

*EXECUTION COPY*

Exhibit 1

**LEASE AGREEMENT**

BY AND BETWEEN

**CITY OF ALAMEDA,**

a charter city and municipal corporation  
AS LANDLORD

and

**THE GOLD BAR SPIRITS COMPANY INC.,**

a Delaware corporation  
AS TENANT

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### *Exhibit*

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| A-2 | PARKING                     |
| A-3 | YARD                        |
| B   | COMMENCEMENT LETTER         |
| C   | RENEWAL NOTICE              |
| D   | ACKNOWLEDGMENT OF RECEIPT   |
| E   | ENVIRONMENTAL QUESTIONNAIRE |
| F   | RULES AND REGULATIONS       |
| G   | WORK LETTER                 |

**LEASE AGREEMENT****BASIC LEASE INFORMATION**

|                            |  |
|----------------------------|--|
| <i>Lease Date:</i>         | Dated as of _____, 2024 for reference purposes only  |
| <i>Landlord:</i>           | City of Alameda,<br>a charter city and municipal corporation   |
| <i>Landlord's Address:</i> | <p>City of Alameda<br/>Alameda City Hall<br/>2263 Santa Clara Ave<br/>Alameda, CA 94501<br/>Tel: (510) 748-4509<br/>Attn: City Manager</p> <p>Notice Copy to:<br/><br/>Lincoln Property Company, as Agent for<br/>City of Alameda<br/>950 W. Mall Square, suite 239<br/>Alameda, CA 94501<br/>Tel: (510) 749-0304</p> <p>Section 4.1(b) Notices to:<br/>Alesia Strauch<br/>Base Reuse Manager<br/>2263 Santa Clara Ave<br/>Alameda, CA 94501<br/>Tel: (510) 747-7449</p> |
| <i>Tenant:</i>             | The Gold Bar Spirits Company Inc., a Delaware corporation  |
| <i>Tenant's Address:</i>   | <p>The Gold Bar Spirits Company Inc.<br/>201 Spear Street, Suite 1100<br/>San Francisco, CA 94105</p> <p>Notice Copy to:<br/><br/>Elliott Gillespie by email to:<br/>Elliott@goldbarwhiskey.com</p>  |

|  |  |                                 |
|--|--|---------------------------------|
| <i>Premises:</i>   | 2505 Monarch Street, Building 22, Alameda Point, CA consisting of approximately thirty-two thousand five hundred (32,500) rentable square feet of space, as depicted on Exhibit A.   |                                 |
| <i>Building:</i>   | 22   |                                 |
| <i>Length of Term:</i>                                   | Seventy-two (72) months  |                                 |
| <i>Estimated Commencement Date:</i>                      | March 25, 2024   |                                 |
| <i>Estimated Expiration Date:</i>                        | March 25, 2030   |                                 |
| <i>Extension Option:</i>                                 | One (1) option to extend the Term for an additional sixty (60) months.   |                                 |
| <i>Base Rent:</i>  | <i>Months</i>  | <i>Monthly Base Rent</i>        |
| *Subject to abatement rights set forth in Section 4.1(b) | 1 – 12   | \$34,125.00                     |
|  | 13 – 24  | \$35,750.00                     |
|  | 25 – 36  | \$40,625.00                     |
|  | 37 – 48  | \$43,875.00                     |
|  | 49 – 60  | \$45,191.00                     |
|  | 61 – 72  | \$46,547.00                     |
| <i>Renewal Term Base Rent:</i>                           | <i>Months</i>  | <i>Monthly Base Rent</i>        |
|  | 73 – 132   | Fair Market Value – Sec. 3.4(c) |
| <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>                                   | 50%  |                                 |
| <i>Security Deposit:</i>                                 | \$46,547.00  |                                 |

|                       |  |
|-----------------------|--|
| <i>Permitted Use:</i> | Warehouse, distribution and production which will include a tasting room, distillery, retail storefront, food services and related uses.   |
| <i>Parking:</i>       | Tenant shall have the right to have its employees and visitors park in the paved areas adjacent to the Building as identified as the Parking Area on <b>Exhibit A-2</b> attached hereto, as further set forth in Section 2.2 herein below. |
| <i>Brokers:</i>       | Cushman & Wakefield (Landlord Broker)  |

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** is made and entered into by and between CITY OF ALAMEDA, a charter city and municipal corporation (“**Landlord**”) and THE GOLD BAR SPIRITS COMPANY INC., a Delaware corporation (“**Tenant**”). 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.

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.

