall be applied to the first full calendar month for which Monthly Base Rent is due. If the Commencement Date should be on a date other than the first day of a calendar month, the Monthly Base Rent installment paid for any fractional month during the Term shall be prorated based upon a thirty (30) day calendar month.

(b) Abatement. Notwithstanding anything in this Article 4 to the contrary, so long as Tenant is not in Default (as defined in Section 18.1 below) hereunder, Tenant shall be entitled to an abatement of Base Rent for the first eighteen (18) full calendar months of the Term (the "**Abatement Period**"), provided that during said Abatement Period Tenant undertakes capital repairs to the building shell, electrical, plumbing or other Building systems and life safety systems and such other repairs described in **Exhibit G**, (the "**Essential Capital Repairs**") for a total cost of One Million Dollars (\$1,000,000) (the "**Minimum Capital Repair Amount**"). Said work shall be undertaken in compliance with the terms and conditions of the Tenant Work Letter, attached hereto as **Exhibit G**. By no later than the end of the eighteenth (18<sup>th</sup>) full calendar month of the Term, Tenant shall deliver to Landlord invoices (either due or paid) for labor or services rendered and materials delivered to the Premises for the Essential Capital Repairs documenting a cumulative amount of not less than the Minimum Capital Repair Amount. If Tenant fails to timely provide such documentation, or if the documentation that is timely provided fails to document costs for the Essential Capital Repairs that meet or exceed the Minimum Capital Repair Amount, then Landlord shall deliver notice of the same to Tenant during the nineteenth (19<sup>th</sup>) full calendar month of the Term and, by no later than the first day of the twentieth (20<sup>th</sup>) full calendar month of the Term, Tenant shall deliver to Landlord, as Additional Rent, a lump sum payment of Eight Hundred Forty-Six Thousand Six Hundred Twelve Dollars (\$846,612) to be held by Landlord as security for Tenant's performance of the Essential Capital Repairs. In addition to the foregoing, if Tenant is in Default hereunder at



any time during the Abatement Period, (i) all previously Abated Base Rent shall immediately become due and payable and (ii) there shall be no further abatement of Base Rent pursuant to this Section 4.1(b). The payment by Tenant of the Abated Base Rent in the event of a Default shall not limit or affect any of Landlord's rights pursuant to this Lease or at law or in equity.

(c) Rent Adjustments: Initial Tenant Improvements. In addition to the Essential Capital Repairs, Tenant shall undertake not less than Three Million Dollars (\$3,000,000) in tenant improvements, allocated to One Million Dollars (\$1,000,000) per floor of the three story Building.

(i) On or before the last day of the fifteenth (15th) calendar month of the Term, Tenant shall have submitted a complete application for Landlord's approval of Construction Drawings (in accordance with Section 2.1 of the Tenant Work Letter) for Tenant improvements within the Building (the "**First Tenant Improvements**"). Within thirty (30) days after Landlord's approval of said Construction Drawings, Tenant shall submit the same to the City of Alameda to obtain such permits and other authorizations as may be required by the City of Alameda, acting in its regulatory capacity. By no later than twelve (12) months after the issuance of such permits and authorizations (the "**First Tenant Improvement Completion Period**"), Tenant shall deliver to Landlord paid invoices for labor or services rendered and materials delivered to the Premises for the First Tenant Improvements, for a cumulative amount of not less than One Millions Dollars (\$1,000,000) (the "**First Tenant Improvement Conditions**"). If Tenant fails to timely satisfy the First Tenant Improvement Conditions then the Base Monthly Rent, commencing on the day after the expiration of the First Tenant Improvement Completion Period shall adjust upward to One Hundred Thousand Dollars (\$100,000) until Tenant satisfies the First Tenant Improvement Conditions, at which time base monthly rent for the next full calendar month shall readjust to the amount stated in the Basic Lease Information.

(ii) On or before the last day of the twenty-first (21st) calendar month of the Term, Tenant shall have submitted a complete application for Landlord's approval of Construction Drawings (in accordance with Section 2.1 of the Tenant Work Letter) for the second phase of Tenant improvements (the "**Second Tenant Improvements**"). Within thirty (30) days after Landlord's approval of said Construction Drawings, Tenant shall submit the same to the City of Alameda to obtain and such permits and other authorizations as may be required by the City of Alameda, acting in its regulatory capacity. By no later than twelve (12) months after the issuance of such permits and authorizations (the "**Second Tenant Improvement Completion Period**"), Tenant shall deliver to Landlord paid invoices for labor or services rendered and materials delivered to the Premises for the Second Tenant Improvements, for a cumulative amount of not less than One Millions Dollars (\$1,000,000) (the "**Second Tenant Improvement Conditions**"). If Tenant fails to timely satisfy the Second Tenant Improvement Conditions, then the Base Monthly Rent, commencing on the day after the expiration of the Second Tenant Improvement Completion Period, shall adjust upward to One Hundred Thousand Dollars (\$100,000) until Tenant satisfies the Second Tenant Improvement Conditions, at which time base monthly rent for the next full calendar month shall readjust to the amount stated in the Basic Lease Information.

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(iii) On or before the last day of the thirty-third (33rd) calendar month of the Term, Tenant shall have submitted a complete application for Landlord's approval of Construction Drawings (in accordance with Section 2.1 of the Tenant Work Letter) for the third phase of Tenant improvements (the "**Third Tenant Improvements**"). Within thirty (30) days after Landlord's approval of said Construction Drawings, Tenant shall submit the same to the City of Alameda to obtain and such permits and other authorizations as may be required by the City of Alameda, acting in its regulatory capacity. By no later than twelve (12) months after the issuance of such permits and authorizations (the "**Third Tenant Improvement Completion Period**") Tenant shall deliver to Landlord paid invoices for labor or services rendered and material delivered to the Premises for the Third Tenant Improvements in an amount not less than One Millions Dollars (\$1,000,000) (the "**Third Tenant Improvement Conditions**"). If Tenant fails to timely satisfy the Third Tenant Improvement Conditions, then the Base Monthly Rent, commencing on the day after the expiration of the Third Tenant Improvement Construction Period, shall adjust upward to One Hundred Thousand Dollars (\$100,000) until such time as Tenant has satisfied the Third Tenant Improvement Conditions, at which time base monthly rent for the next full calendar month shall readjust to the amount stated in the Basic Lease Information. The First, Second and Third Tenant Improvements are, collectively with the Essential Capital Repairs, referred to as the "**Renovation Work**". Said Renovation Work may be completed in full at any time, during the First, Second or Third Tenant Improvement Completion Periods.

4.2 Additional Rent. As used in this Lease, the term "**Additional Rent**" shall mean all sums of money, other than Base Rent, that are due and payable by Tenant under the terms of this Lease. The term "**Rent**," as used herein, shall mean all Base Rent, Additional Rent and all other amounts payable hereunder from Tenant to Landlord. Unless otherwise specified herein, all items of Rent other than Base Rent shall be due and payable by Tenant on or before the date that is thirty (30) days after billing by Landlord.

4.3 Late Charge. Other remedies for non-payment of Rent notwithstanding, if any Monthly Base Rent installment or Additional Rent is not received by Landlord on or before the fifth (5th) day following the due date, or any payment due Landlord by Tenant which does not have a scheduled date is not received by Landlord on or before the thirtieth (30th) day following the date Tenant was invoiced for such charge, a late charge of five percent (5%) of such past due amount shall be immediately due and payable as Additional Rent.

4.4 Interest. Any installment of Rent and any other sum due from Tenant under this Lease which is not received by Landlord within five (5) days from when the same is due shall bear interest from the date such payment was originally due under this Lease until paid at the lesser of: (a) an annual rate equal to the maximum rate of interest permitted by law, or (b) ten percent (10%) per annum. Payment of such interest shall not excuse or cure any Default by Tenant.

## 5. TAXES.

5.1 Definitions. For purposes of this Article 5, the following terms shall have the meanings hereinafter set forth:

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(a) **Tenant's Share** shall mean the percentage figure so specified in the Basic Lease Information.

(b) **Tax and Expense Year** shall mean each twelve (12) consecutive month period commencing July 1st and ending on June 30th of each year or partial year during the Term, provided that Landlord, upon notice to Tenant, may change the Tax Year from time to time (but not more frequently than once in any twelve (12) month period) to any other twelve (12) consecutive month period and, in the event of any such change, Tenant's Share of Taxes shall be equitably adjusted for the Tax Years involved in any such change.

(c) **Taxes** shall mean all taxes, assessments, fees, impositions, assessments and charges levied (if at all) upon or with respect to the Building, or Land, any personal property of Landlord used in the operation of the Building, or Landlord's interest in the Building, other than Personal Property Taxes or Possessory Interest Taxes which are the subject of Article 9. Taxes shall include, without limitation and whether now existing or hereafter enacted or imposed, all general real property taxes, all general and special assessments, all charges, fees and levies for or with respect to transit, housing, police, fire or other governmental or quasi-governmental services or purported benefits to or burdens attributable to the Building or any occupants thereof, all service payments in lieu of taxes, and any tax, fee or excise on the act of entering into this Lease or any other lease of space in the Building or any occupants thereof, on the use or occupancy of the Building, on the rent payable under any lease or in connection with the business of renting space in the Building, that are now or hereafter levied or assessed against Landlord or the Building by the United States of America, the State of California, the City of Alameda, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may now or hereafter be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Taxes, whether or not now customary or in the contemplation of the parties on the date of this Lease. The forgoing notwithstanding, Landlord agrees that fees, special taxes or assessments arising from bonds or other assessments for any City of Alameda Community Financing District ("**CFD**") formed pursuant to the Mello-Roos Community Facilities Act of 1982 (the "**Act**"), the proceeds from which are to be used exclusively for facilities (as defined in the Act) shall be based upon the area of the first floor only, consisting of 94,067 square feet. If a CFD is formed to finance both facilities and services, the City shall use reasonable efforts to cause two separate Notices of Special Tax Lien to be recorded, one for the facilities tax and one for the services tax. All other special taxes or assessments (including a CFD to finance services) shall be assessed based upon the total square footage of the Building (282,202 square feet) but Tenant's share of such Taxes shall be phased in over the first five (5) years of the Term as follows: First Tax Year: 25%; Second Tax Year: 30%; Third Tax Year: 50%; Fourth Tax Year: 75%; and the Fifth Tax Year: 100%. Notwithstanding the foregoing, in the event Landlord has the right to elect to have assessments amortized over different time periods, Landlord will elect (or will charge such assessment through to Tenant as if Landlord had so elected) to have such assessment amortized over the longest period permitted by the assessing authority, and only the amortized portion of such assessment (with interest at the lesser of the actual interest rate paid by Landlord or the then maximum rate of interest not prohibited or made usurious by Law) shall be included in Taxes on an annual basis. Taxes shall not include any franchise, transfer or inheritance or capital stock taxes, gross receipt taxes or any income taxes measured by the net income of Landlord from all sources, unless due to a change in the method of taxation any such taxes are levied or assessed

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against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Tax. Taxes shall also include reasonable legal fees and other costs and disbursements incurred by Landlord in connection with proceedings to contest, determine or reduce Taxes provided, however, that Landlord shall pay to Tenant promptly after receipt by Landlord an amount equal to Tenant's Share of any refunded or recovered Tax previously paid by Tenant.

5.2 Determination and Payment of Taxes. Tenant shall pay to Landlord as Additional Rent one-twelfth (1/12th) of Tenant's Share of the Taxes for each Tax Year, or portion thereof, on or before the first day of each month during such Tax Year, in advance, in an amount estimated by Landlord set forth in an annual statement delivered by Landlord to Tenant; provided that Landlord shall have the right to revise such estimates not more than twice per Tax Year and Tenant shall thereafter make payments hereunder on the basis of such revised estimates. With reasonable promptness after the end of each Tax Year, Landlord shall submit to Tenant a statement showing the actual amount which should have been paid by Tenant with respect to Taxes for the past Tax Year, the amount thereof actually paid during that year by Tenant and the amount of the resulting balance due thereof, or overpayment thereof, as the case may be ("**Landlord's Statement**"). Any balance shown to be due pursuant to said statement shall be paid by Tenant to Landlord within thirty (30) days following Tenant's receipt thereof; and any overpayment shall be immediately credited against Tenant's obligation to make monthly payments for Taxes for the then current Tax Year, or, if by reason of any termination of this Lease no such obligation exists, any such overpayment shall be refunded to Tenant. As an alternative to the monthly payment of Tenant's Share of Taxes and Expenses, and at Landlord's sole discretion, Landlord may direct Tenant to pay, within thirty (30) days of Landlord's delivery of Landlord's Statement, the full annual amount set forth therein. If the Expiration Date shall occur on a date other than the last day of a Tax Year, Tenant's Share of Taxes for the Tax Year in which the Expiration Date occurs shall be in the proportion that the number of days from and including the first day of the Tax Year in which the Expiration Date occurs to and including the Expiration Date bears to 365. Where the calculation of Taxes for a Tax Year cannot be made until after expiration or termination of this Lease, the obligation of Tenant to pay its proportionate share as Additional Rent shall survive the expiration or termination hereof and such Additional Rent for such period shall be payable by Tenant upon demand by Landlord.

## 6. USE; COMPLIANCE WITH LAWS.

6.1 Use. The Premises shall be used for the Permitted Use and for no other use whatsoever. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises, Buildings or with respect to the suitability or fitness of either for the conduct of Tenant's business or for any other purpose.

6.2 Compliance with Laws. Tenant shall comply with all laws, ordinances, rules, regulations and codes, of all municipal, county, state and federal authorities, including the Americans With Disabilities Act, as amended, (42 U.S.C. Section 1201 et seq. [the "ADA"]) (collectively, "**Laws**") pertaining to Tenant's use and occupancy of the Premises and the conduct of its business. Tenant shall be responsible for making all improvements and alterations necessary to bring the Premises into compliance with applicable ADA requirements and to ensure that the Premises remain in compliance throughout the Term of this Lease. Tenant shall

not commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance, or other act or thing which disturbs the quiet enjoyment of any other tenant in the Building, nor shall Tenant store any materials on the Premises which are visible from areas adjacent to the Premises, unless otherwise specifically set forth in this lease. Tenant shall not permit any objectionable odor to escape or be emitted from the Premises and shall ensure that the Premises remain free from infestation from rodents or insects. Tenant shall not do or permit anything to be done on or about the Premises or bring or keep anything into the Premises which will in any way increase the rate of (unless Tenant pays such increased rate), invalidate, or prevent the procuring of any insurance, protecting against loss or damage to the Buildings or any of its contents by fire or other casualty or against liability for damage to property or injury to person in or about the Buildings.

6.3 Compliance with Restrictions. The Premises are located on property known as the former Naval Air Station Alameda, portions of which were conveyed to the City by the United States of America, acting by and through the Department of the Navy by a quitclaim deed dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199806 of Official Records in the Office of the County Recorder, Alameda County, California ("**Quitclaim Deed**"). Said Quitclaim Deed conveyed the Premises subject to certain covenants, conditions, restrictions, easements, and encumbrances as set forth therein. The Premises are further encumbered by those certain restrictions set forth in the Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013 and recorded June 6, 2013 as Series No.: 2013-199782 in the Office of the County Recorder of Alameda County ("**Declaration of Restrictions**"). Copies of the Quitclaim Deed and Declaration of Restrictions have been delivered to Tenant and, concurrently with the execution of this Lease, Tenant shall sign and return to Landlord the Acknowledgment of Receipt, attached hereto as **Exhibit D**. Use of the Premises is further restricted by the Covenant to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013-199839 in the office of the County Recorder, Alameda County, CA (the "**CRUP**"), the National Environmental Protection Act Record of Decision ("**ROD**") for the disposal and reuse of the former Naval Air Station Alameda, and all conditions contained therein. A copy of the ROD is available for review at Landlord's office during normal business hours. The covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances set forth in the Quitclaim Deed, Declaration of Restrictions and the ROD, as they affect the Building, or Premises, are collectively referred to herein as the "**Restrictions**." Any use of the Premises shall comply with the Restrictions and a failure to so comply shall constitute a Default under this Lease.

6.4 Use Permit. Tenant and any of its subtenants shall maintain a City of Alameda Use Permit and other applicable City permits and approvals for the intended use of the Premises (collectively "**Use Permit**").

## 7. **SECURITY DEPOSIT.**

Concurrently with the execution of this Lease, Tenant shall deliver to Landlord the amount identified in the Basic Lease Information as the Security Deposit to be held by Landlord without liability for interest (unless required by Law) as security for the performance of Tenant's obligations until the end of the Abatement Period. The Security Deposit is not an advance payment of Rent or a measure of damages. Landlord may from time to time and

without prejudice to any other remedy provided in this Lease or by Law, use all or a portion of the Security Deposit to the extent necessary to satisfy past due Rent or to satisfy Tenant's breach under this Lease or to reimburse or compensate Landlord for any liability, expense, loss or damage which Landlord may suffer or incur by reason thereof. If Landlord so uses or applies all or any portion of the Security Deposit, then within fifteen (15) days after demand therefore, Tenant shall deposit cash with Landlord in an amount sufficient to restore the deposit to the full amount thereof, and Tenant's failure to do so shall constitute a Default under this Lease. If there are no payments to be made from the Security Deposit as set out in this paragraph, or if there is any balance of the Security Deposit remaining after all payments have been made, the Security Deposit, or such balance thereof remaining, will be applied to the first full calendar month for which Monthly Base Rent is due. Tenant hereby waives the benefit of the provisions of California Civil Code Section 1950.7. In the event of an act of bankruptcy by or insolvency of Tenant or the appointment of a receiver for Tenant or general assignment for the benefit of Tenant's creditors, the Security Deposit shall be deemed immediately assigned to Landlord.

## 8. UTILITIES.

8.1 Payments for Utilities and Services. Tenant shall contract directly with the providers of, and shall pay all charges for, water, sewer, storm water, gas, electricity, heat, cooling, telephone, refuse collection, janitorial, pest control, security and monitoring services furnished to the Premises, together with all related installation or connection charges or deposits ("**Utilities**"). If any Utilities are provided by Alameda Municipal Power ("**AMP**") it is understood and agreed that such entity is separate and distinct from Landlord and Tenant must contract directly with AMP for any such Utilities. If any such Utilities are not separately metered or billed to Tenant for the Premises but rather are billed to and paid by Landlord, Tenant shall pay to Landlord, as Additional Rent, its pro rata share of the cost of such services, as reasonably determined by Landlord. If any Utilities are not separately metered, Landlord shall have the right to determine Tenant's consumption by either submetering, survey or other methods designed to measure consumption with reasonable accuracy. In accordance with California Public Resources Code section 25402.10, Tenant shall, upon written request, promptly provide Landlord with monthly electrical and natural gas (if any) usage data (in either electronic or paper format) for the Premises for the period of time so requested by Landlord. In the alternative, and at Landlord's option, Tenant shall provide any written authorization or other documentation required by Landlord to request information regarding Tenant's electrical and natural gas usage data with respect to the Premises directly from the utility company providing electricity and natural gas to the Premises.

8.2 No Liability of Landlord. Except in the case of Landlord's gross negligence or willful misconduct, in no event shall Landlord be liable or responsible for any loss, damage, expense or liability, including, without limitation, loss of business or any consequential damages, arising from any failure or inadequacy of any service or Utilities provided to the Premises or Buildings, whether resulting from any change, failure, interference, disruption or defect in supply or character of the service or Utilities provided to the Premises or Building, or arising from the partial or total unavailability of the service or utility to the Premises or Buildings, from any cause whatsoever, or otherwise, nor shall any such failure, inadequacy, change, interference, disruption, defect or unavailability constitute an actual or constructive eviction of Tenant, or entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from its

obligations under this Lease. Notwithstanding the foregoing, if the Premises, or a material portion of the Premises, is made untenable, inaccessible or unsuitable for the ordinary conduct of Tenant's business, as a result of an interruption in any of the Utilities attributable to an act or omission of Landlord (or Landlord's agents, employees or subcontractors), then (a) Landlord shall use commercially reasonable good faith efforts to restore the same as soon as is reasonably possible, and (b) if, despite such commercially reasonable good faith efforts by Landlord, such interruption persists for a period in excess of five (5) consecutive business days, then Tenant, as its sole remedy, shall be entitled to receive an abatement of Base Rent payable hereunder during the period beginning on the sixth (6th) consecutive business day of such interruption and ending on the day the Utility or service has been restored.

## 9. PERSONAL PROPERTY AND POSSESSORY INTEREST TAXES.

9.1 Tenant's Tax Obligation. "Taxes" shall mean all taxes, assessments and governmental charges, whether federal, state, county or municipal, and whether general or special, ordinary or extraordinary, foreseen or unforeseen, imposed upon Tenant's personal property or trade fixtures, the Premises, or any possessory interest therein, or their operation, whether or not directly paid by Landlord, but excluding those Taxes paid by Landlord as defined at Section 5.1(c) above.

9.2 Personal Property Taxes. Tenant shall pay all Taxes (as hereinafter defined) levied or imposed against the Premises or Tenant's personal property or trade fixtures placed by Tenant in or about the Premises during the Term ("**Personal Property Taxes**").

9.3 Possessory Interest Taxes. The interest created by this Lease may at some time be subject to property taxation under the laws of the State of California. If property taxes are imposed, the party in whom the possessory interest is vested may be subject to the payment of the taxes levied on such interest. This notice is included in this Lease pursuant to the requirements of section 107.6 (a) of the Revenue and Taxation Code of the State of California.

9.4 Payment. Tenant shall pay the Personal Property Taxes or possessory interest taxes in accordance with the instructions of the taxing entity. Tenant shall pay the Personal Property Taxes, if any, originally imposed upon Landlord, upon Landlord's election, either (a) annually within thirty (30) days after the date Landlord provides Tenant with a statement setting forth in reasonable detail such Taxes, or (b) monthly in advance based on estimates provided by Landlord based upon the previous year's tax bill. All Personal Property Taxes originally imposed upon Landlord and payable by Tenant with respect to the Premises shall be prorated on a per diem basis for any partial tax year included in the Term. Tenant's obligation to pay Taxes during the last year of the Term shall survive the termination of this Lease.

## 10. ALTERATIONS.

10.1 Landlord Consent Required. Tenant shall not make any alterations, improvements, or additions (each an "**Alteration**") in or about the Premises or any part thereof without the prior written consent of Landlord, which consent may be reasonably conditioned upon criteria and/or requirements deemed necessary by Landlord; provided, however, that Landlord shall have the right in its sole and absolute discretion to withhold its consent to any

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Alteration which affects the structural components of the Building, including the roof, support structures, foundations, the exterior of the Building and/or the systems serving the Premises or the Building. Any such approval by Landlord shall be in its proprietary capacity as Landlord and no such approval shall be deemed an approval by the City of Alameda in its regulatory capacity. Notwithstanding the foregoing, Tenant shall have the right to make Alterations to the Premises with prior written notice to, but without the consent of, Landlord provided that such Alterations (a) do not require the procurement of a building permit, (b) do not affect the structural portion of the Building or the systems serving the Building, (c) are performed below the ceiling and above the raised floor of the Premises, (d) the reasonably estimated costs of the Alterations, together with the costs of any other Alteration made during the immediately preceding twelve (12) months period, do not exceed Fifty Thousand Dollars (\$50,000) and, (e) are performed in full compliance with the terms Sections 10.2 through 10.4 below.

10.2 Alterations. Any Alterations to the Premises shall be at Tenant's sole cost and expense, and made in compliance with all applicable Laws and all reasonable requirements requested by Landlord. Prior to starting work, Tenant shall furnish Landlord with plans and specifications (which shall be in CAD format if requested by Landlord); names of contractors reasonably acceptable to Landlord; required permits and approvals; evidence of contractors and subcontractors insurance in amounts reasonably required by Landlord and naming Landlord, the managing agent for the Building and such other persons or entities as Landlord may reasonably request, as additional insureds; and any security for payment in performance and amounts reasonably required by Landlord. In addition, if any such Alteration requires the removal of asbestos, an appropriate asbestos disposal plan, identifying the proposed disposal site of all such asbestos, must be included with the plans and specifications provided to Landlord. Tenant shall reimburse Landlord for any sums paid by Landlord for third party examination of Tenant's plans for Alterations. Landlord agrees to respond to Tenant's request for consent to any Alterations within fifteen (15) days following Tenant's delivery of such request, accompanied by plans and specifications depicting the proposed Alterations ("**Plans**") and a designation of Tenant's general contractor (and major subcontractors) to perform such work. Landlord's response shall be in writing and, if Landlord withholds its consent to any Alterations, Landlord shall specify in reasonable detail in Landlord's notice of disapproval, the basis for such disapproval. If Landlord fails to timely notify Tenant of Landlord's approval or disapproval of any such Plans, Tenant shall have the right to provide Landlord with a second written request for approval (a "**Second Request**") that specifically identifies the applicable Plans and contains the following statement in bold and capital letters: "**THIS IS A SECOND REQUEST FOR APPROVAL OF PLANS PURSUANT TO THE PROVISIONS OF SECTION 10.2 OF THE LEASE. IF LANDLORD FAILS TO RESPOND WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN LANDLORD SHALL BE DEEMED TO HAVE APPROVED THE PLANS DESCRIBED HEREIN.**" If Landlord fails to respond to such Second Request within five (5) business days after receipt by Landlord, the Plans in question shall be deemed approved by Landlord in its proprietary capacity only. If Landlord timely delivers to Tenant a notice of Landlord's disapproval of any Plans, Tenant may revise Tenant's Plans and resubmit such Plans to Landlord; in such event the scope of Landlord's review of such Plans shall be limited to Tenant's correction of the items to which Landlord had previously objected. Landlord's review and approval (or deemed approval) of such revised Plans shall be governed by the provisions as set forth above in this Section 10.2. The procedure set forth above for approval of Tenant's Plans will also apply to any change, addition or amendments to

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Tenant's Plans. Landlord's approval of an Alteration shall not be deemed a representation by Landlord that the Alteration complies with Law. Upon completion, Tenant shall furnish Landlord with at least three (3) sets of "as built" Plans (as well as a set in CAD format, if requested by Landlord) for the Alterations to the extent "as built" Plans are typically provided for such Alterations, completion affidavit and full and final unconditional waivers of liens and will cause a Notice of Completion to be recorded in the Office of the Recorder of the County of Alameda. Any Alteration shall at once become the property of Landlord; provided, however, that Landlord, at its option, may require Tenant to remove any Alterations prior to the expiration or sooner termination of this Lease. If Tenant serves a request in writing together with Tenant's request for Landlord's consent to any such Alterations ("**Removal Request**"), Landlord will notify Tenant at the time of Landlord's consent to any such Alterations as to whether Landlord requires their removal. All costs of any Alterations (including, without limitation, the removal thereof, if required) shall be borne by Tenant. If Tenant fails to promptly complete the removal of any Alterations and/or to repair any damage caused by the removal, Landlord may do so and may charge the reasonable costs thereof to Tenant. All Alterations shall be made in a good and workmanlike manner and in a manner that will not disturb other tenants, in accordance with Landlord's then-current guideline for construction, and Tenant shall maintain appropriate liability and builders' risk insurance throughout the construction. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against any and all claims for injury to or death of persons or damage or destruction of property arising out of or relating to the performance of any Alterations by or on behalf of Tenant. Under no circumstances shall Landlord be required to pay, during the Term (as the same may be extended or renewed) any ad valorem or other Taxes on such Alterations, Tenant hereby covenanting to pay all such taxes when they become due.

10.3 Excavations. In the event Tenant intends to perform any Alterations requiring excavations below the surface of the Premises (whether inside or outside of the Buildings) or construction of a permanent structure on the Premises, Tenant must determine the actual location of all utilities using standard methods (i.e., potholing, metal fish line, etc.) and submit this information with an application to excavate or application to build a permanent structure to Landlord for approval (which shall also include the approval of other applicable governmental authorities). The application shall include a site plan showing the location of utilities and that construction will not take place above the utility line or within the utility easement, specifically showing that no permanent structure will be constructed in these areas. Tenant shall be responsible for complying with the provisions of the City of Alameda's Marsh Crust Ordinance, as well as the Covenant to Restrict Use of Property Environmental Restrictions recorded June 6, 2013 as Series No. 2013- 199838 of Official Records of the County of Alameda, the Site Management Plan for Alameda Point and, if required, shall obtain a Marsh Crust Permit.

10.4 Liens. Tenant shall pay when due all claims for labor or materials furnished Tenant for use in the Premises. Tenant shall not permit any mechanic liens, stop notices, or any other liens against the Premises, Building, Alterations or any of Tenant's interests under this Lease for any labor or materials furnished to Tenant in connection with work performed on or about the Premises by or at the direction of Tenant. Tenant shall indemnify, hold harmless and defend Landlord (by counsel reasonably satisfactory to Landlord) from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. In the event that Tenant shall not, within twenty (20) days following the imposition of

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any such lien or stop notice, cause such lien or stop notice to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein or by law, the right, but not the obligation, to cause the same to be released by such means as it may deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and expenses reasonably incurred in connection therewith, including attorneys' fees and costs, shall be payable to Landlord by Tenant on demand.

**11. MAINTENANCE AND REPAIR OF PREMISES.**

Tenant shall, at its sole cost and expense, repair and maintain the Premises in good repair and in a neat and clean condition, including making all necessary repairs and replacements. Tenant's repair and maintenance obligations include, without limitation, repairs to: (i) floor coverings; (ii) interior partitions; (iii) doors; (iv) the interior side of demising walls; (v) fire life safety systems, including sprinklers, fire alarms and/or smoke detectors; (vi) Alterations, described in Article 10; (vii) heating, ventilation and air conditioning (HVAC) systems exclusively serving the Premises; (viii) kitchens; (ix) plumbing and similar facilities exclusively serving the Premises, whether such items are installed by or on behalf of Tenant or are currently existing at the Premises; (x) all structural elements of the Building; (xi) the roof; (xii) Parking Area; and (xiii) telephone and data equipment, and cabling.

11.1 [INTENTIONALLY OMITTED].

11.2 [INTENTIONALLY OMITTED].

**12. ENVIRONMENTAL PROTECTION PROVISIONS.**

12.1 Hazardous Materials. "**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials known to cause cancer or reproductive harm and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, the state in which the Premises are located or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all environmental laws of the state where the Premises are located, and any other environmental law, regulation or ordinance now existing or hereinafter enacted. "**Hazardous Materials Laws**" shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

12.2 Reportable Uses Required Consent. Except as permitted in this Article 12, Tenant hereby agrees that Tenant and Tenant's officers, employees, representatives, agents, contractors,

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subcontractors, successors, assigns, subtenants, concessionaires, invitees and any other occupants of the Premises (for purposes of this Article 12, referred to collectively herein as “**Tenant Parties**”) shall not cause or permit any Hazardous Materials to be used, generated, manufactured, refined, produced, processed, stored or disposed of, on, under or about the Premises or Building by Tenant or any of Tenant Parties or transported to or from the Premises or Building by Tenant or any Tenant Parties without the express prior written consent of Landlord, which consent may be limited in scope and predicated on strict compliance by Tenant with all applicable Hazardous Materials Laws and such other reasonable rules, regulations and safeguards as may be required by Landlord (or any insurance carrier, environmental consultant or lender of Landlord, or environmental consultant retained by any lender of Landlord) in connection with using, generating, manufacturing, refining, producing, processing, storing or disposing of Hazardous Materials on, under or about the Premises or the Building. In connection therewith, Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Tenant or any of Tenant Parties of Hazardous Materials on the Premises or the Building, including without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the Premises or the Building. The foregoing notwithstanding, Tenant may use ordinary and customary materials reasonably required to be used in the course of the Permitted Use, ordinary office supplies (copier, toner, liquid paper, glue, etc.), paint and common household cleaning materials, so long as such use is in compliance with all Hazardous Materials Laws and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Landlord to any liability therefor.

12.3 Remediation Obligations. If at any time during the Term, any contamination of the Premises by Hazardous Materials shall occur where such contamination is caused by the act or omission of Tenant or Tenant Parties (“**Tenant’s Contamination**”), then Tenant, at Tenant’s sole cost and expense, shall promptly and diligently remediate such Hazardous Materials from the Premises or the groundwater underlying the Premises to the extent required to comply with applicable Hazardous Materials Laws. Tenant shall not take any required remedial action in response to any Tenant’s Contamination in or about the Premises or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Tenant’s Contamination without first obtaining the prior written consent of Landlord, which may be subject to conditions imposed by Landlord as determined in Landlord’s sole discretion. Such prior written consent shall not be required to the extent the delay caused by the requirement to obtain consent may increase the damage to the Premises or the risk of harm to human health, safety, the environment or security caused by the Tenant Contamination. Landlord and Tenant shall jointly prepare a remediation plan in compliance with all Hazardous Materials Laws and the provisions of this Lease. In addition to all other rights and remedies of Landlord hereunder, if Tenant does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Tenant’s Contamination, and thereafter commence the required remediation of any Hazardous Materials released or discharged in connection with Tenant’s Contamination within thirty (30) days after all necessary approvals and consents have been obtained, and thereafter continue to prosecute such remediation to completion in accordance with the approved remediation plan, then Landlord, at its sole discretion, shall have the right, but not the obligation, to cause such remediation to be accomplished, and Tenant shall reimburse Landlord within fifteen (15) business days of Landlord’s demand for reimbursement

of all amounts reasonably paid by Landlord (together with interest on such amounts at the highest lawful rate until paid), when such demand is accompanied by proof of payment by Landlord of the amounts demanded. Tenant shall promptly deliver to Landlord, copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Premises as part of Tenant's remediation of any Tenant's Contamination. The foregoing notwithstanding, "Tenant's Contamination" shall not refer to or include any Hazardous Materials that were not clearly introduced to the Premises by Tenant or Tenant Parties. As an example, if lead dust or asbestos are found on the Premises, unless there is clear evidence that Tenant introduced those Hazardous Materials to the Premises or they were dislodged by a Tenant Alteration, those Hazardous Materials shall not be considered "Tenant's Contamination," and it shall not be Tenant's responsibility to take remedial action relating to such Hazardous Materials.

12.4 Environmental Permits. Tenant and Tenant Parties shall be solely responsible for obtaining and complying with, at their cost and sole expense, any environmental permits required for Tenant's operations under this Lease, independent of any existing permits held by Landlord. Tenant shall not conduct operations or activities under any environmental permit that names Landlord as a secondary discharger or co-permittee. Tenant shall provide prior written notice to Landlord of all environmental permits and permit applications required for any of Tenant's operations or activities. Tenant acknowledges that Landlord will not consent to being named a secondary discharger or co-permittee for any operations or activities of Tenant, its contractors, assigns or subtenants. Tenant shall strictly comply with any and all environmental permits (including any hazardous waste permit required under the Resource Conservation and Recovery Act or its state equivalent) and must provide, at its own expense, any hazardous waste management facilities complying with all Hazardous Material Laws.

12.5 Landlord's Inspection Right. Landlord shall have the right to inspect, upon reasonable notice to Tenant, the Premises for Tenant's compliance with this Article 12. Landlord normally will give Tenant twenty-four (24) hours' prior notice of its intention to enter the Premises unless it determines the entry is required for exigent circumstances related to health, safety, or security; provided, however, Landlord agree to use its best commercial efforts to provide Tenant with the maximum advance notice of any such entrance and will, without representation or warranty, attempt to structure such entrance in the least intrusive manner possible. Tenant shall have no claim against Landlord, or any officer, agent, employee, contractor or subcontractor of Landlord by reason of entrance of such Landlord officer, agent, employee, contractor or subcontractor onto the Premises.

12.6 Hazardous Materials Handling Plan. Prior to the execution of this Lease, Tenant shall complete, execute and deliver to Landlord an Environmental Questionnaire Disclosure Statement (the "**Environmental Questionnaire**"), in the form of **Exhibit E** attached hereto and shall require any Subtenant who will bring to, or use at the Premises, any Hazardous Materials to also execute and deliver to Landlord an Environmental Questionnaire. To the extent Tenant intends to store, use, treat or dispose of Hazardous Materials on the Premises, Tenant shall prepare and submit together with the Environmental Questionnaire a Hazardous Materials Handling Plan (the "**Hazardous Materials Handling Plan**"). For a period of fifteen (15) days following Landlord's receipt of the Environmental Questionnaire and Hazardous Materials Handling Plan, if applicable, Landlord shall have the right to approve or disapprove such documents. The failure of Landlord to approve such documents shall be deemed Landlord's



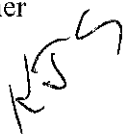
disapproval thereof. Landlord approval of the Environmental Questionnaire and the Hazardous Materials Handling Plan shall constitute approval for Tenant's use of the Hazardous Materials set forth therein in compliance with Hazardous Materials Laws and the Hazardous Materials Handling Plan. Following approval of the Hazardous Materials Handling Plan, Tenant shall comply therewith throughout the Term. To the extent Tenant is permitted to utilize Hazardous Materials upon the Premises, such use shall be limited to the items set forth in the Environmental Questionnaire, shall comply with Hazardous Materials Laws and the Hazardous Materials Handling Plan and Tenant shall promptly provide Landlord with complete and legible copies of all the following environmental items relating thereto: reports filed pursuant to any self-reporting requirements; permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices and all other reports, disclosures, plans or documents relating to water discharges, air pollution, waste generation or disposal, and underground storage tanks for hazardous materials; orders, reports, notices, listing and correspondence of or concerning the release, investigation of, compliance, cleanup, remedial and corrective actions, and abatement of hazardous materials; and all complaints, pleadings and other legal documents filed by or against Tenant related to Tenant's use, handling, storage or disposal of Hazardous Materials. If, in conjunction with Tenant's Permitted Use of the Premises, Tenant desires to commence the use, treatment, storage or disposal of previously undisclosed Hazardous Materials, prior to such usage thereof, Tenant shall notify Landlord thereof, by written summary detailing the scope of such proposed usage and updating the Hazardous Materials Handling Plan to the extent required by such proposed usage. For a period of fifteen (15) days following Landlord's receipt of such notice, Landlord shall have the right to approve or disapprove of such documents. The failure of Landlord to approve of such documents within such time period shall be deemed Landlord's disapproval thereof.

12.7 Hazardous Materials Indemnity. In addition to any other provisions of this Lease, Tenant shall, and does hereby agree, to, indemnify and hold harmless Landlord from any costs, expenses, liabilities, fines or penalties resulting from discharges, emissions, spills, storage or disposal caused by Tenant's Contamination. Tenant's obligations hereunder shall apply whenever Landlord incurs costs or liabilities for Tenant's activities or for the activities of Tenant's contractors, employees, agents, assigns, invitees, or subtenants as provided hereunder. This provision shall survive the expiration or termination of this Lease.

### 13. ASSIGNMENT AND SUBLETTING.

#### 13.1 Landlord Consent Required.

(a) Subject to the remaining provisions of this Article 13, Tenant shall not voluntarily or by operation of law, (a) mortgage, pledge, hypothecate or encumber this Lease or any interest therein, (b) assign or transfer this Lease or any interest herein, sublease the Premises or any part thereof or any right or privilege appurtenant thereto, or allow any other person (the employees and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof, without first obtaining the written consent of Landlord, which consent shall not be withheld unreasonably provided that (i) Tenant is not then in Default under this Lease nor is any event then occurring, with the giving of notice or the passage of time, or both, would constitute a Default hereunder, and (ii) Tenant has not previously assigned or transferred this Lease. A transfer of the power to control the day-to-day affairs of Tenant, either



in one (1) transaction or a series of transaction shall be deemed to be an assignment under this Lease.

(b) The Parties hereby agree that Tenant intends to sublet the Premises and Tenant shall give Landlord written notice of subleases (the "**Sublet Notice**") which shall identify any intended Subtenant and its intended use of the Premises and attach copy of the proposed Sublease between Tenant and the proposed Subtenant and, if required by Section 12.6, an Environmental Questionnaire. Landlord shall then have a period of ten (10) business days following receipt of such additional information within which to notify Tenant in writing that Landlord elects either to approve or disapprove of the sublet, and if, disapproved, the reason for such disapproval. If Landlord fails to respond, upon the expiration of the applicable time period, the Sublease that is the subject of the Sublet Notice shall be deemed approved. Landlord may disapprove of any Sublease if (a) the use of the Premises by such proposed assignee or subtenant would not be a Permitted Use; or (b) Landlord or Landlord's agents is in negotiation or have negotiated with the proposed assignee or subtenant with regard to the leasing of space at the Property, at any time within the preceding three (3) months provided that Landlord has space available at the Property that is reasonably comparable to the space that would be subject to the proposed assignment or sublease.

13.2 **INTENTIONALLY OMITTED**

13.3 **INTENTIONALLY OMITTED**

13.4 **INTENTIONALLY OMITTED**

13.5 Tenant Affiliates. Notwithstanding anything to the contrary contained in Section 13.1, Tenant may, without obtaining the prior consent of Landlord, sublet or license the use of all or any part of the Premises or assign this Lease to a Tenant Affiliate, provided that (a) Tenant shall give not less than thirty (30) days' prior written notice thereof to Landlord (to the extent such notice is permitted by applicable Law), (b) Tenant shall continue to be fully obligated under this Lease, and (c) any such assignee or sublessee shall expressly assume and agree to perform all the terms and conditions of this Lease to be performed by Tenant and to use the Premises only for a Permitted Use (but with respect to a sublease, only with respect to that portion of the Premises that is the subject of the sublease and excluding all rental obligations of Tenant hereunder). As used herein, "**Tenant Affiliate**" means (i) an entity controlling, controlled by or under common control with Tenant, (ii) a successor corporation related to Tenant by merger, consolidation, non-bankruptcy reorganization, or government action, or (iii) a purchaser of substantially all of Tenant's assets located in the Premises; and a party shall be deemed to "control" another party for purposes of the definition contained in the aforesaid clause (i) only if the first party owns more than fifty percent (50%) of the stock or other beneficial interests of the second party or has the power to direct or cause the direction of the management or policy of the second party, or the first and second party share the same, or substantially the same (defined as a majority of directors on the "controlled" entity's board are also on the other entity's board), board of directors or the same persons control the affairs of the first and second parties. Within five (5) business days of execution of any such sublease or license with a Tenant Affiliate, Tenant shall deliver to Landlord a copy of the fully executed assignment, sublease or license.

13.6 No Release. No Transfer shall release or discharge Tenant of or from any liability, whether past, present or future, under this Lease, and Tenant shall continue to be fully liable hereunder. Each subtenant or assignee shall agree, in a form reasonably satisfactory to Landlord, to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Lease. The assignment or sublease agreement, as the case may be, after approval by Landlord, shall not be amended without Landlord's prior written consent, and shall contain a provision directing the assignee or subtenant to pay the rent and other sums due thereunder directly to Landlord upon receiving written notice from Landlord that Tenant is in default under this Lease with respect to the payment of Rent. In the event that, notwithstanding the giving of such notice, Tenant collects any rent or other sums from the assignee or subtenant, then Tenant shall hold such sums in trust for the benefit of Landlord and shall immediately forward the same to Landlord. Landlord's collection of such rent and other sums shall not constitute an acceptance by Landlord of attornment by such assignee or subtenant. Tenant shall deliver to Landlord promptly after execution an executed copy of each Transfer and an agreement of compliance by each such subtenant or assignee.

13.7 Expenses and Attorneys' Fees. Tenant shall pay to Landlord all costs and expenses (including without limitation, the fees of Landlord's counsel) incurred in connection Landlord's review and processing of documents regarding any proposed Transfer (which under no circumstances shall be less than \$750 per proposed Transfer).

13.8 Limitations on Transfer Reasonable. Tenant acknowledges and agrees that the restrictions, conditions, and limitations imposed by this Article 13 on Tenant's ability to assign or transfer this Lease or any other interests herein, to sublet the Premises or any part thereof, are, for purposes of California Civil Code Section 1951.4, as amended from time to time, and for all other purposes, reasonable at the time this Lease was entered into and shall be deemed to be reasonable at the time that Tenant seeks to assign or transfer this Lease or any interest herein, to sublet the Premises or any part thereof, or transfer or assign any right or privilege appurtenant to the Premises.

13.9 Non-Disturbance and Attornment. Tenant may request that Landlord enter into a Non-Disturbance and Attornment Agreement as to a Sublease or proposed Sublease, together with Tenant and the Subtenant. Landlord reserves for itself the sole and absolute discretion to consent to, to condition or to deny any such request.

#### **14. INDEMNITY AND WAIVER OF CLAIMS.**

14.1 Tenant Indemnification. Tenant shall indemnify, defend and hold Landlord and Landlord Related Parties harmless against and from all liabilities, obligations, damages, penalties, claims, actions, costs, charges, judgment and expenses (including reasonable attorneys' fees, costs and disbursements) (collectively referred to as "Losses"), arising from (a) the use of, or any activity done, permitted or suffered in or about the Premises (b) any activity done, permitted or suffered by Tenant or Tenant's agents in or about the Buildings (c) any act, neglect, fault, willful misconduct of Tenant or Tenant's agents, or (d) from any breach or default in the terms of this Lease by Tenant or Tenant's agents, except to the extent such claims arise out of or relate to the gross negligence or willful misconduct of Landlord. If any action or proceeding is brought against Landlord by reason of any such claim, upon notice from Landlord,

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Tenant shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. As a material part of the consideration to Landlord, Tenant hereby releases Landlord and its trustees, members, principals, beneficiaries, partners, officers, directors, employees, property managers, Mortgagees and agents ("**Landlord Related Parties**") from responsibility for, waives its entire claim of recovery for and assumes all risks of (i) damage to property or injury to person in or about the Premises or the Building from any cause whatsoever except to the extent caused by the gross negligence or willful misconduct of Landlord or any Landlord Related Parties, or (ii) loss resulting from business interruption or loss of income at the Premises.

14.2 Waiver of Claims. Except in the event of its own gross negligence or willful misconduct, Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord and Landlord Related Parties for any injury or damage to any person or property occurring or incurred in connection with or in any way relating to the Premises or Building from any cause. Without limiting the foregoing, neither Landlord nor any Landlord Related Party shall be liable for and there shall be no abatement rent for (a) any damage to Tenant's property stored with or entrusted to any Landlord Related Party, (b) loss of or damage to any property by theft or any other wrongful or illegal act, or (c) any injury or damage to person or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Premises or Building or from the pipes, appliances, appurtenance or plumbing works thereof or from the roof, street or surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Premises or Building or from any other cause whatsoever, (d) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises or (e) any latent or other defects in the Premises or the Building. Tenant agrees that in no case shall Landlord or any Landlord Related Party be responsible or liable on any theory for any injury to Tenant's business, loss of profits, loss of income or any other form of consequential damage.

14.3 Survival/No Impairment. The obligations of Tenant under this Article 14 shall survive any termination of this Lease. The foregoing indemnity obligations shall not relieve any insurance carrier of its obligations under any policies required to be carried by either party pursuant to this Lease, to the extent that such policies cover the peril or currents that results in the claims that is subject to the foregoing indemnity.

## 15. INSURANCE.

### 15.1 Tenant's Insurance.

(a) Liability Insurance. Tenant shall maintain in full force throughout the Term, commercial general liability insurance providing coverage on an occurrence form basis with limits of not less than Two Million Dollars (\$2,000,000.00) each occurrence for bodily injury and property damage combined, or such larger amount as Landlord may prudently require from time to time, covering bodily injury and property damage liability and product liability if a product is sold from the Premises. Each policy of liability insurance required by this Section shall: (i) contain a cross liability endorsement or separation of insureds clause; (ii) provide that any waiver of subrogation rights or release prior to a loss does not void coverage; (iii) provide that it is primary to and not contributing with, any policy of insurance

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carried by Landlord covering the same loss; (iv) provide that any failure to comply with the reporting provisions shall not affect coverage provided to Landlord, its partners, property managers and Mortgagees; and (v) name Landlord, PM Realty Group L.P. and such other parties in interest as Landlord may from time to time reasonably designate to Tenant in writing, as additional insureds in an Additional Insured Endorsement. Such additional insureds shall be provided at least the same extent of coverage as is provided to Tenant under such policies. The additional insured endorsement shall be in a form at least as broad as endorsement form number CG 20 11 01 96 promulgated by the Insurance Services Office.

(b) Personal Property Insurance. Tenant shall maintain in full force and effect on all of its personal property, furniture, furnishings, trade fixtures and equipment from time to time located in, on or upon the Premises (“**Tenant’s Property**”), and any Alterations (as defined in Article 10) in an amount not less than one hundred percent (100%) of their full replacement value from time to time during the Term, providing protection against all perils, included within the standard form of “all-risk” (i.e., “Special Cause or Loss”) fire and casualty insurance policy, except Tenant is not obligated to carry earthquake or flood insurance. Landlord shall have no interest in the insurance upon Tenant’s Property or Alterations and will sign all documents reasonably necessary in connection with the settlement of any claims or loss by Tenant. Landlord will not carry insurance on Tenant’s Property or Alterations.

(c) Worker’s Compensation Insurance; Employer’s Liability Insurance. Tenant shall, at Tenant’s expense, maintain in full force and effect during the Term of this Lease, worker’s compensation insurance with not less than the minimum limits required by law, and employer’s liability insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00).

(d) Pollution Legal Liability. Commercial Pollution Legal Liability Insurance with coverage limits of not less than Two Million Dollars (\$2,000,000).

(i) Commercial Pollution Legal Liability. Tenant shall maintain a Commercial Pollution Legal Liability Insurance with coverage limits of not less than Two Million Dollars (\$2,000,000) annual aggregate covering claims arising out of or related to Tenant’s Contamination during the term of this Lease.

(ii) Contractor’s Pollution Legal Liability. Tenant shall cause any contractors retained for performing any Alterations of the Premises, the total cost of which exceed Two Hundred Thousand dollars (\$200,000) to obtain and maintain Contractor’s Pollution Liability Insurance covering the general contractor and all subcontractors in an amount of not less than Two Million Dollars (\$2,000,000) with a maximum deductible of One Hundred Thousand Dollars (\$100,000) with coverage continuing for ten years after completion of construction. Any such policy shall name Landlord as an additional insured.

(e) Business Interruption Insurance. Tenant shall, at Tenant’s expense, maintain in full force and effect during the Term of this Lease, Business Interruption Insurance with a limit of liability representing loss of at least approximately twelve (12) months of income.

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(f) Automobile Liability. Tenant's expense, maintain in full force and effect during the Term of this Lease, Commercial Automobile Liability. Such policy shall be in an amount of not less than One Million Dollars (\$1,000,000) combined singled limit. Such policy of insurance shall be issued by an insurance company authorized to do business in the state of California and rated A-: VII or better in the Best's Key Rating Guide.

15.2 Requirements For All Policies. Each policy of insurance required under Section 15.1 shall: (a) be in a form, and written by an insurer, reasonably acceptable to Landlord, (b) be maintained at Tenant's sole cost and expense, and (c) require at least thirty (30) days' written notice to Landlord prior to any cancellation, nonrenewal or modification of insurance coverage. Insurance companies issuing such policies shall have rating classifications of "A-" or better and financial size category ratings of "VII" or better according to the latest edition of the Best Key Rating Guide. All insurance companies issuing such policies shall be admitted carriers licensed to do business in the state where the Premises is located. Any deductible amount under such insurance shall not exceed \$5,000. Tenant shall provide to Landlord, upon request, evidence that the insurance required to be carried by Tenant pursuant to this Section, including any endorsement affecting the additional insured status, is in full force and effect and that premiums therefor have been paid. Tenant shall, at least thirty (30) days prior to expiration of each policy, furnish Landlord with certificates of renewal thereof and shall provide Landlord with at least thirty days prior written notice of any cancellation or modification. Landlord and Tenant agree, to the extent such waivers are commercially reasonable, to have their respective insurance companies waive any rights of subrogation that such company may have against Landlord or Tenant, as the case may be.

15.3 Certificates of Insurance. Upon execution of this Lease by Tenant, and not less than thirty (30) days prior to expiration of any policy thereafter, Tenant shall furnish to Landlord a certificate of insurance reflecting that the insurance required by this Article is in force, accompanied by an endorsement(s) showing the required additional insureds satisfactory to Landlord in substance and form.

15.4 Landlord's Insurance. Landlord maintains no property or other insurance covering the Building or any portion of the Premises, land or parking area, nor does Landlord have any obligations to obtain or maintain any such insurance.

## 16. **DAMAGE OR DESTRUCTION.**

### 16.1 Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises which can reasonably be repaired in six (6) months or less from the date of the damage or destruction. Tenant shall notify Landlord in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Partial or Total and the estimated time for repairing said damage.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction. Tenant shall notify Landlord in writing within thirty (30)

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days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

16.2 Partial Damage. If a Premises Partial Damage occurs, Tenant shall repair such damage.

16.3 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate sixty (60) days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Tenant, Landlord shall have the right to recover Landlord's damages from Tenant.

16.4 Abatement of Rent. In the event of Premises Partial Damage or Premises Total Destruction (except to the extent caused by the negligence of Tenant or any Tenant Parties), the Rent payable by Tenant for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired, and such abatement shall be Tenant's sole remedy for such impairment of use. All other obligations of Tenant hereunder shall be performed by Tenant, and Landlord shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

## 17. CONDEMNATION.

If the whole or if any material part of the Premises or Building is taken or condemned for any public or quasi-public use under either state or federal law, by eminent domain or purchase in lieu thereof (a "Taking"), and (a) such Taking renders the Premises or Building unsuitable for the Permitted Use; or (b) the Premises or Building cannot be repaired, restored or replaced at reasonable expense to a configuration and condition that is economically profitable for Tenant, then either party may, at its option, terminate this Lease as of the date possession vests in the condemning party. If twenty-five percent (25%) or more of the Premises is taken and if the Premises remaining after such Taking and any repairs by Landlord would be untenable (in Tenant's reasonable opinion) for the conduct of Tenant's business operations, Tenant shall have the right to terminate this Lease as of the date possession vests in the condemning party. The terminating party shall provide written notice of termination to the other party within thirty (30) days after it first receives notice of the Taking. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If this Lease is not terminated, Base Rent shall be appropriately adjusted to account for any reduction in the square footage of the Premises. If only a part of the Premises is subject to a Taking and this Lease is not terminated, Landlord, with reasonable diligence, will restore the remaining portion of the Premises as nearly as practicable to the condition immediately prior to the Taking. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws. Landlord shall be entitled to any and all compensation, damages, income, rent, awards or any interest thereon which may be paid or made in connection with any such Taking, and Tenant shall have no claim against Landlord for the value of any expired term of this Lease or otherwise; provided, however, that Tenant shall be entitled to receive any award separately allocated by the condemning authority to Tenant for Tenant's relocation expenses, the value of Tenant's fixture, equipment and personal property (specifically excluding components of the

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Premises which under this Lease or by law are or at the expiration of the Term will become the property of Landlord, including, without limitation, fixtures and Alterations), or Tenant's loss of business goodwill, provide that such award does not reduce any award otherwise allocable or payable to Landlord.

**18. DEFAULT.**

18.1 Events of Default. The occurrence of any of the following shall constitute a "Default" by Tenant:

(a) Tenant fails to make any payment of Rent when due, if payment in full is not received by Landlord within ten (10) business days after written notice that it is past due.

(b) Tenant abandons the Premises as defined in Section 1951.3 of the California Civil Code.

(c) Tenant fails timely to deliver any subordination document or estoppel certificate requested by Landlord within the applicable time period specified hereinbelow.

(d) Tenant violates the restrictions on Transfer set forth in Article 13.

(e) Tenant ceases doing business as a going concern; makes an assignment for the benefit of creditors; is adjudicated an insolvent, files a petition (or files an answer admitting the material allegations of a petition) seeking relief under any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights; all or substantially all of Tenant's assets are subject to judicial seizure or attachment and are not released within thirty (30) days, or Tenant consents to or acquiesces in the appointment of a trustee, receiver or liquidator for Tenant or for all or any substantial part of Tenant's assets.

(f) Tenant fails to perform or comply with any provision of this Lease other than those described in (a) through (e) above, and does not fully cure such failure within fifteen (15) days after notice to Tenant or, if such failure cannot be cured within such fifteen (15) day period, Tenant fails within such fifteen (15)-day period to commence, and thereafter diligently proceed with, all actions necessary to cure such failure as soon as reasonably possible but in all events within ninety (90) days of such notice.

18.2 Remedies. Upon the occurrence of any Default under this Lease, whether enumerated in Section 18.1 or not, Landlord shall have the option to pursue any one or more of the following remedies without any notice (except as expressly prescribed herein) or demand whatsoever. Without limiting the generality of the foregoing, Tenant hereby specifically waives notice and demand for payment of Rent or other obligations, and waives any and all other notices or demand requirements imposed by applicable Law:

(a) Terminate this Lease and Tenant's right to possession of the Premises and recover from Tenant an award of damages equal to the sum of the following:

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(i) The Worth at the Time of Award of the unpaid Rent which had been earned at the time of termination;

(ii) The Worth at the Time of Award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant affirmatively proves could have been reasonably avoided;

(iii) The Worth at the Time of Award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant affirmatively proves could be reasonably avoided discounted to the then present value;

(iv) Any other amount necessary to compensate Landlord for all the detriment either proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and

(v) All such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable law.

The "**Worth at the Time of Award**" of the amounts referred to in parts (i) and (ii) above, shall be computed by allowing interest at the lesser of a per annum rate equal to: (A) the greatest per annum rate of interest permitted from time to time under applicable law, or (B) the Prime Rate plus 5% as determined by Landlord.

(b) Employ the remedy described in California Civil Code § 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations); or

(c) Notwithstanding Landlord's exercise of the remedy described in California Civil Code § 1951.4 in respect of an event or events of Default, at such time thereafter as Landlord may elect in writing, to terminate this Lease and Tenant's right to possession of the Premises and recover an award of damages as provided above.

18.3 No Waiver. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No waiver by Landlord of any breach hereof shall be effective unless such waiver is in writing and signed by Landlord.

18.4 Waiver of Redemption, Reinstatement, or Restoration. Tenant hereby waives any and all rights conferred by Section 3275 of the Civil Code of California and by Sections 1174(c) and 1179 of the Code of Civil Procedure of California and any and all other laws and rules of law from time to time in effect during the Lease Term or thereafter providing that Tenant shall

have any right to redeem, reinstate or restore this Lease following its termination as a result of Tenant's breach.

18.5 Remedies Cumulative. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing by agreement, applicable Law or in equity. In addition to other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable Law, to injunctive relief, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Landlord at law or in equity. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of Default shall not be deemed or construed to constitute a waiver of such Default.

18.6 Landlord's Right to Perform Tenant's Obligations. If Tenant is in Default of any of its non-monetary obligations under this Lease, in addition to the other rights and remedies of Landlord provided herein, then Landlord may at Landlord's option, but without any obligation to do so and without further notice to Tenant, perform any such term, provision, covenant or condition or make any such payment and Landlord by reason of doing so shall not be liable or responsible for any loss or damage thereby sustained by Tenant. If Landlord performs any of Tenant's obligations hereunder in accordance with this Section 18.6, the full amount of the costs and expense incurred or the payments so made or the amount of the loss so sustained shall be immediately be owed by Tenant to Landlord, and Tenant shall promptly pay to Landlord upon demand, as Additional Rent, the full amount thereof with interest thereon from the day of payment by Landlord the lower of ten percent (10%) per annum, or the highest rate permitted by applicable law.

18.7 Severability. This Article 18 shall be enforceable to the maximum extent such enforcement is not prohibited by applicable Law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion.

## 19. LIMITATION OF LIABILITY.

Notwithstanding anything to the contrary contained in this Lease, the liability of Landlord (and of any successor landlord) shall be governed by applicable state and federal laws for so long as Landlord is a public entity and, at any time thereafter, shall be limited to the interest of Landlord in the Building as the same may from time to time be encumbered. Tenant shall look solely to Landlord's interest in the Building for the recovery of any judgment. Neither Landlord nor any Landlord Related Party shall be personally liable for any judgment or deficiency, and in no event shall Landlord or any Landlord Related Party be liable to Tenant for any lost profit, damage to or loss of business or a form of special, indirect or consequential damage. Before filing suit for an alleged default by Landlord, Tenant shall give Landlord and the Mortgagee(s) whom Tenant has been notified hold Mortgages (defined in Article 22 below), notice and reasonable time to cure the alleged default.

## 20. SURRENDER OF PREMISES.

At the termination of this Lease or Tenant's right of possession, Tenant shall remove Tenant's property including any furniture, fixtures, equipment or cabling installed by or for the benefit of Tenant from the Premises, and quit and surrender the Premises to Landlord, broom clean, and in good order, condition and repair, ordinary wear and tear and damage which Landlord is obligated to repair hereunder excepted. Landlord may, by notice to Tenant not less than sixty (60) days prior to the Expiration Date (except in the event of a termination of this Lease prior to the scheduled Expiration Date, in which event no advance notice shall be required) require Tenant, at Tenant's expense, remove any Alterations (except as otherwise provided at Section 10.2, above) and repair any damage caused by such removal. If Tenant fails to remove any of Tenant's property, or to restore the Premises to the required condition, Landlord, at Tenant's sole cost and expense, shall be entitled (but not obligated) to remove and store Tenant's property and/or perform such restoration of the Premises. Landlord shall not be responsible for the value, preservation or safekeeping of Tenant's property. Tenant shall pay Landlord, upon demand, the expenses and storage charges incurred. If Tenant fails to remove Tenant's property from the Premises or storage, within thirty (30) days after notice, Landlord may deem all or any part of Tenant's property to be abandoned and, at Landlord's option, title to Tenant's property shall vest in Landlord or Landlord may dispose of Tenant's property in any manner Landlord deems appropriate.

## 21. HOLDING OVER.

If Tenant fails to surrender all or any part of the Premises at the termination of this Lease, occupancy of the Premises after termination shall be that of a tenancy at sufferance. Tenant's occupancy shall be subject to all the terms and provisions of this Lease and Tenant shall pay an amount (on a per month basis without reduction for partial months during the holdover) equal to 150% of the sum of the Base Rent due for the period immediately preceding the holdover. No holding over by Tenant shall operate to extend the Term. If Tenant does not surrender possession at the end of the Term or sooner termination of this Lease, Tenant shall indemnify and hold Landlord harmless from and against any and all losses or liability resulting from delay in Tenant so surrendering the Premises including, without limitations, any loss or liability resulting from any claim against Landlord made by any succeeding tenant or prospective tenant founded on or resulting from such delay. Any holding over by Tenant with the written consent of Landlord shall thereafter constitute a lease from month to month.

## 22. MORTGAGES.

22.1 Landlord Mortgage Protection. Tenant shall give to any Mortgagee, in accordance with the notice requirements of Article 25 below, at the same time as it is given to Landlord, a copy of any notices of default given to Landlord, provided that, prior to such notice, Tenant has been notified in writing (by way of notice of assignment of rent and leases, or otherwise) of the existence and address of such Mortgagee. Tenant further agrees that, if Landlord shall have failed to cure such default within the time provided for in this Lease, then the Mortgagee shall have an additional reasonable period of time within which to cure such default, or if such default cannot be cured without Mortgagee pursuing its remedies against Landlord, then mortgagee shall have such additional time as may be necessary to commence and

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complete a foreclosure proceeding. If, in connection with obtaining financing for the Project, or a portion thereof, Landlord's lender shall request reasonable modifications to this Lease as a condition to such financing, Tenant shall not unreasonably withhold, delay or defer its consent to such modifications, provided that such modifications do not materially adversely affect Tenant's rights or increase Tenant's obligations under this Lease.

22.2 Leasehold Mortgage. Tenant shall have the right, from time to time during the Lease Term, to enter into a deed of trust, mortgage, assignment, security interest, lien or other encumbrance in or against Tenant's interest in this Lease (a "**Leasehold Mortgage**") with one or more banks or other institutional lenders and subsequent assignees and any entity that controls, is controlled by, or is under common control with such bank or institutional lender or its assignee (each a "**Leasehold Mortgagee**"), provided that: (a) each of the applicable requirements of this Section 22.2 is satisfied and (b) Landlord grants its prior written approval to the Loan or other arrangement, which it shall not unreasonably withhold. The parties recognize that, in order to meet loan commitment deadlines of a proposed Leasehold Mortgagee, timely consideration of proposed financings will be needed. To facilitate meeting of such deadlines, Tenant agrees to use good faith, diligent efforts to expedite submittal of all materials required by Landlord for timely review and consideration of any proposed financing request, and Landlord agrees to use good faith diligent efforts to promptly review and respond to all such requests for approval. If, within fifteen (15) business days after Landlord's receipt of such requested materials, Landlord fails to notify Tenant of its approval or disapproval of the requested Leasehold Mortgage, Tenant shall have the right to provide Landlord with a second written request for approval (a "**Second Request**") that specifically identifies the applicable Plans and contains the following statement in bold and capital letters: "**THIS IS A SECOND REQUEST FOR APPROVAL OF LEASEHOLD MORTGAGE PURSUANT TO THE PROVISIONS OF SECTION 22.2 OF THE LEASE. IF LANDLORD FAILS TO RESPOND WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN LANDLORD SHALL BE DEEMED TO HAVE APPROVED THE LEASEHOLD MORTGAGE AS DOCUMENTED HEREIN.**" If Landlord fails to respond to such Second Request within five (5) business days after receipt by Landlord, the Leasehold Mortgage in question shall be deemed approved by Landlord. Before entering into a Leasehold Mortgage, Tenant shall give Landlord written notice and shall accompany the notice with a true and correct copy of the Leasehold Mortgage and related loan documents, and shall procure Landlord's prior written. Any Leasehold Mortgage shall be subject to the following terms and conditions:

(a) No Merger. So long as any Leasehold Mortgage shall encumber Tenant's leasehold estate, there shall be no merger of this Lease or any interest in this Lease, nor of the leasehold estate created hereby, with the fee estate in the Premises.

(b) Non Subordination. Nothing in this Lease shall be construed as an agreement by Landlord to subordinate its fee interest in the Premises, the Building or the Land. Except as expressly set forth in this Article 22 or elsewhere in this Lease, no Leasehold Mortgage shall impair Landlord from enforcing its rights and remedies under this Lease or provided by law.

(c) Use of Proceeds. The net proceeds from any such loan secured by a Leasehold Mortgage shall be used for (i) Capital Repairs; (ii) Alterations; (iii) to

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pay off then existing debt secured by Tenant's interests in this Lease; or (iv) otherwise reinvested in the Premises or Building.

(d) Landlord Encumbrance. Landlord acknowledges that any mortgage, deed of trust or other security interest on Landlord's interest in the Premises shall be subject to this Lease and to Tenant's leasehold estate for the duration of this Lease.

22.3 Rights of Leasehold Mortgagee. Landlord and Tenant expressly agree that a Leasehold Mortgagee making a loan secured by a Leasehold Mortgage shall have the following rights and protections:

(a) Modification or Termination of Lease. Tenant and Landlord shall not modify or consensually terminate this Lease without the prior written consent of any Leasehold Mortgagee and any modification or consensual termination of the Lease without the consent of a Leasehold Mortgagee shall not be binding upon such Leasehold Mortgagee. If the proposed modification of this Lease will not limit or impair the rights or security of any Leasehold Mortgagee, then such Leasehold Mortgagee shall not arbitrarily or unreasonably withhold, condition or delay their consent to such modification. No voluntary termination or surrender of this Lease by Tenant shall be effective without the written consent of any Leasehold Mortgagee. Except for any termination of this Lease by Landlord due to a Default, no merger of this Lease and the fee estate in the Premises shall occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of any Leasehold Mortgagee.

(b) Notices. Landlord shall give any Leasehold Mortgagee a duplicate copy of any and all notices Landlord may from time to time give to or serve on Tenant pursuant to this Lease, such duplicate copy to be given concurrently with the notice given to or served on Tenant, so long as Tenant or any Leasehold Mortgagee shall at all times keep Landlord informed, in writing, of the name and mailing address of the Leasehold Mortgagee and any changes in the Leasehold Mortgagee's mailing address. Landlord shall have no liability to any Leasehold Mortgagee for any failure to give any such notices to such Leasehold Mortgagee, but provided that Tenant or any such Leasehold Mortgagee shall have provided Landlord in writing, of the name and mailing address of the Leasehold Mortgagee and any changes in the Leasehold Mortgagee's mailing address, as between Landlord and such Leasehold Mortgagee, no notice of default shall be effective as against such Leasehold Mortgagee, or operate to activate any periods of time within which such Leasehold Mortgagee may be required or elect to act hereunder, unless and until Landlord gives such Approved Lender a copy of such notice. Any notices or other communications required or permitted by this or any other provision of this Lease or by law to be served on or given to any Leasehold Mortgagee by Landlord may be delivered in the manner specified in Article 25 below. Following receipt of any such notice of a Tenant Default (and provided that the Leasehold Mortgagee (i) expeditiously pursues its cure rights as herein described, (ii) continues to timely pay all Rent and other sums payable by Tenant under this Lease while the cure is pending, and (iii) within fifteen (15) days of receipt of Landlord's notice, Leasehold Mortgagee provides Landlord with written notice of its intent to remedy such Tenant Default), each such Leasehold Mortgagee shall have the right to remedy the Tenant Default, or cause the same to be remedied, within the same time allowed to Tenant therefor, plus, in the case

of monetary Defaults, an additional 15 days, and in the case of non-monetary defaults, an additional 60 days or such longer time period as may be provided herein below.

(c) Leasehold Mortgagee Cure of Non-Monetary Default.

With respect to those events of non-monetary default the curing of which requires entry upon the Property, then (i) whenever a Leasehold Mortgagee desires to cure a Tenant Default, there shall be added to the period otherwise provided to the Leasehold Mortgagee for the cure of the Tenant Default the additional period needed by the Leasehold Mortgagee in the exercise of reasonable diligence to enter upon the Property; (ii) whenever a Leasehold Mortgagee seeks to have a receiver appointed for the interest of Tenant under this Lease, so as to have the receiver cure such Tenant Default, then there shall be added to the period otherwise provided to the Leasehold Mortgagee for the cure of such Tenant Default, the additional period needed by the Leasehold Mortgagee to effect, with reasonable diligence, the appointment of such receiver and the entry by such receiver upon the Property; and (iii) whenever a Leasehold Mortgagee elects to foreclose upon the interest of Tenant under this Lease, there shall be added to the period otherwise provided to the Leasehold Mortgagee for the cure of such Tenant Default, such additional period as is needed, in the exercise of reasonable diligence, for the effectuation of the foreclosure sale.

(d) Leasehold Mortgagee Foreclosure. If a noncurable breach of this Lease occurs, a Leasehold Mortgagee shall have the right to begin foreclosure proceedings and to obtain possession of the leasehold, so long as Leasehold Mortgagee complies with the conditions set forth below:

(i) Notifies Landlord, within thirty (30) days after receipt of Landlord's notice of a Tenant Default, of its intention to effect this remedy;

(ii) Diligently institutes steps or legal proceedings to foreclose on or recover possession of the leasehold (after Leasehold Mortgagee has completed its customary pre-foreclosure due diligence requirements), and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity; and

(iii) Keeps and performs, during the foreclosure period (including pre-foreclosure due diligence period), all of the covenants and conditions of this Lease requiring the payment of money, including, without limitation, payment of all Base Rent and Additional Rent, Taxes, Personal Property Taxes and insurance premiums required by this Lease to be paid by Tenant and which become due during the pre-foreclosure or foreclosure period.

(e) Obligations After Foreclosure. Any Leasehold Mortgagee or other purchaser at a foreclosure sale under a Leasehold Mortgage who acquires title to the leasehold estate shall immediately provide Landlord with written notice of such transfer. Such Leasehold Mortgagee or other purchaser shall be subject to the following terms and conditions:

(i) So long as the Leasehold Mortgagee shall have observed all of the conditions of this Section 22.4, then the following breaches, if any, relating to the prior Tenant shall be deemed cured: (i) attachment, execution of or other judicial levy upon the leasehold estate, (ii) assignment for the benefit of creditors of Tenant, (iii) judicial appointment of a receiver or similar officer to take possession of the leasehold estate or the

Property or (iv) filing any petition by, for or against Tenant under any chapter of the Federal Bankruptcy Code;

(ii) By its acceptance of the leasehold estate, such Leasehold Mortgagee or other purchaser (i) assumes this Lease as to the entire leasehold estate, but only during the period when such Leasehold Mortgagee or other purchaser owns such leasehold estate, (ii) covenants with Landlord to be bound hereby during such period of ownership, and (iii) agrees to execute and deliver to Landlord a commercially reasonable lease assumption agreement evidencing such acceptance and assumption, but only during the period when such Leasehold Mortgagee or other purchaser owns such leasehold estate, in a form reasonably acceptable to Landlord; and

(iii) Such Leasehold Mortgagee or other purchaser shall have the right to further assign this Lease without Landlord's consent.

(f) Landlord Acceptance of Performance. Landlord shall accept performance by or on behalf of any Leasehold Mortgagee who has complied with the notice provisions of Section 22.4(b) as if the same had been performed by Tenant.

(g) Leasehold Mortgagee Right to Act for Tenant. It is expressly agreed that each Leasehold Mortgagee has the right to act for and in the place of Tenant, to the extent permitted by the applicable Leasehold Mortgage or otherwise agreed to by Tenant in writing. Without limiting the foregoing, each Leasehold Mortgagee may, to the extent permitted in its Leasehold Mortgage, exercise options and otherwise exercise the rights of Tenant.

(h) Insurance Loss Payee. The name of the Leasehold Mortgagee may be added as a loss payee of any fire and extended coverage insurance carried by Tenant, provided insurance proceeds are first used for repair and restoration as required by this Lease, unless a Leasehold Mortgagee's security has been impaired and such Leasehold Mortgagee is legally entitled to the application of the insurance proceeds to the unpaid indebtedness of Tenant, in which case such insurance proceeds shall be paid to the Leasehold Mortgagee up to the amount of the unpaid indebtedness secured by any such Leasehold Mortgage(s).

(i) Leasehold Mortgage Estoppel Certificate. If an actual or prospective Leasehold Mortgagee shall require Landlord to deliver a customary estoppel certificate as part of such Leasehold Mortgagee's financing arrangement with Tenant, Landlord shall execute, acknowledge and deliver such ground lessor estoppel certificate. At the option of such Leasehold Mortgagee, such lessor estoppel certificate shall be in the form of an agreement between Landlord and such Leasehold Mortgagee.

(j) No Assignment of Lease. The making of any Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or the leasehold estate so as to require such Leasehold Mortgage, as such,

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to assume the performance of any of the terms, covenants or conditions on the part of Tenant under this Lease to be performed.

(k) No Encumbrance on Fee Interest. No Leasehold Mortgage shall encumber or create any lien or charge against Landlord's fee interest in the Premises, Building or Land.

(l) Assignment of Rents from Subleases. Landlord consents to a provision in any Leasehold Mortgage or otherwise for an assignment of rents from subleases of the Property to the holder thereof, effective upon any default under such Leasehold Mortgage.

(m) Attornment. The foreclosure of a Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in any Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Tenant to any Leasehold Mortgagee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not breach any provision of or constitute a default under this Lease and shall not require Landlord's consent, and upon such foreclosure, sale or conveyance and Leasehold Mortgagee's execution and delivery to Landlord of a lease assumption agreement in a form consistent with the requirements of Section 22.4(d) above, Landlord shall recognize the Leasehold Mortgagee, or such other purchaser at such foreclosure sale, as Tenant hereunder.

(n) Replacement Lease. If this Lease is terminated prior to the Expiration Date for any reason, including without limitation the termination by Landlord on account of a Default or the rejection by a trustee of Tenant in bankruptcy or by Tenant as a debtor in possession, Landlord shall execute a new lease for the Premises ("**Replacement Lease**") with an Approved Lender (or Lender Affiliate or Subsequent Transferee, if applicable) that holds a first lien position Leasehold Mortgage as Tenant, if so requested by such Approved Lender, within sixty (60) days following the date of the termination, subject to the following:

(i) the new lease shall: (A) be for a term beginning on the date this Lease was so terminated and ending on the same date the Term would have ended had not this Lease been terminated; (B) provide for the payment of Rent at the same rate that would have been payable under this Lease during the remaining Term of this Lease had this Lease not been terminated; and (C) otherwise contain the same terms and conditions as are contained in this Lease (except for any requirements or conditions which have been satisfied by Tenant prior to the termination);

(ii) upon execution of the new lease by Landlord, such Approved Lender (or Lender Affiliate or Subsequent Transferee, if applicable) shall pay (if not previously paid) to Landlord any and all Rent and other amounts payable, but unpaid, under this Lease, and such Approved Lender shall also remedy, or agree in writing to remedy, as promptly as practicable, any other defaults under this Lease committed by the former Tenant that can be remedied by a party other than the former Tenant;

(iii) as between Landlord, Tenant and such Approved Lender (or Lender Affiliate or Subsequent Transferee, if applicable), and with respect to all third parties having actual or constructive notice of the terms of this Lease, the new lease shall have

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the same priority as this Lease, shall be subject to all subleases, and shall be assignable by such Approved Lender as provided in this Lease; and

(iv) together with the execution and delivery of the new lease, Landlord shall confirm and acknowledge, by such means as is customary or may be reasonably required by a reputable title insurance company to insure the leasehold estate of such Approved Lender (or Lender Affiliate or Subsequent Transferee, if applicable) created by the new lease, that as between the applicable Approved Lender (or Lender Affiliate or Subsequent Transferee, if applicable) and Landlord, and all persons claiming by, through or under Landlord (including without limitation the holder of any mortgage or other encumbrance against Landlord's fee interest in the Premises), such Approved Lender (or Lender Affiliate or Subsequent Transferee, if applicable) has a leasehold interest in the Premises and an option to purchase the Option Property pursuant to terms of the replacement lease.

In the event of a rejection by a trustee of Tenant in bankruptcy or by Tenant as a debtor in possession, then the provisions of this Section 22.4(n) shall survive any such termination of this Lease prior to the Expiration Date, for a period of ninety (90) days following the date of the termination for the sole purposes of allowing the completion and execution of a Replacement Lease, and this shall constitute a separate agreement by Landlord for the benefit of and enforceable by the Approved Lender holding a first lien position Leasehold Mortgage.

(o) Approved Lender and Lender Affiliate Defined. As used in this Lease, the term "**Approved Lender**" shall mean not only the Leasehold Mortgagee that loaned money to Tenant and is named as beneficiary, mortgagee, assignee, secured party or security holder in any Leasehold Mortgage, but also all subsequent assignees and holders of the security interest created by such instrument; and the term "**Lender Affiliate**" shall mean any partnership, limited liability company, corporation or other entity that controls, is controlled by, or is under common control with any Approved Lender.

### 23. TENANT'S ESTOPPEL CERTIFICATE.

Within ten (10) days after written request therefor by Landlord or Tenant (the "**Requesting Party**") the other party (the "**Responding Party**") shall execute and deliver to the Requesting Party, in a form provided by or reasonably satisfactory to the Requesting Party, an estoppel certificate stating, that this Lease is in full force and effect, describing any amendments or modifications thereto, stating any other information the Requesting Party may reasonably request, including the Term, the monthly Base Rent, the date to which Rent has been paid, the amount of any security deposit or prepaid rent, whether either party hereto is in default under the terms of the Lease, and whether the Responding Party has completed any construction obligations hereunder. Any such estoppel certificate may be relied upon by any person or entity purchasing, acquiring an interest in or extending finance with respect to Landlord's or Tenant's interest in this Lease, the Building, or the Land, or any part thereof. If Tenant fails to provide such certificate within ten (10) days as herein provided, such failure shall at Landlord's election, constitute a Default and Tenant shall be deemed to have given such certificate as above provided without modification and shall be deemed to have admitted the accuracy of any information supplied by Landlord to a prospective purchaser or mortgagee or deed of trust holder.

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24. [INTENTIONALLY OMITTED].

25. NOTICE.

All notices shall be in writing and delivered by hand or sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service, or sent by overnight or same day courier service or by electronic mail (subject to a read receipt or other comparable confirmation of receipt) at the party's respective Notice Address(es) set forth in the Basic Lease Information ("Notice Address"). Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Tenant has vacated the Premises or any other Notice Address of Tenant without providing a new Notice Address, three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above. Either party may, at any time, change its Notice Address (other than to a post office box address) by giving the other party written notice of the new address.

26. LABOR PROVISIONS.

26.1 Equal Opportunity. During the Term, and with respect to person(s) in the Building or Premises or employment or employees at the Premises, Tenant agrees as follows:

(a) Tenant will not discriminate against any guest, visitor, invitee, customer, employee of Tenant or applicant for employment because of race, color, religion, sex or national origin. The employees of Tenant shall be treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, notices to be provided by the applicable government agencies, setting forth the provisions of this nondiscrimination provision.

(b) Tenant will, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) Tenant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, advising the labor union or worker's representative of Tenant's commitments under this Equal Opportunity Clause and shall post copies of notice in conspicuous places available to employee and applications for employment.

(d) Tenant, through any approved sublease, shall require each of its subtenants to comply with the nondiscrimination provisions contained in this Section 26.1.

26.2 Convict Labor. In connection with the performance of work required by this Lease, Tenant agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

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26.3 Prevailing Wages. Tenant acknowledges and agrees any maintenance or Alterations made by or on behalf of Tenant to the Premises, or any portion thereof (“**Prevailing Wage Improvement Work**”) whether paid for in whole or in part by Landlord or which are considered to have been paid for in whole or in part by Landlord (e.g. by virtue of any rents that are reduced, waived or forgiven), will constitute “[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds...”. (California Labor Code section 1720.) Accordingly, Tenant shall comply with all applicable prevailing wage policies as set forth in applicable California Labor Code sections pertaining to “public works” (California Labor Code sections 1720 et seq., as amended from time to time and implementing regulations), the Davis-Bacon Act (sec. 1-7, 46 Stat. 1949, as amended; Pub. L. 74-403, 40 U.S.C. 27a-27a-7, as amended from time to time and implementing regulations), section 2-67 of the Alameda Municipal Code, and other applicable laws, statutes, rules, regulations or ordinances now or hereinafter in effect addressing the payment of prevailing wages in connection with any Prevailing Wage Improvement Work (collectively, “**Prevailing Wage Laws**”). Tenant shall require the general contractor for any Prevailing Wage Improvement Work to submit, upon request by Landlord, certified copies of payroll records and to maintain and make records available to Landlord and its designees for inspection and copying to ensure compliance with Prevailing Wage Laws. Tenant shall also include in its general contractor agreement, and in all of its subleases and other contracts, a provision in a format reasonably acceptable to Landlord, which obligates the general contractor and others as applicable, (a) to comply with, and to require that their respective contractors and/or subcontractors comply with Prevailing Wage Laws, and (b) to require the general contractor for any prevailing wage work to furnish electronic certified payroll records directly to the Labor Commissioner at: <https://apps.dir.ca.gov/ecpr/das/altlogin>, or to comply with any other regulation related to public contracts. Tenant shall defend, indemnify and hold harmless Landlord and all Landlord Related Parties (as defined at Section 14.1 above) from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys’ fees and costs) (collectively, “**Claims**”) arising out of or in any way connected with Tenant’s obligation to comply with all laws, statutes, rules, regulations or ordinances now or hereinafter in effect with respect to any improvement work and/or Prevailing Wage Laws, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code section 1726. Tenant hereby waives, releases and discharges Landlord and all Landlord Related Parties from any and all present and future claims arising out of or in any way connected with Tenant’s obligations to comply with the Prevailing Wage Laws.

27. **MISCELLANEOUS.**

27.1 Governing Law. This Lease shall be interpreted and enforced in accordance with the Laws of the State of California and Landlord and Tenant hereby irrevocably consent to the jurisdiction and proper venue of such state.

27.2 Severability. If any section, term or provision of this Lease is held invalid by a court of competent jurisdiction, all other sections, terms or severable provisions of this Lease shall not be affected thereby, but shall remain in full force and effect.

27.3 Attorneys' Fees. In the event of an action, suit, arbitration or proceeding brought by Landlord or Tenant to enforce any of the other's covenants and agreements in this Lease, the prevailing party shall be entitled to recover from the non-prevailing party any costs, expenses (including out of pocket costs and expenses) and reasonable attorneys' fees incurred in connection with such action, suit or proceeding. Without limiting the generality of the foregoing, if Landlord utilizes the services of an attorney for the purpose of collecting any Rent due and unpaid by Tenant or in connection with any other breach of this Lease by Tenant following a written demand of Landlord to pay such amount or cure such breach, Tenant agrees to pay Landlord reasonable actual attorneys' fees for such services, irrespective of whether any legal action may be commenced or filed by Landlord.

27.4 Force Majeure. Whenever a period of time is prescribed for the taking of an action by Landlord or Tenant (other than the payment of Rent), the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics, civil disturbances, extreme weather and other causes beyond the reasonable control of the performing party ("**Force Majeure**").

27.5 Sale. At any time after expiration of the Option Term (as defined in Section 28.2 below) Landlord shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Building and Parking Area. Upon transfer, Landlord shall be released from any further obligations hereunder and Tenant agrees to look solely to the successor in interest of Landlord for the performance of such obligations, provided that any successor pursuant to a voluntary, third party transfer (but not as part of an involuntary transfer resulting from a foreclosure or deed in lieu thereof) shall have assumed Landlord's obligations under this Lease.

27.6 Signs. Tenant shall not place any sign upon the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. All signage shall comply with Landlord's signage design criteria, as exist from time to time. In addition, any style, size, materials and attachment method of any such signage shall be subject to Landlord's prior written consent, which consent shall not be unreasonably withheld. The installation of any sign on the Premises by or for Tenant shall be subject to the provisions of this Lease. Tenant shall maintain any such signs installed on the Premises.

27.7 Brokers. Landlord and Tenant each represents and warrants to the other that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker except the Broker(s) specified in the Basic Lease Information in the negotiating or making of this Lease. Each party agrees to indemnify, defend and hold harmless the other from any claim or claims, and costs and expenses, including attorneys' fees, incurred by the indemnified party in conjunction with any such claim or claims of any other broker or brokers to a commission in connection with this Lease as a result of the actions of the indemnifying party. Provided that this Lease is fully executed by the parties hereto, Landlord shall pay a commission to Landlord's Broker pursuant to a separate written agreement between Landlord and Landlord's Broker, and Landlord's Broker shall be responsible for any fee or commission payable to Tenant's Broker, if any.

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27.8 Access by Landlord. In addition to access provided by this Lease, Landlord shall be allowed access to the Premises at all reasonable times throughout the term of this Lease, for any reasonable purpose upon prior written notice to Tenant. Landlord will normally give Tenant a minimum of twenty-four (24) hours prior notice of an intention to enter the Premises, unless the entry is reasonably required on an emergency basis for safety, environmental, operations or security purposes. Tenant shall ensure that a telephone roster is maintained at all times for on-call persons representing Tenant who will be available on short notice, 24 hours a day, 365 days per year, and have authority to use all keys necessary to gain access to the Premises to facilitate entry in time of emergency. Tenant shall ensure that Landlord has a current roster of such on-call personnel and their phone numbers. Tenant shall provide Landlord with a key or other access device for the Building. Tenant shall give keys or other access devices to the Building to Landlord at the expiration or termination of this Lease. Tenant shall have no claim against Landlord for exercise of its rights of access hereunder. Portions of the utilities systems serving the Property may be located within the Premises. Tenant agrees to allow Landlord and its utility supplier reasonable access to the Premises for operation, maintenance, repair and replacement of these utilities systems as may be required. In executing operation, maintenance, repair or replacement of these systems, Landlord agrees to take commercially reasonable steps to limit interference with the use of the Premises by Tenant.

27.9 Waiver of Right to Jury Trial. Landlord and Tenant waive their respective rights to trial by jury of any contract or tort claim, counterclaim, cross-complaint, or cause of action in any action, proceeding, or hearing brought by either party against the other on any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant's use or occupancy of the Premises, including without limitation any claim of injury or damage or the enforcement of any remedy under any current or future law, statute, regulation, code, or ordinance. Landlord and Tenant agree that this paragraph constitutes a written consent to waiver of trial by jury within the meaning of California Code of Civil Procedure Section 631(f)(2), and Tenant does hereby authorize and empower Landlord to file this paragraph and/or this Lease, as required, with the clerk or judge of any court of competent jurisdiction as a written consent to waiver of jury trial. If the waiver set forth in this Section 27.9 is determined by any court to be invalid because it was executed prior to the commencement of any action, then Landlord and Tenant each covenant and agree to execute and deliver to the other, within five (5) days of a written request by the other, a waiver of the right to trial by jury similar in terms and scope to the waiver set forth in this Section 27.9 at such time following the commencement of such action as such waiver, if then made, would be valid.

27.10 Recordation. This Lease shall not be recorded by Tenant or by anyone acting through, under or on behalf of Tenant. The foregoing notwithstanding, Landlord and Tenant may execute and record in the office of the Alameda County Recorder a memorandum of this Lease, the cost of which (including recording costs, if any) shall be borne by Tenant.

27.11 Article and Section Titles. The Article and Section titles use herein are not to be considered a substantive part of this Lease, but merely descriptive aids to identify the paragraph to which they referred. Use of the masculine gender includes the feminine and neuter, and vice versa.

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27.12 Authority. If Tenant is a corporation, partnership, trust, association or other entity, Tenant and each person executing this Lease on behalf of Tenant does hereby covenant and warrant that (a) Tenant is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation, (b) Tenant has and is duly qualified to do business in California, (c) Tenant has full corporate, partnership, trust, association or other power and authority to enter into this Lease and to perform all Tenant's obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this Lease on behalf of Tenant is duly and validly authorized to do so. Upon execution hereof and at Landlord's request, Tenant shall provide Landlord with a written certification of its Corporate Secretary or other appropriate authorizing officer or partner attesting that at a duly noticed meeting of its Board of Directors or other governing body a resolution has been unanimously adopted approving Tenant's execution hereof, thereby binding itself to the terms of this Lease and identifying the person(s) authorized to execute this Lease on behalf of Tenant.

27.13 Quiet Possession. Landlord covenants and agrees with Tenant that, upon Tenant's payment of Rent and observing and performing all of the terms, covenants, conditions, provisions and agreements of this Lease on Tenant's part to be observed or performed, Tenant shall have the quiet possession of the Premises throughout the Term.

27.14 Asbestos Notification for Commercial Property Constructed Before 1979. Tenant acknowledges that Landlord has advised Tenant that, because of its age, the Building may contain asbestos-containing materials ("ACMs"). If Tenant undertakes any Alterations as may be permitted by Article 10, Tenant shall, in addition to complying with the requirements of Article 10, undertake the Alterations in a manner that avoids disturbing ACMs present in the Building. If ACMs are likely to be disturbed in the course of such work, Tenant shall encapsulate or remove the ACMs in accordance an approved asbestos-removal plan and otherwise in accordance with all applicable Environmental Laws, including giving all notices required by California Health & Safety Code Sections 25915-25919.7.

27.15 Lead Warning Statement. Tenant acknowledges that Landlord has advised Tenant that buildings built before 1978 may contain lead-based paints ("LBP"). Lead from paint, paint chips and dust can pose health hazards if not managed properly. Subject to Article 10 of this Lease, Tenant may at its sole cost and expense, have a state certified LBP Inspector complete a LBP inspection and abatement and provide an abatement certification to Landlord. Landlord has no specific knowledge of the presence of lead-based paint in the Premises.

27.16 OFAC Certification. Tenant represents, warrants and covenants that: (a) Tenant and its principals are not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "**Specially Designated and Blocked Person**" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (b) Tenant acknowledges that the breach of this representation, warranty and covenant by Tenant shall be an immediate Default under the Lease.

27.17 Certified Access Specialist Disclosure. In accordance with Civil Code Section 1938, Landlord hereby discloses that the Premises have not undergone inspection by a Certified

Access Specialist for purposes of determining whether the property has or does not meet all applicable construction related accessibility standards pursuant to Civil Code Section 55.53.

27.18 Time of the Essence. Time is of the essence of this Lease and each and all of its provisions.

27.19 Entire Agreement. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understandings pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

27.20 Rules and Regulations. Tenant shall faithfully observe and comply with the non-discriminatory rules and regulations attached hereto as **Exhibit F** and incorporated herein by this reference, as the same may be modified from time to time by Landlord, provided that such modifications do not materially restrict Tenant's use of the Premises. Any additions or modifications to those rules shall be binding upon Tenant upon Landlord's delivery of a copy to Tenant.

27.21 Financial Statement. Within thirty (30) days after Landlord's written request, Tenant shall deliver to Landlord the then current financial statements of Tenant, including a balance sheet and profit and loss statement for the most recent prior year, all prepared in accordance with generally accepted accounting principles consistently applied and shall be certified as accurate in all material respect by an officer of Tenant.

27.22 Relocation Benefits. Tenant acknowledges that upon the expiration or earlier termination of this Lease, for any reason other than a Taking as defined at Article 17, Tenant shall not be a displaced person, and hereby does, waive any and all claims for relocation benefits, assistances and/or payments under Government Code Sections 7260 et seq., 25 California Code of Regulations Sections 600 et seq., 42 U.S.C. 4601 et seq., 29 C.F.R. Sections 121 et seq. and 49 C.F.R Sections 24.1 et seq. (collectively the "**Relocation Assistance Laws**"). Any Relocation of the Premises pursuant to Article 24 of this Lease shall be governed by the terms of said article and not the Relocation Assistance Laws. Tenant further acknowledges and agrees that upon the expiration or earlier termination of this Lease for any reason, other than a Taking as hereinabove defined, no claim shall arise, nor shall Tenant assert any claim for loss of business goodwill (as that term is defined at CCP §1263.510) and no compensation for loss of business goodwill shall be paid by Landlord.

27.23 Alameda NAS Historic District. Tenant acknowledges that the Building is located within the NAS Alameda Historic District and has been designated as contributing to the Historic District. In granting, denying or conditioning its consent to any Alterations in accordance with Section 10.1 or the placement of any signs in accordance with Section 27.6, Landlord's decision will be guided by the terms and conditions of the City's Historic Preservation Ordinance and other planning and regulatory documents governing properties located within the NAS Alameda Historic District.

27.24 Subdivision and Development of Property. Subject to Section 28.1 below, Tenant acknowledges that, without any form of representation or warranty, Landlord (or its successor) may cause the Property to be subdivided or existing parcels to be assembled to facilitate the sale, development or redevelopment of portions of Property which may or may not include those portions of the Property upon which the Building, Land and Parking Areas are located. Other than as contemplated in Section 28.1, Landlord shall not cause any such subdivision before the expiration of the Option Term without Tenant having exercised the Option or the Option otherwise having been terminated, and no such subdivision shall result in a material impairment of Tenant's rights under this Lease. As a material inducement for Landlord to enter into this Lease, Tenant agrees not to take any actions, oral or in writing, in opposition to such activities, or the planning thereof by Landlord (or its successor) unless such activity threatens to materially disrupt Tenant's rights under this Lease.

27.25 Environmental and Planning Documents. Tenant acknowledges that its use of the Premises and any Alterations thereto shall comply with the terms, conditions and requirements of: (a) the Environmental Impact Report for Alameda Point and the Mitigation Monitoring and Reporting Program adopted pursuant thereto; (b) the Master Infrastructure Plan; (c) the Town Center and Waterfront Precise Plan (as applicable); and (d) the Alameda Point Transportation Demand Management Plan. Compliance with the foregoing may include the payment of applicable fees and the preparation of a Compliance Strategy consistent with the Transportation Demand Management Plan.

27.26 Telecommunications Equipment. Tenant shall have the right to install and operate telecommunications or other equipment on the roof of the Building only if the same complies with the following:

(a) Compliance with Article 10. Tenant's installation of such equipment is done in full compliance with Article 10.

(b) RF Emissions Review and Annual Monitoring. No wireless telecommunication equipment shall be sited or operated on the Building in such a manner that it poses a threat to public health. To that end, no wireless telecommunication facility or combination of facilities on the Building shall produce at any time power densities that exceed the then applicable current FCC adopted standards for human exposure to radio frequency (RF) emissions.

(c) Changes to FCC standards. If the FCC modifies its RF standards applicable to the any wireless telecommunication equipment on the Building, Tenant shall ensure that said wireless telecommunication equipment are re-evaluated for compliance with the new standard(s), and a re-certification statement prepared by a an RF engineer or other State-licensed health physics professional shall be submitted by Tenant to Landlord prior to the effective date of the new FCC standard(s). If calculated levels of cumulative emissions or human exposure would exceed eighty percent (80%) of the new proposed FCC standard for Maximum Permissible Exposure Limits, then actual measurements shall be taken on site, at Tenant's expense, and the re-certification statement shall include statements of compliance with regard to both calculated and measured levels of exposure. If the report shows that the wireless telecommunication equipment would fail to comply with the new proposed FCC standard, then

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on the effective date of the change in FCC standards Tenant shall cause the cessation of use of said wireless telecommunication equipment until it can be demonstrated that the equipment complies with, or have been modified to achieve compliance with, the new FCC standard.

27.27 LIFOC. The United States of America, acting by and through the Department of the Navy (“**Government**”), is the owner of real and personal property commonly referred to as the former Naval Air Station Alameda (“**NAS Alameda**” or the “**Property**”), which was closed as a military installation and is subject to disposal pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1991, as amended (PUB, law No. 101-510). As surplus property, the Property may be leased to a state or local government pending final disposition of such property pursuant to the provisions of 10 U.S.C. 2667(g). Landlord and Government have agreed upon a method of conveyance of said Property as set forth in the Economic Development Conveyance Memorandum of Agreement (“**EDC MOA**”) dated June 6, 2000. Prior to the conditions for a deed transfer of the Property to Landlord having been met, immediate possession of all or portions of the Property was granted by the Government to Landlord’s predecessor in interest pursuant to a Lease in Furtherance of Conveyance dated June 6, 2000, as amended by that certain Amendment No. 1 to the Lease in Furtherance of Conveyance, dated November 28, 2000 and as further amended by 2 to the Lease in Furtherance of Conveyance, dated March 30, 2009 (collectively the “**LIFOC**”). Landlord has possession and control of the LIFOC Parcel (as defined at Section 2.2 above) pursuant to the LIFOC. On January 31, 2012, the Governing Board of the Alameda Reuse and Redevelopment Authority assigned its rights, assets, liabilities and obligations to the City of Alameda. On February 7, 2012, the City Council of the City of Alameda accepted the assignment. On March 9, 2012 the U.S. Department of Defense, Office of Economic Adjustment (“**OEA**”) acknowledged the City of Alameda as the Local Reuse Authority (“**LRA**”) for the former Alameda Naval Air Station. On April 4, 2012, the Department of the Navy acknowledged the City of Alameda had been recognized by the OEA as the LRA.

(a) Subordination to LIFOC. Notwithstanding anything to the contrary contained herein, this Lease as relates to the LIFOC Parcel shall be subject and subordinate to all of the terms of the LIFOC and Tenant acknowledges that Landlord’s rights to the LIFOC Parcel arise solely under the LIFOC and the EDC MOA. A copy of the LIFOC is available at: <http://alamedaca.gov/alameda-point/background-documents>, and the terms and conditions of the LIFOC are incorporated herein by this reference.

(b) Compliance with LIFOC. Landlord and Tenant hereby agrees as follows: (i) Tenant will not do or permit anything to be done in or about the LIFOC Parcel which will cause the occurrence of a default by Landlord under the LIFOC (provided that Tenant shall not be responsible for the activities of Landlord or the Government or any of their respective agents, employees or contractors), (ii) if the LIFOC expired or is terminated for any reason, Tenant’s license for the use of the LIFOC Parcel shall thereupon terminate, without any liability of Landlord to Tenant and without impairing the rights and obligations of the parties and Landlord and Tenant under any other terms of the Lease, as if such date were the scheduled expiration date of the Term.

(c) Default under LIFOC. Landlord shall have no liability to Tenant for Government’s default under the LIFOC. Tenant agrees that Landlord shall not be

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obligated to perform any of Government's obligations under the LIFOC, except to the extent that such obligations are expressly made obligations of Landlord under this Lease. Tenant further agrees that neither this Lease nor any obligation hereunder, including the payment of Rent, shall be affected by the Government's default under the LIFOC, except to the extent that the LIFOC is terminated, or unless such default causes Landlord to breach the covenant of quiet enjoyment in favor of Tenant contained herein. To the extent that the provision of any service or the performance of any maintenance or other act respecting the LIFOC Parcel Land is the responsibility of the Government under the LIFOC, upon Tenant's request, Landlord will use its commercially reasonable efforts to cause the Government to perform such obligations under the LIFOC.

(d) Interpretation. In the event of any conflict of the rights of Tenant under this Lease and the rights of Landlord under the LIFOC, the terms, conditions and covenants of LIFOC shall control.

(e) No Merger. Upon the exercise by Tenant of its Option and its purchase of the Option Property, the license to use the LIFOC Parcel granted under the terms by this Lease shall survive the conveyance of the Option Property until the earlier of the expiration or earlier termination of the license granted hereunder or the conveyance of the LIFOC Parcel as set forth in Section 28.12 below. Between the conveyance of the Option Property and the expiration or earlier termination of the license granted hereunder or the conveyance of the LIFOC Parcel, Tenant's continued use and occupancy of the LIFOC Parcel shall not be subject to any Base Rent but shall be subject to all of the other applicable terms and conditions of this Lease Agreement.

27.28 Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

## 28. OPTION TO PURCHASE.

28.1 Option. Subject to satisfaction of the Subdivision Condition as defined at Section 28.1(a) below (the "**Condition Precedent**"), Landlord grants to Tenant or a related entity assignee approved by Landlord an option to purchase ("**Option**") the real property including the Building and Parking Areas consisting of approximately 3.38 acres as more particularly described and depicted in **Exhibit H**, attached hereto and incorporated herein by this reference ("**Option Property**") upon all of the terms, covenants and conditions set forth in this Article. For purposes of this Article, Landlord may sometimes be referred to as "Optionor" and Tenant as "Optionee". If the Option is exercised and Optionee takes title to the Option Property, it shall thereafter be referred to as "Owner" and Optionor shall be referred to as the "City". This Option is personal to and may be exercised only by the entity identified as the Tenant in the Basic Lease Information or an assignee that is a Tenant Affiliate.

(a) Subdivision Condition. Optionee acknowledges that the Option Property has not been surveyed, subdivided or assigned an Assessor Parcel Number. This Option is therefore contingent upon the approval and filing for record of a final subdivision map or parcel map in compliance with California laws, including the Subdivision Map Act

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(Government Code sections 66410, et seq.) (the “**Subdivision Condition**”). Optionee agrees to undertake such actions as may be reasonably requested by Optionor to assist in the satisfaction of this condition. Optionee acknowledges that in satisfying such Subdivision Condition, Optionor may be required to reserve certain public easements for utilities and for emergency vehicle access and certain private easements for access to adjacent properties or buildings (as generally depicted, except for utility easements, on the Draft Tentative Map attached hereto as **Exhibit K**). The reservation of any such private access easements shall be accompanied by a Declaration of Reciprocal Easements (the “**REA**”) which shall be recorded with such parcel or subdivision map. The boundaries and permitted uses of any such private access easements shall also be subject to the prior approval of Optionee, which approval shall not unreasonably be withheld. The reservation of any public or private easements shall not affect the amount of the Purchase Price as specified at Section 28.3 below. Satisfaction of such Subdivision Condition may also require Optionee to comply with the City of Alameda’s Private Sewer Lateral ordinance, on-site wastewater collection system requirements of the Alameda Point Master Infrastructure Plan and such flood protection or insurance requirements deemed necessary by the Public Works Director.

(b) Notice of Completion of Subdivision Condition. The Condition Precedent to the Option shall be deemed satisfied by Optionor’s delivery of notice that the Subdivision Condition has been completed (“**Notice of Completion of Subdivision Condition**”). Said Notice of Completion of Subdivision Condition shall be delivered to Optionee in the manner provided in Article 25 of this Lease, and may be delivered at any time after the Commencement Date. The Notice of Completion of Subdivision Condition shall not bind Optionee to buy the Option Property, but shall instead serve as a notice to Optionee of the satisfaction of the Condition Precedent to its option rights.

28.2 Term. The term of this Option (“**Option Term**”) shall be for a period commencing upon the earlier of the first day of the twenty fifth full calendar month of the Term or the date Optionor delivers its Notice of Completion of Subdivision Condition (“**Option Commencement Date**”) and, unless earlier exercised or terminated pursuant to the terms and conditions set forth below, terminate at midnight on the last day of the Twenty Fourth (24th) calendar month following delivery of the Notice of Completion of Subdivision Condition (“**Option Termination Date**”).

28.3 Purchase Price. The purchase price for the Option Property (“**Purchase Price**”) shall be Ten Million Three Hundred Thousand Dollars (\$10,300,000). The Purchase Price shall be paid by Optionee in cash, to Escrow Holder (as defined at Section 28.7 below) in good, same day funds, or before the Closing Date.

28.4 Exercise of Option.

(a) Notice. Provided that the (i) Optionee is not in Default under this Lease; (ii) Optionor has given its Notice of Completion of Subdivision Condition, the Option may be exercised by Optionee at any time thereafter during the Option Term described in Section 28.2 above. The Option shall be exercised by written notice (“**Option Notice**”) delivered by Optionee to Optionor on or before the Option Termination Date unconditionally stating Optionee’s exercise of the Option. Said notice shall identify a Closing Date, which Closing Date shall be a date which is not more than ninety (90) days from and after the delivery

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of the Option Notice unless the parties agree in writing to further extend the Closing Date. The Option Notice shall be delivered to Optionor in a manner provided for in Article 25 of the Lease. If Optionee delivers its Option Notice before Optionor delivers its Notice of Completion of Subdivision Condition, then Optionee shall be deemed to have agreed to accept a conveyance of the Option Property by a metes and bounds description, subject to the same reserved easements and Restrictions, compliance with the Private Sewer Lateral Ordinance, flood protection insurance and such other obligations as would be imposed on Optionee in the event of a subdivision.

(b) Binding Agreement. Upon due and timely delivery of the Option Notice in accordance with Section 28.4(a), Optionee shall become obligated to buy and Optionor shall become obligated to sell, the Option Property, upon and subject to the terms and conditions of this Article. If the Option is not timely exercised as provided in Section 28.4(a) above, the Option shall irrevocably terminate, and Optionee shall have no further right to purchase the Option Property.

#### 28.5 Condition of Option Property and Risk of Loss.

(a) Risk of Loss. Until the Close of Escrow, the risk of any loss or damage to the Option Property shall be governed by the terms and conditions of this Lease. The risk of loss or damage to the Option Property shall pass to Optionee upon the recordation of the Quitclaim Deed on the Closing Date.

(b) Property Sold in an "As-Is" Condition "With All Faults". Optionor and Optionee mutually acknowledge and agree that the Option Property is being sold in an "As-Is" condition "with all faults" known or unknown, contingent or existing, and without any representation or warranty by Optionor as to its fitness for any purpose. Optionee has the sole responsibility to fully inspect the Option Property, to investigate all matters relevant thereto and to reach its own independent evaluation of the risks (environmental or otherwise) or rewards associated with the ownership of the Option Property. Effective as of the Closing Date, except as otherwise expressly set forth herein, Optionee hereby waives and releases the Landlord Related Parties (as defined at Section 14.1 above) and their successors and assigns from and against any claims, obligations or liabilities arising out of or in connection with the physical condition of the Option Property.

(c) Waiver of Environmental Conditions. To the fullest extent permitted by law, and except as expressly set forth in this Lease, Optionee does hereby unconditionally waive and release the Landlord Related Parties from any present or future claims and liabilities of any nature arising from or relating to the presence or alleged presence of Hazardous Materials (as defined at Section 12.1 above) in, on, at, from, under, or about the Option Property including, without limitation, any claims under or on account of any Hazardous Materials Laws regardless if other such Hazardous Materials are located in, on, at, from, under, or about the Option Property prior to or after the date hereof. Upon the giving of Option Notice in accordance with Section 28.4 above, Optionee shall be deemed to have expressly released Optionor from any Remediation Obligations under Section 12.3 of this Lease.

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(d) Waiver of Natural Hazards. Optionee further acknowledges that "Natural Hazards" described in the following California Code Sections ("**Natural Hazards Laws**") may affect the Option Property: Government Code sections 8589.4; 8589.3; Government Code sections 51183.4; Public Resource Code section 2621.9; and Public Resource Code section 4136. Optionee acknowledges and agrees that Optionee has had the opportunity independently to evaluate and investigate whether any or all such Natural Hazards affect the Option Property, and Optionor shall have no liabilities or obligations with respect thereto. Without limiting the foregoing, Optionee acknowledges and agrees that Optionee knowingly and intentionally waives and releases Optionor from any disclosures, obligations, or requirements of Optionor with respect to Natural Hazards, including, without limitation, any disclosures, obligations, or requirements, under the aforementioned code sections or under Article 1.5 section 1102, et seq. of the California Civil Code.

(e) Waiver of Energy Consumption Disclosure. Optionee acknowledges that it will have been in possession of the Option Property and will have contracted directly with the providers of any Utilities in accordance with Section 8.1 of the Lease prior to the Option Effective Date and, to the extent that Optionor may have any energy use disclosure requirements under California Public Resource Code section 25402.10 and any implementing regulations promulgated pursuant thereto, Optionee does hereby unconditionally waive and release Optionor from any such disclosure requirements.

28.6 Title. Upon and subject to Close of Escrow, Optionor shall convey title to the Option Property to Optionee by quitclaim deed, free of monetary encumbrances other than taxes or assessments. Optionee acknowledges that the Option Property will be conveyed subject only to all of the Restrictions as described at section 6.3 of this Lease, such public and private easements as described at Section 28.1(a), the Environmental Planning Documents described at Section 27.25, and the REA.

28.7 Closing.

(a) Establishment of Escrow. Concurrent with the delivery of its Option Notice, Optionee shall establish an escrow with Chicago Title Company, One Kaiser Plaza, Suite 745, Oakland, CA 94612 ("**Escrow Holder**" or "**Title Company**") and shall promptly give Optionor notice of the escrow number for this transaction.

(b) Time. The "**Closing Date**" or "**Close of Escrow**" or "**Closing**" shall mean and refer to the date of the close of escrow, which shall occur through Escrow Holder.

(c) Deposit of Documents by Optionor. On or before the Closing Date, Optionor shall deposit with Escrow Holder:

(i) a duly executed and acknowledged quitclaim deed conveying the Option Property to Optionee;

(ii) an Assignment and Assumption (the "Assignment") executed by Optionor conveying to Optionee any intangible property, the Lease and service contracts.

(iii) written instructions to Escrow Holder instructing the Escrow Holder to close the escrow in accordance with the terms of this Article;

(iv) any other documents as may be reasonably requested by Optionee or the Escrow Holder as may be necessary to consummate the transaction including, but not limited to, any statement of information requested by the Escrow Holder.

(d) Deposit of Documents and Money by Optionee. On or before the Closing Date, Optionee shall deposit with Escrow Holder:

(i) the Purchase Price in cash, increased or reduced, as the case may be, by Optionee's share of the closing costs and other prorations;

(ii) written instructions to the Escrow Holder instructing the Escrow Holder to close the escrow in accordance with the terms of this Article; and

(iii) any other documents or money as may be reasonably requested by the Optionor or the Escrow Holder as necessary to consummate the transaction.

(e) Closing. Escrow shall close by:

(i) recording the quitclaim deed conveying the Option Property to Optionee;

(ii) payment of the Purchase Price to Optionor, less Optionor's share of closing costs and prorations as required by this Article; and

(iii) obtaining from the Title Company for Optionee an owner's policy of title insurance in form and with endorsements designated by Optionee in the amount of the Purchase Price showing title to the Option Property vested of record as of the Closing Date in Optionee.

(f) Closing Costs and Prorations.

(i) Closing Costs. Optionor and Optionee shall each pay one half (1/2) of all escrow fees.

Optionee shall pay:

A. All premium costs and expenses incurred in connection with any policy of title insurance obtained by or on behalf of Optionee; and

B. 50% of any real estate transfer tax.

C. The expense of its own counsel.

NSM

D. Any other closing costs not specified herein shall be divided equally between the parties.

Optionor shall pay:

E. 50% of any real estate transfer tax.

F. The expense of its own counsel.

(ii) Prorations and Adjustments. The following shall be prorated and adjusted between Optionor and Optionee as of the Closing Date, except as otherwise specified:

A. It is acknowledged that prior to the Closing Date, the Option Property has not been subject to ad valorem taxes or assessments thus no proration of such taxes is required. The foregoing notwithstanding, Optionee shall remain solely responsible for payment of any Personal Property Taxes or possessory interest taxes in accordance with Sections 9.2 and 9.3 of this Lease;

B. All maintenance and repair obligation and expenses of Landlord pursuant to Section 11.2 of the Lease shall be prorated effective as of 11:59 pm on the day prior to the Closing Date. If the exact amount of any item to be prorated is not known as of the Closing Date, the proration shall be based upon a reasonable estimate thereof made by Optionor and Optionee, and, as soon after the Closing as the exact amount of the item is known, the proration shall be adjusted.

C. There shall be credited against the Purchase Price the amount of any Base Rent paid and attributable to the period from and after the Closing as prorated based upon the number of days in the month in which the Closing occurs.

28.8 Infrastructure Financing. As additional consideration for the rights and obligations of the parties under this Article 28, Optionee agrees on behalf of itself and any successors and assigns that it will not oppose and will vote in favor of the formation of any City of Alameda Community Financing Districts or other special tax districts for infrastructure, municipal services, transportation, parking, community benefit and geological hazard abatement districts. The parties hereto acknowledge that the Purchase Price includes an allocated share of the cost of backbone infrastructure improvements as set forth in the Alameda Point Master Infrastructure Plan and, except as otherwise provided herein, Optionor agrees to exempt the Option Property from bonds or other assessments made for purposes of such backbone infrastructure improvements and any development impact fees that may otherwise be assessed for the Renovation Work (as described in **Exhibit G**). The foregoing notwithstanding, Optionor and Optionee agree that while the Option Property may be subject to bonds or other assessments for certain City of Alameda Community Financing Districts for other items, the total amount of fees, special taxes or assessments arising therefrom, combined with all other ad valorem taxes shall not create an overall combined tax rate in excess of 1.6% of the value of the Option Property from time to time. This cap on the overall combined tax rate shall survive Closing by Optionee on the Option Property.

28.9 Infrastructure Improvements.

(a) Plan Approval. The Renovation Work (as defined in **Exhibit G**) will require certain off site infrastructural improvements (the “**Infrastructure Improvements**”). Optionee may elect to perform some of said Infrastructure Improvements as an element of, or in conjunction with, the Renovation Work. Optionee understands and agrees that any Infrastructure Improvements must be done in full compliance with the Alameda Point Master Infrastructure Plan (“**MIP**”). Engineering and other plans for any such Infrastructure Improvements shall be prepared consistent with the then current City of Alameda submittal requirements and may be subject to review and approval by the City and utility agencies, including EBMUD and AMP to ensure consistency with the MIP and their then current regulations. All construction documents and final reports for any Infrastructure Improvements shall be processed through the City’s Permit Center, EBMUD, AMP and any other approving agency. The costs associated with Public Works Department, EBMUD and AMP’s review of plans, reports and details are included in the cost estimates included in Appendix G to the MIP.

(b) Infrastructure Improvements Credit. At Closing, One Million Eight Hundred Thousand Dollars (\$1,800,000) of the Purchase Price (the “**Infrastructure Credit Amount**”) shall be allocated by Optionor and held by the City in an account to be known as the “**Infrastructure Improvements Account.**” The Infrastructure Improvements Account will earn interest at the Local Agency Investment Rate as defined in Section 1.1(a) of **Exhibit G**. At any time after completion by Owner and approval by the City or any other approving agency (as defined at section 28.9 below) of the Infrastructure Improvements, but not later than twelve (12) months after Closing, Owner may submit documentation of the costs of Infrastructure Improvements Credit Items and, in increments of not less than One Hundred Thousand (\$100,000) each, the City shall reimburse Owner from the Infrastructure Improvements Account the amount of any such documented invoices within twenty (20) business days after receipt thereof. Any amount remaining in the Infrastructure Improvements Account at the end of twenty-fourth (24th) full calendar month after Closing shall then be transferred to an Alameda Point Development Infrastructure Fund for general application to infrastructure work at Alameda Point in accordance with the MIP.

(c) Infrastructure Improvements Credit Items. Owner may receive reimbursement only for the following items and costs incurred by it (collectively the “**Infrastructure Improvements Credit Items**”) and no other costs incurred by Owner may qualify for reimbursement hereunder. The Essential Infrastructure Improvements Credit Items shall consist of:

(i) Payment of all fees and costs for any architect or engineer, contractor or other consultants in connection with the design and construction of the Infrastructure Improvements;

(ii) The payment of plan check, permit, inspection and license fees relating to construction of the Infrastructure Improvements;

(iii) Insurance, bonding or similar costs relating to construction of the Infrastructure Improvements; and



(iv) Sales and/or use taxes.

28.10 Brokers Commission. Optionor and Optionee acknowledge and agree that the representations, warranties, rights and obligations set forth in Section 27.7 (Brokers) apply to any exercise of the Option under this Article 28.

28.11 Termination of Option upon Default. No attempt to exercise this Option pursuant to Section 28.4 shall be effective if Optionee, as Tenant under this Lease, is in Default beyond any notice and cure period under the terms and conditions of this Lease as of the date of giving said Option Notice, or at any time subsequent thereto prior to Close of Escrow. If this Lease is terminated prior to Close Escrow as the result of a Default by Optionee as Tenant under the Lease, this Option shall be terminated.

28.12 Exchange. Optionee shall be permitted to assign its obligations under this Agreement to an intermediary for the purpose of effectuating a reverse tax-deferred exchange or multiple reverse tax-deferred exchanges, so long as such assignment shall not (a) delay or extend the Closing Date, or (b) require Optionor to assume any additional obligations, incur any out-of-pocket expenses, or take title to any other property. Optionor shall not be, in any way, responsible or liable for the tax or other consequences of any tax-deferred exchanges (or attempted tax-deferred exchanges) effected by Optionee. Optionor agrees, upon request of Optionee, to execute an acknowledgement and consent to such assignment.

28.13 Conveyance of LIFOC Parcel. Optionor shall use commercially reasonable efforts to enforce its right to acquire the LIFOC Parcel from the Government in accordance with the terms of the EDC MOA and this Agreement. Optionor shall not amend the provisions of the EDC MOA that affects the LIFOC Parcel without Optionee's prior written consent, which should not be unreasonably withheld, conditioned or delayed. Within twelve (12) months after the Government conveys the LIFOC Parcel, Optionor shall immediately convey same to Optionee. It is agreed that the Purchase Price for the Option Property is adequate consideration for the future conveyance of the LIFOC Parcel from Optionor to Optionee. Within said twelve (12) month period, Optionor shall further, at its sole cost and expense, cause the LIFOC Parcel to be merged with the Option Property in accordance with the terms of the Subdivision Map Act (Government Code §§ 66410-66413.5). For purposes of any rights or obligations of the parties arising under this Lease, once merged, the LIFOC Parcel shall be construed as being a part of the Option Property. Optionee shall reasonably cooperate with Optionor in effectuating such merger.

## 29. RIGHT OF FIRST OFFER.

If Tenant fails to exercise its Option during the Option Term and, thereafter during the initial Term (but not any renewal Term), Landlord intends to offer the subdivided Option Property, as a stand-alone parcel (the "ROFO Parcel") for sale to an unaffiliated third party or if Landlord receives an offer from an unaffiliated third party to purchase the ROFO Parcel on terms acceptable to Landlord, Landlord will first offer Tenant the right to purchase the ROFO Parcel by sending to Tenant a written notice of the specific terms of the offer to sell or purchase. The offer will include the price (the "Offering Amount"), payment terms, conditions of title, costs of escrow and other relevant terms. Tenant will have fifteen (15) calendar days after receipt of the

*KS*

notice to exercise its right to purchase by providing written notice to Landlord. If Tenant exercises the right to purchase, the closing will occur within sixty (60) days after the date of Tenant's notice. If Tenant does not elect to accept the offer or fails to provide notice within the fifteen (15) day period, Landlord may offer to sell the ROFO Parcel to a third party on substantially the terms and conditions provided in Landlord's notice to Tenant. If Landlord does not complete the sale on substantially the terms in the notice to Tenant (for not less than ninety percent (90%) of the Offering Amount) in one hundred eighty (180) days, and if Landlord determines again that Landlord desires to offer the ROFO Parcel for sale, Landlord must again comply with the terms of this Article 29 and Tenant will again have the right of first offer in this Article 29.

Landlord and Tenant have executed this Lease as of the day and year first above written.

**LANDLORD:**

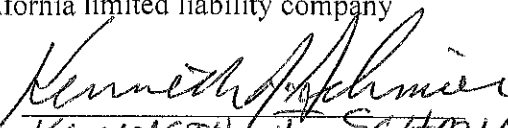
City of Alameda,  
a charter city and municipal corporation

By: \_\_\_\_\_  
Elizabeth D. Warmerdam  
Interim City Manager

Date: \_\_\_\_\_

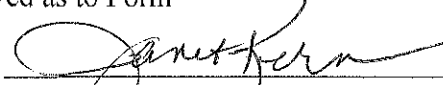
**TENANT:**

Alameda Point Redevelopers, LLC  
a California limited liability company

By:   
Name: KENNETH J. SCHMIER  
Title: MANAGING MEMBER

Date: 2/4/2016

Approved as to Form

By:   
Janet Kern  
City Attorney

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

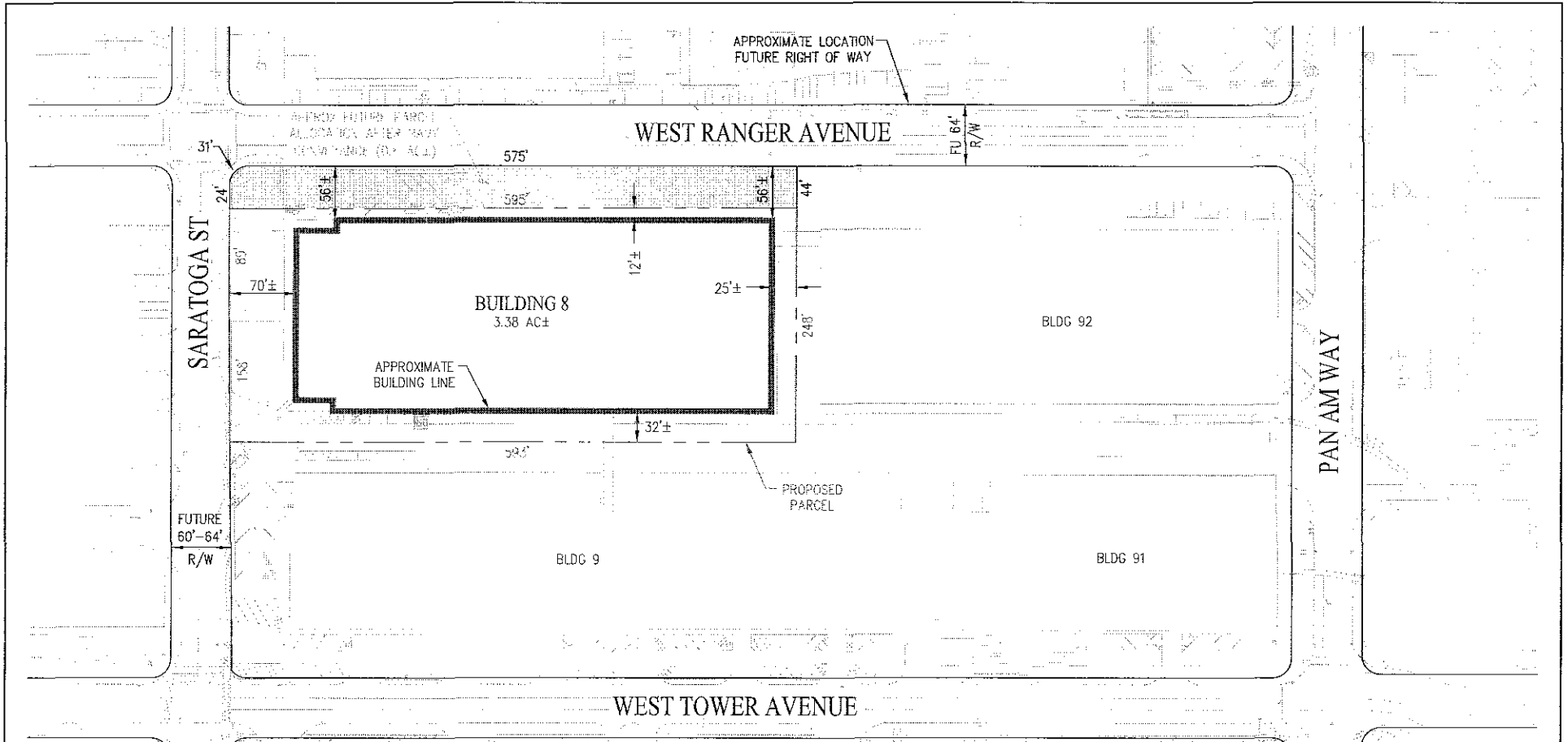
Date: \_\_\_\_\_

**EXHIBIT A**

**PREMISES**

123

Exhibit A: Premises



ALAMEDA POINT  
BUILDING 8

CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA  
DATE: DECEMBER 14, 2015 SCALE: 1" = 100'



	Carlson, Barbee & Gibson, Inc. CIVIL ENGINEERS - SURVEYORS - PLANNERS
	2033 DOWNEY AVENUE, SUITE 201 DOWNEY, CALIFORNIA 90241

6/20



**EXHIBIT A-1**

**LAND AREA**

*MS*

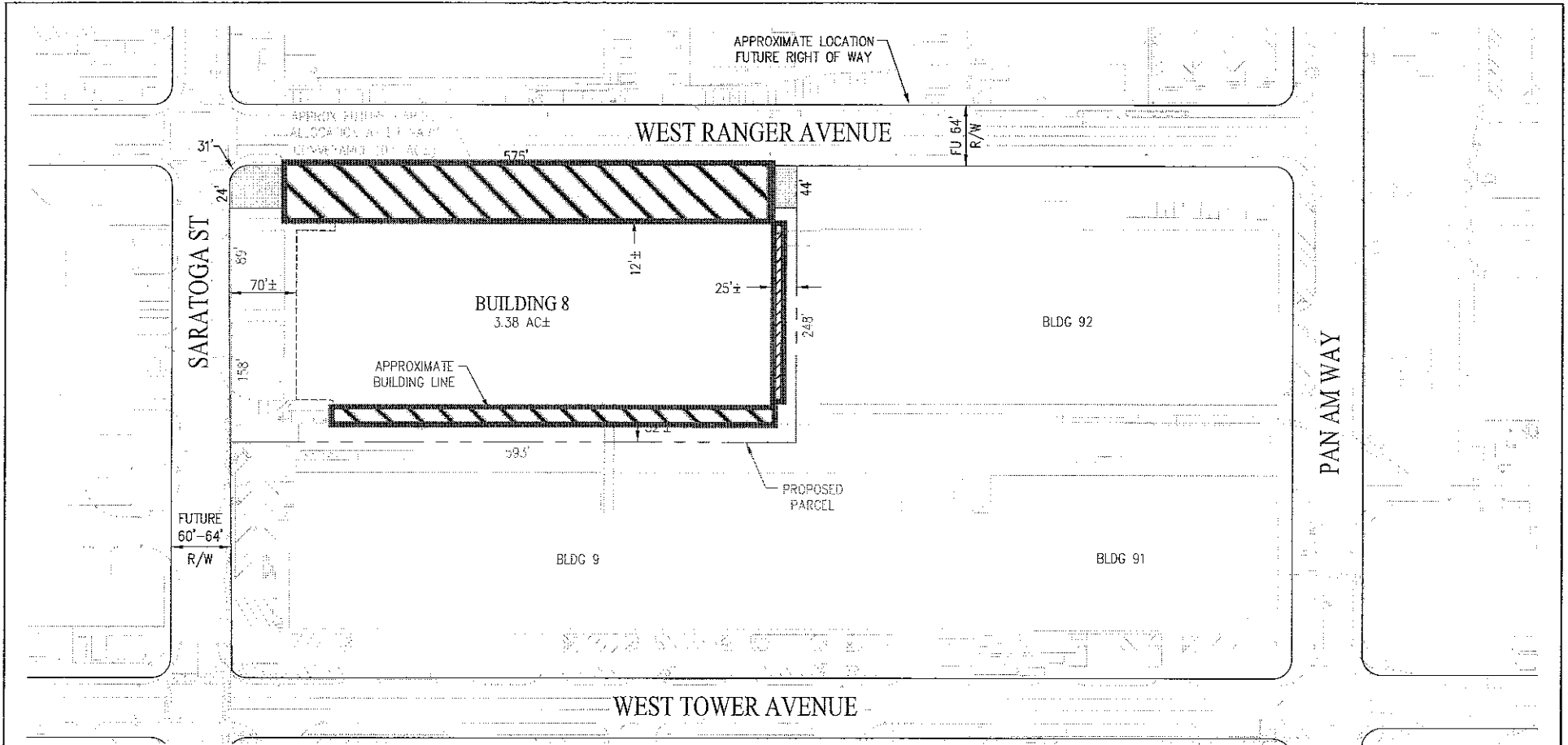


**EXHIBIT A-2**

**PARKING**

*KTS*

# Exhibit A-2: Parking Area



155

## ALAMEDA POINT BUILDING 8

CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA  
DATE: DECEMBER 14, 2015 SCALE: 1" = 100'

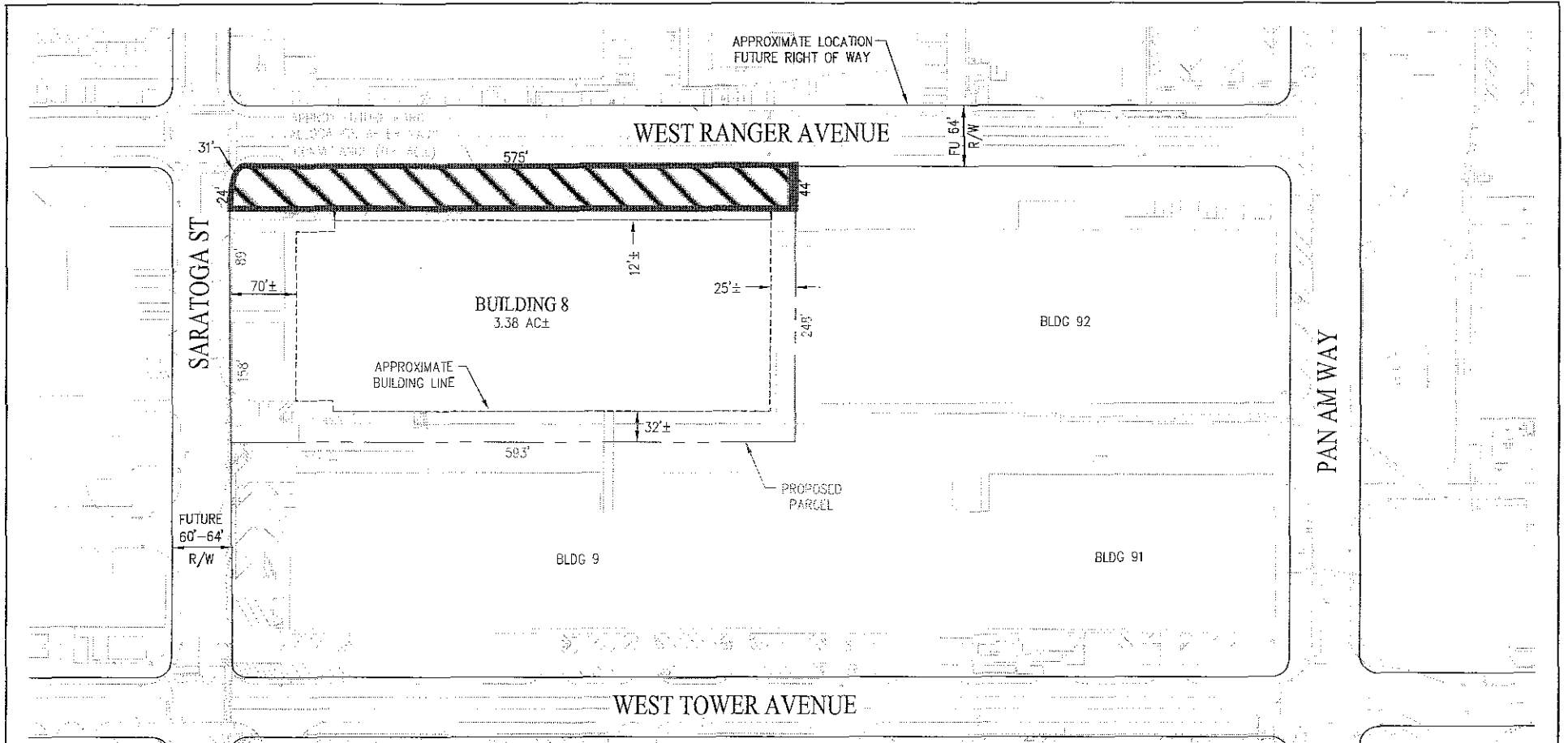


**cbs**  
Carlson, Barbois  
& Gibson, Inc.  
CIVIL ENGINEERS - SURVEYORS - PLANNERS  
2015 COUNTY BOARDING OFFICE, 101  
14TH FLOOR, 101 FORTIN BLVD  
14750 14TH AVE  
WWW.CBSINC.COM

**EXHIBIT A-3**  
**LIFOC PARCEL**

*1/10/23*

Exhibit A-3: Lifoc Parcel



ALAMEDA POINT  
BUILDING 8

CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA  
DATE: DECEMBER 14, 2015 SCALE: 1" = 100'



	Carlson, Barbee & Gibson, Inc.
	CIVIL ENGINEERS • SURVEYORS • PLANNERS
2625 CALIFORNIA HIGHWAY, SUITE 200 SAN FRANCISCO, CALIFORNIA 94134	415.766.8222 www.cbsg.com

*Handwritten initials/signature*

**EXHIBIT B  
COMMENCEMENT LETTER**

Date: \_\_\_\_\_

Re: Lease dated as of \_\_\_\_\_, 2016, by and between City of Alameda, as Landlord, and \_\_\_\_\_, a \_\_\_\_\_, as Tenant, for \_\_\_\_\_ rentable square feet in the Building \_\_\_\_\_ located at \_\_\_\_\_, Alameda, California.

Dear \_\_\_\_\_:

In accordance with the terms and conditions of the above referenced Lease, Tenant accepts possession of the Premises and agrees:

1. The Commencement Date of the Lease is \_\_\_\_\_;
2. The Expiration Date of the Lease is \_\_\_\_\_.

Please acknowledge your acceptance of possession and agreement to the terms set forth above by signing all 3 counterparts of this Commencement Letter in the space provided and returning 2 fully executed counterparts to my attention.

Sincerely	Agreed and Accepted:
Landlord: City of Alameda  By: _____ Name: _____ Title: _____	Tenant: _____  By: _____ Name: _____ Title: _____

[Exhibit Do not sign]

*KVS*

**EXHIBIT C**  
**RENEWAL NOTICE**

Date: \_\_\_\_\_

Re: Lease dated as of \_\_\_\_\_, 2016, by and between City of Alameda, as Landlord, and  
\_\_\_\_\_, a \_\_\_\_\_, as Tenant.

Dear \_\_\_\_\_:

In accordance with Section 3.4 (a) of the above referenced Lease, by this notice Tenant hereby irrevocably exercises its Renewal Option for the Renewal Term, at the Renewal Rate and upon the terms and conditions specified in Section 3.4.

Sincerely;

\_\_\_\_\_  
[Name of Tenant]

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

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

[Exhibit Do not sign]

KTS



**EXHIBIT D**

**ACKNOWLEDGMENT OF RECEIPT**

Pursuant to that certain Lease Agreement entered into by and between City of Alameda, a charter city and municipal corporation ("Landlord") and Alameda Point Redevelopers, LLC, a California limited liability company ("Tenant") dated as of February \_\_\_, 2016 ("Lease") Tenant hereby acknowledges that Landlord has provided it with copies of the following documents:

- Quitclaim Deed from the United States of America, acting by and through the Department of the Navy to the City of Alameda, dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199806 of Official Records in the Office of the County Recorder, Alameda County, California ("Quitclaim Deed");
- Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199782 in the Office of the County Recorder of Alameda County ("Declaration of Restrictions").

Pursuant to Section 6.3 of the Lease, Tenant acknowledges receipt of the above referenced documents and agrees that its use of the Premises (as defined in the Lease) shall comply with the restrictions set forth in said documents and failure to do so shall constitute a Default under the Lease.

Alameda Point Redevelopers, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

KTS

**EXHIBIT E**

**ENVIRONMENTAL QUESTIONNAIRE**

The purpose of this form is to obtain information regarding the use, if any, of hazardous substances in the process proposed on the premises to be leased. Any such use must be approved in writing by Landlord. Prospective tenants should answer the questions in light of their proposed operations on the premises. Existing tenants should answer the questions as they relate to ongoing operations on the premises and should update any information previously submitted. If additional space is needed to answer the questions, you may attach separate sheets of paper to this form.

Your cooperation in this matter is appreciated. Any questions should be directed to, and when completed, the form should be mailed to:

PM Realty Group L.P.  
Attn: Property Manager  
101 West Atlantic Avenue  
Alameda, California 94501  
(510) 749-0304; (510) 749-1095 fax

1. General Information.

Name of Responding Company: \_\_\_\_\_

Check the Applicable Status: \_\_\_\_\_

Prospective Tenant  Existing Tenant

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_

Alameda Point Address of Proposed Premises to be Leased: \_\_\_\_\_

\_\_\_\_\_

Length of Lease Term: \_\_\_\_\_

Your Standard Industrial Classification (SIC) Code Number: \_\_\_\_\_

Describe the proposed operations to take place on the property, including principal products manufactured, services and a brief process flow description to be conducted. Existing tenants should describe any proposed changes to ongoing operations.

\_\_\_\_\_

\_\_\_\_\_

2. Use and/or Storage of Hazardous Materials.

KJS

2.1 Will any hazardous materials be used or stored onsite?

Hazardous Wastes                      Yes                       No   
Hazardous Chemical Products      Yes                       No

2.2 Attach the list of any hazardous materials/wastes to be used, stored, or generated the quantities that will be onsite at any given time, and the location and method of storage (e.g., 55-gallon drums on concrete pad).

2.3 Does your company handle hazardous materials in a quantity equal to or exceeding an aggregate of 500 pounds, 55 gallons, or 200 cubic feet?

Yes                       No

If yes please provide Material Safety Data Sheets (MSDS) on such materials.

2.4 Has your business filed for a Consolidated Hazardous Materials Permit from the Alameda County Environmental Management Department?

Yes                       No

If so, attach a copy of the permit application.

2.5 Are any of the chemicals used in your operations regulated under Proposition 65?

Yes                       No

If so, describe the actions taken, or proposed to be taken, to comply with Proposition 65 requirements. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2.6 Do you store or use or intend to store or use acutely hazardous materials above threshold quantities requiring you to prepare a risk management plan (RMP)?

Yes                       No

2.7 Describe the procedures followed to comply with OSHA Hazard Communication Standard requirements. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

3. Storage Tanks and Pumps.

3.1 Are any above or below ground storage of gasoline, diesel, or other hazardous substances in tanks or pumps being used as a part of your present process or proposed for use on this leased premises?

Yes                       No

If yes, describe the materials to be stored, and the type, size and construction of the pump or tank. Attach copies of any permits obtained for the storage of such substances. \_\_\_\_\_

KJY

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3.2 If you have an above ground storage tank (AST), do you have a spill prevention containment and countermeasures (SPCC) plan?

Yes  No  Not Applicable

3.3 Have any tanks, pumps or piping at you existing facilities been inspected or tested for leakage?

Yes  No  Not Applicable

If so, attach the results.

3.4 Have any spills or leaks occurred from such tanks, pumps or piping?

Yes  No  Not Applicable

If so, describe. \_\_\_\_\_

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3.5 Were any regulatory agencies notified of any spills or leaks?

Yes  No  Not Applicable

If so, attach copies of any spill reports filed, any clearance letters or other correspondence from regulatory agencies relating to the spill or leak.

3.6 Have any underground storage tanks, sumps or piping been taken out of service or removed at the proposed facility or facilities that you operate?

Yes  No  Not Applicable

If yes, attach copies of any closure permits and clearance obtained from regulatory agencies relating to closure and removal of such tanks.

4. Spills.

4.1 During the past year, have any spills occurred on any site you occupy?

Yes  No  Not Applicable

If so, please describe the spill and attach the results of any process conducted to determine the extent of such spills.

4.2 Were any agencies notified in connection with such spills?

Yes  No  Not Applicable

If no, attach copies of any spill reports or other correspondence with regulatory agencies.

4.3 Were any clean-up actions undertaken in connection with the spills?

Yes  No  Not Applicable

If so, briefly describe the actions taken. Attach copies of any clearance letters obtained from any regulatory agencies involved and the results of any final soil or

KJH

groundwater sampling done upon completion of the clean-up work \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Waste Management.

5.1 Has your business filed a Hazardous Material Plan with the Alameda County Environmental Management Department?

Yes  No

5.2 Has your company been issued an EPA Hazardous Waste Generator I.D. Number?

Yes  No

If yes: EPA ID# \_\_\_\_\_

5.3 Has your company filed a biennial report as a hazardous waste generator?

Yes  No

If so, attach a copy of the most recent report filed.

5.4 Are hazardous wastes stored in secondary containments?

Yes  No

5.5 Do you utilize subcontractors for lighting/electrical, plumbing, HVAC, pest services, landscaping and/or building maintenance services?

Yes  No

If yes, do any of these subcontractors store, mix or utilize chemicals on site?

Yes  No

If yes, what types and quantities? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attach the list of the hazardous waste, if any, generated or to be generated at the premises, its hazard class and the quantity generated on a monthly basis.

Describe the method(s) of disposal for each waste. Indicate where and how often disposal will take place. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Indicate the name of the person(s) responsible for maintaining copies of hazardous waste manifests completed for offsite shipments of hazardous waste. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*KTS*

Is any treatment, processing and recycling of hazardous wastes currently conducted or proposed to be conducted at the premises:

Yes  No

If yes, please describe any existing or proposed treatment, processing or recycling methods. \_\_\_\_\_  
\_\_\_\_\_

**Attach copies of any hazardous waste permits or licenses issued to your company with respect to its operations on the premises.**

6. Wastewater Treatment/Discharge.

6.1 Will your proposed operation require the discharge of wastewater to (answer Yes or No to each of the following)?

\_\_\_\_\_ storm drain                      \_\_\_\_\_ sewer  
\_\_\_\_\_ surface water                      \_\_\_\_\_ no industrial discharge

6.2 Does your business have a Sewer Use Questionnaire on file with Alameda County Sanitation District?

Yes  No

6.3 Is your wastewater treated before discharge?

Yes  No  Not Applicable

If yes, describe the type of treatment conducted.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6.4 Does your business conduct operations outside the building or store materials outside?

Yes  No  Not Applicable

6.5 Do you have a Storm Water Pollution Prevention Plan (SWPPP)?

Yes  No  Not Applicable

6.6 Does your business have a General Permit for storm water discharge associated with industrial activity?

Yes  No  Not Applicable

6.7 Does your business operate under a National Pollution Discharge Elimination System (NPDES) Permit?

Yes  No  Not Applicable

**Attach copies of any wastewater discharge permits issued to your company with respect to its operations on the premises.**

*RTS*

7. Air Discharges.<sup>1</sup>

7.1 Do you have or intend to have any air filtration systems or stacks that discharge into the air?

Yes  No

7.2 Do you operate or plan to operate any of the following types of equipment, or any other equipment requiring an air emissions permit (answer Yes or No to each of the following)?

Spray booth	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Dip tank	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Drying oven	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Incinerator	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Other (please describe)	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Boiler	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
I/C Engine	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Emergency Backup Generator	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Processes that apply coatings, inks, adhesives or use solvents	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

7.3 Do you emit or plan to emit any toxic air contaminants?

Yes  No

7.4 Are air emissions from your operations monitored?

Yes  No

If so, indicate the frequency of monitoring and a description of the monitoring results. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Attach copies of any air emissions permits pertaining to your operations on the premises.**

8. Enforcement Actions, Complaints.

8.1 Has your company, within the past five years, ever been subject to any agency enforcement actions, administrative orders, or consent decrees?

Yes  No

If so, describe the actions and any continuing compliance obligations imposed as a result of these actions. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> NOTE: Businesses will have to comply with prohibitory rules regardless of whether they have or need a permit.

*RTS*

8.2 Has your company ever received requests for information, notice or demand letters, or any other inquiries regarding its operations?

Yes  No

8.3 Have there ever been, or are there now pending, any lawsuits against the company regarding any environmental or health and safety concerns?

Yes  No

8.4 Has any environmental audit ever been conducted at your company's current facility?

Yes  No

If so, discuss the results of the audit. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8.5 Have there been any problems or complaints from neighbors at the company's current facility?

Yes  No

Please describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**The undersigned hereby certifies that all of the information contained in this questionnaire is accurate and correct.**

\_\_\_\_\_ a \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

K55



## EXHIBIT F

### RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the non-performance of any of said Rules and Regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Building. In the event of any conflicts between the Rules and Regulations and other provisions of this Lease, the latter shall control.

1. No advertisements, pictures or signs of any sort shall be displayed on or outside the Premises or Building without the prior written consent of Landlord. This prohibition shall include any portable signs or vehicles placed within the parking lot, common areas or on streets adjacent thereto for the purpose of advertising or display. Landlord shall have the right to remove any such unapproved item without notice and at Tenant's expense.

2. Storage of forklift propane tanks, whether interior or exterior, shall be in secured and protected storage and enclosure approved by the local fire department and, if exterior, shall be located in areas specifically designated by Landlord. Tenant shall protect electrical panels and building mechanical equipment from damage from forklift trucks.

3. Machinery, equipment and apparatus belonging to Tenant which causes noise or vibration that may be transmitted to the structure of the Building to such a degree as to be objectionable to Landlord or other tenants or to cause harm to the Building, shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate the transmission of such noise and vibration. Tenant shall cease using any such machinery which causes objectionable noise and vibration which cannot be sufficiently mitigated.

4. All goods, including materials used to store goods, delivered to the Premises shall be immediately moved into the Premises and shall not be left in parking or exterior loading areas overnight, except as otherwise authorized by Landlord during construction of the Renovation Work as described in the Tenant Work Letter.

5. Tractor trailers which must be unhooked or parked with dolly wheels beyond the concrete loading areas must use steel plates or wood blocks of sufficient size to prevent damage to the asphalt paving surfaces. No parking or storage of such trailers will be permitted in the auto parking areas adjacent to the Premises or on streets adjacent thereto, except as otherwise authorized by Landlord during construction of the Renovation Work as described in the Tenant Work Letter.

6. Tenant is responsible for the safe storage and removal of all pallets. Pallets shall be stored behind screen enclosures at locations approved by Landlord, except as otherwise authorized by Landlord during construction of the Renovation Work as described in the Tenant Work Letter.

7. Tenant shall not store or permit the storage of merchandise in or around the common areas surrounding the Premises.

K59

8. Tenant is responsible for the storage and removal of all trash and refuse. All such trash and refuse shall be contained in suitable receptacles stored behind screen enclosures at locations approved by Landlord.

9. Tenant shall not overload the floor of the Premises.

10. No awnings or other projections over or around the windows or entrances of the Premises shall be installed by any tenant without the prior written consent of Landlord.

11. Tenant hereby acknowledges that Landlord shall have no obligation to provide guard service or other security measures for the benefit of the Premises or Building. Tenant hereby assumes all responsibility for the protection of Tenant and its agents, employees, contractors, invitees and guests, and the property thereof, from acts of third parties, including keeping doors locked and other means of entry to the Premises closed.

12. No auction, liquidation, fire sale, going out of business or bankruptcy sale shall be conducted in or about the Premises without the prior written consent of Landlord.

13. Tenant, Tenant's agents, employees, contractors, licensees, or visitors shall not park any vehicles in driveways, service entrances, or areas posted as no parking.

14. If the Premises are or become infested with vermin as a result of the use or any misuse or neglect of the Premises by Tenant, its agents, employees, contractors, visitors or licensees, Tenant shall forthwith, at Tenant's expenses, cause the same to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord.

15. Tenant, its employees and agents shall not loiter in or on the entrances, sidewalks, or any common areas of the building for the purpose of smoking tobacco products or for any other purposes, nor in any way obstruct such areas, and shall use them only as a mean of ingress and egress from the Premises.

16. Tenant shall be permitted during the Term (including any Renewal Term(s)) to allow its employees or subtenants to bring fully domesticated and trained dogs ("**Permitted Dogs**") into the Premises. Tenant shall procure, pay for and keep in full force and effect, at all times during the Term, such additional insurance as may be reasonably required by Landlord in connection therewith. Landlord reserves the right to exclude from the Premises or Land any dog which, in the reasonable judgment of Landlord, behaves in a threatening, aggressive or disruptive manner or which is otherwise not properly controlled by its owner in accordance with this Rule 16. As set forth in the Declaration of Restrictions, domestic dogs have been identified as potential mammalian predators of least terns, and are therefore subject to the Alameda Point Predator Management Plan for Lands West of Main Street together with the other restrictions included in the Declaration of Restrictions. In view of the foregoing, any Permitted Dogs must remain on leash at all times when they are outside of the Building, including the Land depicted in Exhibit A-2 and anywhere else on the Property, as defined at Section 2.1 above. Tenant shall further be responsible for the prompt removal of any Permitted Dogs' defecation on the Land or Property.

KJS

17. Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable Rules and Regulations as in Landlord's judgment may from time to time be necessary for the management, safety, care and cleanliness of the Premises, common areas of the Building and Building, and for the preservation of good order therein, as well as for the convenience of other occupants and tenants thereof. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all tenants of the Building. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition to its occupancy of the Premises.

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## EXHIBIT G

### TENANT WORK LETTER

This Exhibit is attached to and made a part of the Lease Agreement (the "**Lease**") by and by and between CITY OF ALAMEDA, a charter city and municipal corporation ("**Landlord**") and Alameda Point Redevelopers, LLC, a California limited liability company ("**Tenant**") for those premises consisting of approximately 270,000 rentable square feet in Building 8, located at 2350 Saratoga St. Alameda, CA (the "**Premises**").

This Tenant Work Letter shall set forth the terms and conditions relating to the construction of certain renovations, including Essential Capital Repairs, the First Tenant Improvements, the Second Tenant Improvements and the Third Tenant Improvements, and other work, all as generally outlined in **Exhibit J** (collectively referred to as the "**Renovation Work**"). This Tenant Work Letter is essentially organized chronologically and addresses the issues of the construction of the Premises, in sequence, as such issues will arise during the actual construction of the Renovation Work. All references in this Tenant Work Letter to Sections of "this Lease" shall mean the relevant portions of the Lease, and all references in this Tenant Work Letter to Sections of "this Tenant Work Letter" shall mean the relevant portions of Sections 1 through 4 of this Tenant Work Letter.

#### 1. **ESSENTIAL CAPITAL REPAIRS**

##### 1.1 Essential Capital Repairs Deposit.

(a) Essential Capital Repairs. It is agreed that Tenant shall complete the essential capital repairs (collectively the "**Essential Capital Repairs**") to bring the Premises to a "warm shell condition" within the first eighteen (18) months of the Term. It is understood and agreed that any Essential Capital Repairs must comply with all of the terms and provisions of this Lease, including, but not limited to, Sections 6.2, 6.3, 26.3, 27.14, 27.15, 27.23, 27.24 & 27.25

(b) Essential Capital Repair Deposit. Prior to the expiration of the Early Termination Period (as defined in Section 3.4 of the Lease), Tenant shall deliver to Landlord the amount of One Million Dollars (\$1,000,000) (the "**Essential Capital Repair Deposit**") to be held by Landlord in an account known as the "**Capital Repairs Account**" as security for Tenant's completion of the Essential Capital Repairs as set forth herein. It is understood and agreed that a failure of Tenant to timely deliver the Essential Capital Repair Deposit shall constitute a breach of Tenant's obligations hereunder, subject to notice and opportunity to cure in accordance with Section 18.1(a) and Landlord's remedies under Section 18.2 of this Lease. The Capital Repairs Account will earn interest at the Local Agency Investment Rate ("**LAIF**") as reported quarterly by the California State Treasurer. Interest earned on the funds in the Capital Repairs Account shall be added to the Essential Capital Repairs Deposit. Upon documentation of Essential Capital Repairs in accordance with Section 1.2(b) below, and in increments of not less than One Hundred Thousand Dollars (\$100,000) each, Landlord shall pay from the Capital Repairs Account to Tenant for payment of a documented invoice or reimburse Tenant for any such documented invoices paid by Tenant, the amount of documented Essential Capital Repairs

1255

within twenty (20) days after receipt of documented invoices. If, on or before the eighteenth (18th) full calendar month of the Term, Tenant has failed to document (in accordance with Section 1.2(b)) completion of the Essential Capital Repairs, Tenant shall make the lump sum payment of Additional Rent required by Section 4.1(b) of the Lease. Landlord may, and without prejudice to any other remedy provided in this Lease or by Law, use any remaining portion of the Essential Capital Repair Deposit to the extent necessary to cause the Essential Capital Repairs to be completed.

1.2 Periodic Capital Repair Reimbursement.

(a) Capital Repair Credit Items. Except as otherwise set forth in this Tenant Work Letter, Tenant shall receive reimbursement only for the following items and costs incurred by it (collectively, the “**Essential Capital Repair Reimbursement Items**”) and, except as otherwise specifically and expressly provided in this Tenant Work Letter, no other costs incurred by Tenant may qualify for reimbursement hereunder. The Essential Capital Reimbursement Credit Items shall consist of:

(i) Payment of the fees and costs of the “Architect” and the “Engineers,” as those terms are defined in Section 2.1 of this Tenant Work Letter, costs paid to Tenant’s consultants in connection with the design, construction of the Essential Capital Repairs and all related design and construction costs, including the fees and costs of Tenant’s project management consultants;

(ii) The payment of plan check, permit, inspection and license fees relating to construction of the Essential Capital Repairs;

(iii) The cost of construction of the Essential Capital Repairs, including, without limitation, testing and inspection costs, and trash removal costs, and contractors’ fees and general conditions;

(iv) The cost to comply with all applicable building codes, such cost to include all direct architectural and/or engineering fees and expenses incurred in connection therewith;

(v) The cost of any changes to the Construction Drawings or Essential Capital Repairs required by all applicable building codes;

(vi) Insurance, bonding or similar costs relating to construction of the Essential Capital Repairs;

(vii) Sales and use taxes; and

(viii) All other costs approved by or expended by Tenant in connection with the construction of the Essential Capital Repairs, including, for example, special security measures and premiums for builders risk insurance but expressly excluding tenant improvements, furniture, fixtures, equipment, cabling or moving expenses.

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(b) Documentation of Essential Capital Repair Reimbursement Items. From time to time after the Commencement Date, Tenant shall deliver to Landlord: (A) statement showing the schedule, by trade, of percentage of completion of the Essential Capital Repairs to the Premises, detailing the portion of the work completed for said documentation period (each, a “**Documentation Period**”); (B) invoices from all of “Tenant’s Construction Participants,” as that term is defined in Section 3.1(b) of this Tenant Work Letter, for labor rendered and materials delivered to the Premises for the applicable Documentation Period; (C) copies of invoices or receipts for other costs incurred in connection with the Essential Capital Repairs; and (D) all other information reasonably requested in good faith by Landlord.

## 2. CONSTRUCTION DRAWINGS

2.1 Selection of Architect/Construction Drawings. Tenant shall retain an architect/space planner approved by Landlord, which approval shall not be unreasonably withheld or delayed (the “**Architect**”) to prepare the “Construction Drawings,” as that term is defined in this Section 2.1. Tenant shall retain the engineering consultants approved by Landlord (the “**Engineers**”), which approval shall not be unreasonably withheld or delayed, to prepare all construction drawings relating to the structural, mechanical, electrical, plumbing, HVAC, life safety, and sprinkler work for all Renovation Work in the Premises. The drawings and specifications to be prepared by Architect and the Engineers hereunder shall be known collectively as the “**Construction Drawings.**” All Construction Drawings shall be in a drawing format reasonably acceptable to Landlord. Landlord’s review of the Construction Drawings as set forth in this Section 2, shall be for its sole purpose and shall not imply Landlord’s review of the same for quality, design, compliance with the Code (as defined in Section 3.2(b) below) or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or its consultants, Landlord shall have no liability whatsoever in connection therewith, except to the extent that Landlord has specifically requested a modification to the Construction Drawings as a condition to Landlord’s approval of the Construction Drawings, and shall not be responsible for any omissions or errors contained in the Construction Drawings, and Tenant’s waiver and indemnity set forth in this Lease shall specifically apply to the Construction Drawings. Furthermore, Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the base building drawings, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Each time Landlord is granted the right to review, consent or approve the Construction Drawings or any component thereof (collectively, “**Consent**”), such Consent shall not be unreasonably withheld, conditioned or delayed.

2.2 Completion of Construction Drawings. Tenant, the Architect and the Engineers shall promptly complete the Construction Drawings for the Premises in a form which is sufficient to allow subcontractors to bid on the work and to obtain applicable permits and shall submit such Construction Drawings to Landlord for Landlord’s approval. Such Construction Drawings may be submitted in one or more stages at one or more times, provided that Tenant shall ultimately supply Landlord with three (3) completed copies signed by Tenant of such Construction Drawings. Landlord shall, within ten (10) business days after Landlord’s receipt of each stage of the Construction Drawings, either (i) approve the Construction Drawings, (ii) approve the Construction Drawings subject to specified conditions which must be stated in a

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reasonably clear and complete manner to be satisfied by Tenant prior to submitting the Approved Construction Drawings for permits as set forth in Section 2.3 below of this Tenant Work Letter, or (iii) disapprove and return the Construction Drawings to Tenant with reasonably clear and complete requested revisions. If Landlord fails to timely notify Tenant of Landlord's approval or disapproval of any such Construction Drawings, Tenant shall have the right to provide Landlord with a second written request for approval (a "**Second Request**") that specifically identifies the applicable Construction Drawings and contains the following statement in bold and capital letters: "**THIS IS A SECOND REQUEST FOR APPROVAL OF CONSTRUCTION DRAWINGS PURSUANT TO THE PROVISIONS OF SECTION 2.2 OF THE WORK LETTER. IF LANDLORD FAILS TO RESPOND WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN LANDLORD SHALL BE DEEMED TO HAVE APPROVED THE CONSTRUCTION DRAWINGS DESCRIBED HEREIN.**" If Landlord fails to respond to such Second Request within five (5) business days after receipt by Landlord, the Construction Drawings in question shall be deemed approved by Landlord. If Landlord timely delivers to Tenant a notice of Landlord's disapproval of any Construction Drawings, Tenant may revise Tenant's Construction Drawings and resubmit the same to Landlord; in such event the scope of Landlord's review of such Construction Drawings shall be limited to Tenant's correction of the items to which Landlord had previously objected. Such procedure shall be repeated until the Construction Drawings are approved.

2.3 Approved Construction Drawings. The Construction Drawings for any component of the Renovation Work shall be approved by Landlord in accordance with Section 2.2 (the "**Approved Construction Drawings**") prior to the commencement of construction of the work covered thereby. In the event that Tenant shall submit Construction Drawings to Landlord in more than one stage, Landlord shall be entitled to approve a stage and to subsequently disapprove of such stage in accordance with Section 2.2. Tenant shall cause to be obtained all applicable building permits required in connection with the construction of the Renovation Work, including the Essential Capital Repairs ("**Permits**"). Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any Permits for the Premises and that obtaining the same shall be Tenant's responsibility; provided, however, that Landlord shall cooperate with Tenant in performing ministerial acts reasonably necessary to enable Tenant to obtain any such Permits or certificate of occupancy. No material changes, modifications or alterations in the Approved Construction Drawings may be made without the prior written consent of Landlord pursuant to the terms of Section 2.4 below.

2.4 Tenant Changes. In the event Tenant desires to make a material change to the Approved Construction Drawings, Tenant shall deliver notice (the "**Drawing Change Notice**") of the same to Landlord, setting forth in detail the changes (the "**Tenant Changes**") Tenant desires to make to the Approved Construction Drawings. Landlord shall, within ten (10) business days of receipt of a Drawing Change Notice either (i) approve the Tenant Changes, or (ii) disapprove the Tenant Changes and deliver a notice to Tenant specifying in reasonably sufficient detail the reasons for Landlord's disapproval. If Landlord fails to timely notify Tenant of Landlord's approval or disapproval of any such Tenant Changes, Tenant shall have the right to provide Landlord with a second written request for approval (a "**Second Request**") that specifically identifies the applicable Tenant Change and contains the following statement in bold and capital letters: "**THIS IS A SECOND REQUEST FOR APPROVAL OF TENANT CHANGES TO THE PROVISIONS OF SECTION 2.5 OF THE WORK LETTER. IF**

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**LANDLORD FAILS TO RESPOND WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN LANDLORD SHALL BE DEEMED TO HAVE APPROVED THE TENANT CHANGES DESCRIBED HEREIN.”** If Landlord fails to respond to such Second Request within five (5) business days after receipt by Landlord, the Tenant Changes in question shall be deemed approved by Landlord. If Landlord timely delivers to Tenant a notice of Landlord’s disapproval of any Tenant Changes, Tenant may revise the Tenant Changes and resubmit the same to Landlord; in such event the scope of Landlord’s review of such Tenant Changes shall be limited to Tenant’s correction of the items to which Landlord had previously objected.

### 3. CONSTRUCTION

#### 3.1 Tenant’s Selection of Contractors.

(a) The Contractor. Tenant shall retain a licensed general contractor (the “**Contractor**”) in compliance with all legal or contractual obligations for the Essential Capital Repairs or any other element of the Renovation Work, pre-approved by Landlord, which approval shall not be unreasonably withheld or delayed, prior to Tenant causing the Contractor to commence construction activities.

(b) Tenant’s Construction Participants. All major trade subcontractors and suppliers used by Tenant must be approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. If Landlord does not approve any of Tenant’s proposed major subcontractors, or material suppliers, Tenant shall submit other proposed trade subcontractors, or material suppliers for Landlord’s written approval. The Contractor and the Contractor’s subcontractors (collectively, “**Tenant’s Contractors**” and the major trade subcontractors and material suppliers performing Essential Capital Repairs or any other component of the Renovation Work are along with all other laborers, materialmen, and suppliers, and the Contractor collectively, “**Tenant’s Construction Participants**”).

#### 3.2 Construction by Tenant’s Construction Participants.

##### (a) Tenant’s Agents.

(i) Landlord’s General Conditions for Tenant’s Construction Participants. Tenant’s and Tenant’s Construction Participants’ construction of the Essential Capital Repairs or any other component of the Renovation Work shall comply with the following: (A) the work shall be constructed in material conformance with the Approved Construction Drawings; and (B) Tenant shall abide by all construction guidelines and reasonable rules made by Landlord’s Property manager with respect to any matter, within reason, in connection with this Tenant Work Letter.

(ii) Indemnity. Tenant’s indemnity of Landlord as set forth, qualified and conditioned in this Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant’s Construction Participants, or anyone directly or indirectly employed by any of them, or in connection with Tenant’s non-payment of any amount arising out of the Essential Capital Repairs or any other component of the Renovation Work.

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(iii) Contractor's Warrants. Tenant's Contractor shall warrant to Tenant and for the benefit of Landlord that the portion of Renovation Work for which such contractor is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of substantial completion thereof. Tenant's Contractor shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after substantial completion. All such warranties or guarantees as to materials or workmanship shall be contained in the contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect such right of direct enforcement.

(iv) Insurance Requirements.

A. General Coverages. All of Tenant's Construction Participants which have employees shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in this Lease (provided that the limits of liability to be carried by Tenant's Construction Participants and Contractor, shall be in an amount which is customary for such respective Tenant's Construction Participants employed by tenants constructing improvements in the Comparable Buildings), and the policies therefor shall insure Landlord and Tenant, as their interests may appear.

B. Special Coverages. Contractor shall carry "Builder's All Risk" insurance (or the industry equivalent), in an amount approved by Landlord but not more than the amount of the construction contract, covering the construction of the Renovation Work, and such other insurance as Landlord may reasonably require.

C. General Terms. Certificates for all insurance carried pursuant to this Section shall be delivered to Landlord before the commencement of construction of the Essential Capital Repairs and before the Contractor's equipment is moved into the Premises. If commercially customary and available without significant additional expense, all such policies of insurance must contain a provision that the company writing said policy will give Landlord thirty (30) days' prior notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance. In the event that the Essential Capital Repairs or any other components of the Renovation Work are damaged by any cause during the course of the construction thereof and this Lease is not terminated, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's Construction Participants shall maintain all of the foregoing insurance coverage in force until the completion of the Renovation Work. All such insurance relating to property, except Workers' Compensation, maintained by Tenant's Construction Participants shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner and that any other insurance maintained by Landlord is excess and noncontributing with the insurance required hereunder.

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(b) Governmental Compliance. The Renovation Work shall comply in all respects with the following: (i) all Laws; and (ii) the applicable building code (collectively, the "Code").

(c) Inspection by Landlord. Landlord shall have the right to inspect the Renovation work (including the Essential Capital Repairs) at all reasonable times; provided, however, that Landlord's failure to inspect such work shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of such work constitute Landlord's approval of the same. In the event that Landlord should reasonably disapprove any portion of such work for failure to comply with the Approved Construction Drawings, during an inspection, Landlord shall notify Tenant in writing within a reasonable time of such inspection of such disapproval and shall specify in reasonably clear and complete detail the items disapproved and grounds for disapproval. Any defects or deviations in, and/or disapprovals in accordance herewith by Landlord of, the Essential Capital Repairs or any other component of the Renovation Work shall be rectified by Tenant at Tenant's expense and at no additional expense to Landlord; provided, however, that in the event Landlord determines that a defect or deviation exists or reasonably disapproves of any matter in connection with any portion of the Renovation Work, Landlord may, following notice to Tenant and a reasonable period of time for Tenant to cure, take such action as Landlord deems necessary to correct the same, at Tenant's expense, and at no additional expense to Landlord, and without incurring any liability on Landlord's part.

(d) [INTENTIONALLY OMITTED]

(e) Meetings. Commencing upon the execution of this Lease, Tenant shall hold periodic meetings at a reasonable time, with the Architect and the Contractor regarding the progress of the preparation of Construction Drawings and the construction of the Essential Capital Repairs, which meetings shall be held at a location reasonably agreed upon by Landlord and Tenant, and Landlord and/or its agents shall receive prior notice of, and shall have the right to attend, all such meetings, and, upon Landlord's request, certain of Tenant's Construction Participants shall attend such meetings.

3.3 Notice of Completion; Copy of Record Set of Plans. Within ten (10) days after completion of construction of the Essential Capital Repairs or any other component of the Renovation Work, Tenant shall prepare a Notice of Completion, which Landlord shall execute if factually correct, and Tenant shall cause such Notice of Completion to be recorded in the office of the Recorder of the County of Alameda in accordance with Section 8060 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Construction Drawings, which may be by hand mark-up, as necessary to reflect all changes made to the Approved Construction Drawings during the course of construction, (B) to certify to the best of their knowledge that the updated drawings are true and correct, which certification shall survive the expiration or termination of this Lease, and (C) to deliver to Landlord a CD ROM of such updated Approved Construction Drawings, in a PDF or CAD format, and (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the Premises.

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4. MISCELLANEOUS

4.1 Tenant's Representative. Tenant has designated Jonah Hendrickson as its sole representative with respect to the matters set forth in this Tenant Work Letter, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Tenant Work Letter.

4.2 Landlord's Representative. Landlord has designated Nanette Mocanu as its sole representative with respect to the matters set forth in this Tenant Work Letter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Tenant Work Letter.

4.3 Time of the Essence in this Tenant Work Letter. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

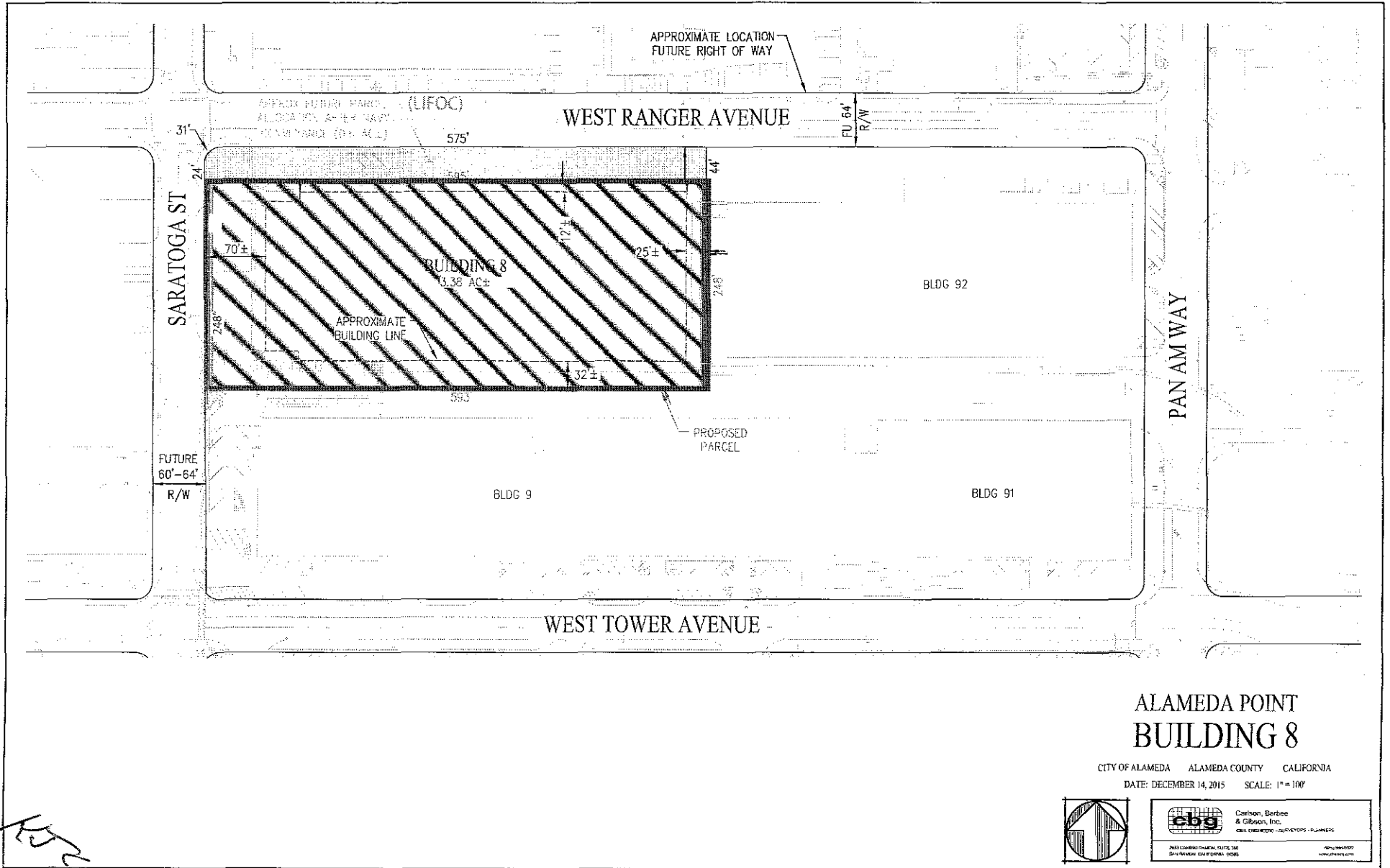
4.4 Force Majeure. The Force Majeure section 27.4 of the Lease shall govern any Force Majeure event under this Tenant Work Letter.

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**EXHIBIT H**  
**(OPTION PROPERTY)**

*RJS*

Exhibit H: Option Property



*Handwritten initials: R/S*

ALAMEDA POINT  
BUILDING 8

CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA  
DATE: DECEMBER 14, 2015 SCALE: 1" = 100'



**cbg** Carlson, Barbee & Gibson, Inc.  
CIVIL ENGINEERS - SURVEYORS - PLANNERS  
2803 LAMAR STREET, SUITE 100  
OAKLAND, CALIFORNIA 94612  
415.764.0000  
WWW.CBG.COM

**EXHIBIT I**

**PERMITTED USE**

**Subsection 30-4.24 (AP, Alameda Point District)**

**Table B: Allowed Land Uses and Off-Street Parking Requirements**

Artist Studio  
Work/Live  
Office  
Retail \*  
Retail, catalog and mail order \*  
Grocery  
Art Gallery  
Café \*  
Catering services  
Restaurant \*  
Bars/Tavern \*  
Banks and financial services  
Repair business (consumer products)  
Personal services  
Library  
Museum  
Theater/Entertainment  
Health and fitness facilities\*\*  
Teaching studios (art, dance, fitness, music)\*\*  
College/Vocational school  
Family day care with 7 or more children  
Family day care with 6 or fewer children  
Car or bike sharing  
Marine research  
Maritime workplace  
Maritime concessions  
Boating clubs or schools  
Food and beverage manufacturing  
Industrial, light  
Industrial arts  
Printing and publishing  
Specialty trade contractors and businesses

\* Such retail uses limited to no more than five percent (5%) of the total area of the premises. Ancillary retail to other uses not included in the five percent (5%) cap.

\* Tenant acknowledges that, as of the date of this Lease, an exclusive use provision in a lease elsewhere on the NAS Alameda precludes Landlord from leasing or selling any property to be utilized for in-line hockey, arena soccer, fitness center, group exercise, rock climbing, gymnastics, martial arts, baseball, golf, basketball, volleyball, go-cart racing, sports tournaments, video games or boxing.

KJS

## EXHIBIT J

### RENOVATION WORK

**Renovation Work:** conceptual list to become basis for further layers of submittals to Landlord for approval (initially schematic drawings, and following schematic approvals construction drawings) and such approvals will not be unreasonably withheld.

1. REMOVE, ABATE:

Personal property  
Hazardous material

2. REPAIR, REPLACE OR INSTALL NEW:

Utilities, including but not limited to and referring to main service and the distribution of such utility throughout the premise: electrical, data, gas, mechanical, sewer, water, fire sprinkler and / or suppression, solar, cellular, as well as others as needed for the permitted uses.

Building and Structure: seismic upgrades, roof, title 24 upgrades, ADA upgrades, historic rehabilitation elements and upgrades, windows, elevator(s), interior demise of space (including full height walls and acoustical /washable ceilings) to create circulation corridors, and marketable multi-tenant layouts for the permitted uses, exiting pathways, removal of portions of the structure including portions of the roof, third, and second floor and supports to create atriums, light wells, shafts, courtyards, a unit that contains a portion of more than one floor, additional doors / entry ways into the building and subject to historic restrictions, with or without additional square footage (i.e. a projected entry awning or feature,) 4th floor habitable structures as allowed by historic requirements and planning codes, roof deck and roof plantings.

Out Door Areas: paving, sidewalks, lighting, striping, landscaping, awnings, shade structures, handrails, outdoor areas and or new structures to accommodate loading / unloading including new loading dock infrastructure, trash enclosures, utilities, bike parking, recreation use, outdoor seating, Bus stop shelter, signage as allowed by planning codes.

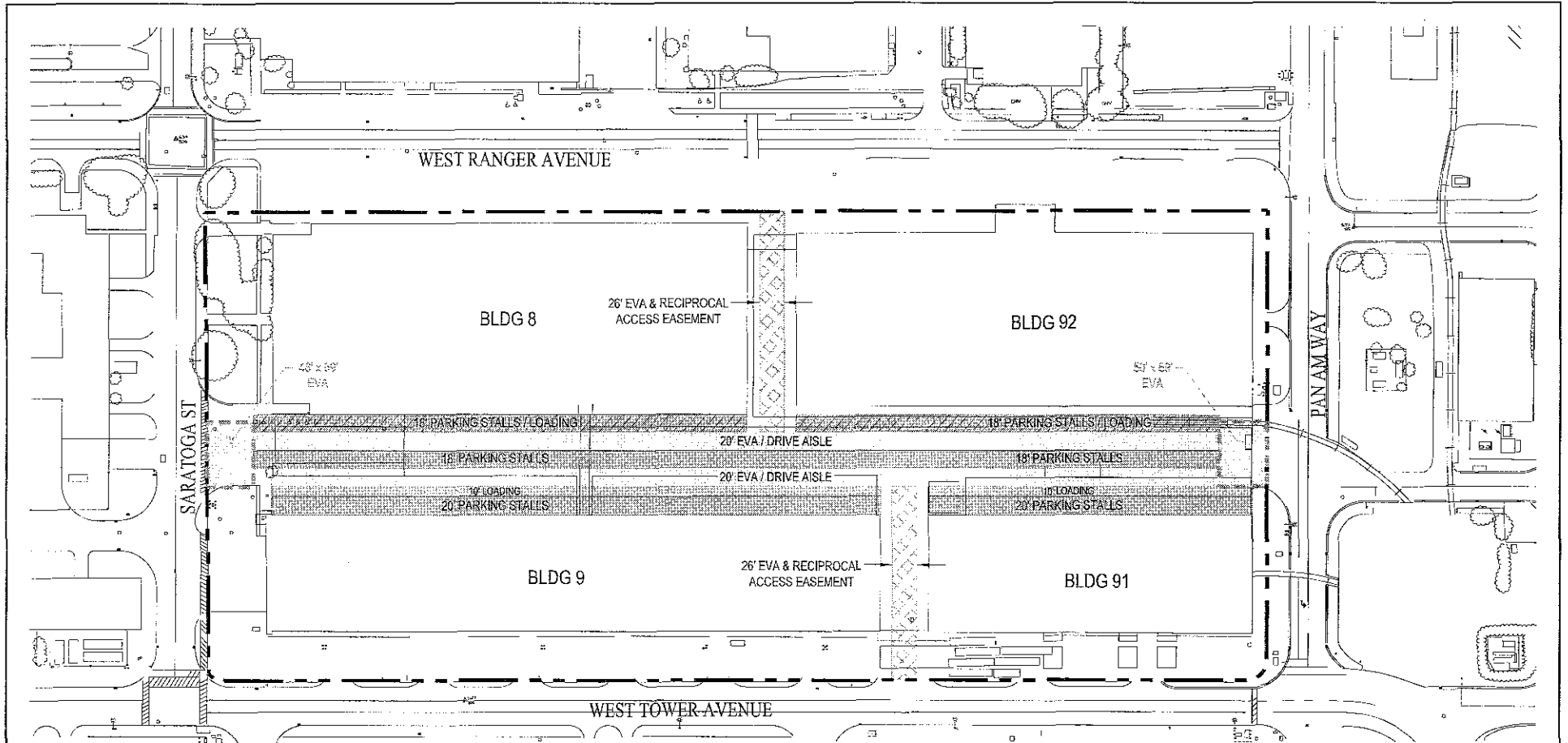
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**EXHIBIT K**  
**DRAFT TENTATIVE MAP**







KVS



# Exhibit K: Tentative EVA Map



### LEGEND

-  PROPOSED BOUNDARY
-  PROPOSED EMERGENCY VEHICLE ACCESS / ACCESS EASEMENT
-  PROPOSED EMERGENCY VEHICLE ACCESS / RECIPROCAL ACCESS EASEMENT
-  PROPOSED PARKING AREA
-  PROPOSED PARKING & LOADING AREA
-  PROPOSED LOADING AREA

## ALAMEDA POINT CONCEPTUAL IMPROVEMENTS

### PRELIMINARY PARCELIZATION

CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA

DATE: DECEMBER 17, 2015 SCALE: 1" = 100'



**cbo**  
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**DRAFT**