### 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. Provided that Tenant shall not be in Default under the terms and conditions of this Lease, in addition to the Premises, Landlord grants to Tenant an irrevocable license for the duration of the Lease to use the land area appurtenant to the Premises as generally depicted on **Exhibit A-1** attached hereto (“**Land**”). Landlord further grants Tenant an irrevocable license for the duration of the Lease for Tenant and its employees, agents, suppliers, customers and patrons the right to use those portions of the Land designated on **Exhibit A-2** for parking purposes (the “**Parking Area**”). The term “**Land**” refers to the Yard (defined below) and both the Parking Area identified as “**Rear Parking**” and “**Front Parking**.” Tenant shall have the right, on an exclusive basis, to have its employees and visitors park in the area identified as the “**Rear Parking**” of the Parking Area on **Exhibit A-2**, and the right, on a non-exclusive basis, to have its employees and visitors park in the area identified as the “**Front Parking (not exclusive)**” of the Parking Area on **Exhibit A-2**. Tenant may also use the Land, including the Parking Area for the loading and unloading of trucks shipping items to and from the Premises. Subject to obtaining all relevant permits and licenses, signage restrictions and City consents and approvals, Tenant may also use the Land (but excluding the non-exclusive Parking Area) for special events associated with the marketing, advertising and promotion and use of the Premises for the Permitted Use. Landlord shall not be required to enforce Tenant’s rights to use any parking spaces on the Parking Area. Landlord reserves the right, from time to time, to stripe, restripe or otherwise designate those areas of the Land (exclusive of the Parking Area) which may be used for parking purposes. Landlord agrees to provide thirty (30) days’ notice of work in the Parking Area that may impede the normal use of Tenant’s business operations for the

Permitted Use. Under no circumstances may the Land or non-exclusive Parking Area be utilized for the storage (beyond 72 hours), repair or maintenance of any vehicles. Subject to obtaining all relevant permits and licenses, Tenant shall be permitted to place bins or dumpsters, tanks, totes, barrels, pumps and other storage vessels on the Land in the areas designated on **Exhibit A-3** attached hereto (“**Yard**”), provided that Tenant has secured a use permit from the City of Alameda and such storage is reasonably necessary for Tenant’s business operations and is no higher than what is permitted by the Restrictions as defined as Section 6.3 below. Further, Tenant shall be permitted to use the area identified as the “Rear Parking” of the Parking Area on **Exhibit A-2** for exterior seating, subject to the Restrictions; provided, however, that Tenant has secured a use permit from the City of Alameda.

Should Tenant or its agents, employees or invitees use the Land (including any Parking Area) or any portion thereof in violation of this Section 2.2, Landlord shall have the right, 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 (including any 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 (including any 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 (including the non-exclusive 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. In addition to the foregoing, if Tenant desires storage rights or other such uses of the Land, in addition to those permitted under this section, Tenant shall provide a narrative written description and plans showing such uses for Landlord’s review and approval. If Tenant obtains Landlord’s approval for outside storage or other uses, the same shall be properly screened, consistent with Landlord’s reasonable standards for the Property.

### 2.3 Common Areas. Intentionally Omitted.

2.4 Possession. 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. 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, Parking Area, or infrastructure for the conduct of Tenant’s business. Landlord shall not be liable for any latent or patent defects in the Building, Parking Area 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 Landlord's Reserved Rights. Landlord hereby reserves the right, and at any time and from time to time, without the same constituting an actual or constructive eviction, to make alterations, additions, repairs, improvements to or in all or any part of the Building, and common areas within and around the Building and to change the arrangement and/or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, toilets and other public parts of the Building and parking areas, drive isles, landscaping, curb cuts and paved and unpaved portions of the exterior of the Building. Without limiting the foregoing, Landlord reserves the right from time to time to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires, meters and equipment for services to the Premises or other part of the Building which are above the ceiling surfaces, below the floor surfaces, within the walls and in the central core areas of the Building which are located within the Premises or located elsewhere in the Building. In connection with any of the foregoing activities, Landlord shall use reasonable efforts to minimize any interference with Tenant's use of the Premises and shall not, without the prior written approval of Tenant, (a) materially change the location, size or configuration of the Premises; or (b) do anything which would have a material and adverse effect on access to the Premises, or ingress and egress to the Premises. Landlord will provide thirty (30) days' notice prior to commencing any non-emergency work described in this Section 2.5. No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease.

### 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, at its sole and absolute discretion, 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 seventy-second (72<sup>nd</sup>) 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 as completed by Landlord 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. However, if possession is not delivered within ninety (90) days of the Estimated Commencement Date, Tenant shall have the right to unilaterally terminate this Lease. In the event of any termination of this Lease pursuant to this Section 3.2, Landlord shall refund to Tenant any prepaid rent and the Security Deposit, and neither party shall have any further liability or obligation to the other under this Lease.

3.3 Contingency for Liquor License, Permits and Approvals. The parties hereby acknowledge and agree that this Lease is subject to the conditions subsequent (the “**Liquor License, Permits and Approvals Contingency**”) that Tenant satisfy itself that it can (i) obtain a distilled spirits plant license and any other licenses required for the business conducted on the Premises from the California Department of Alcoholic Beverage Control (“**ABC**”) (the “**ABC License**”), (ii) obtain all additional approvals and permits for the distilled spirits business conducted on the Premises as required by the Alcohol and Tobacco Tax Trade Bureau (“**TTB**”) (the “**TTB Approvals**”), (iii) obtain a Certificate of Occupancy from the City of Alameda, and (iv) obtain a Use Permit (as defined in Section 6.4 below) from the City of Alameda. Tenant shall use its best efforts and diligence to apply to the ABC for the ABC License and to the TTB for the TTB Approvals and process the applications therefor as soon as reasonably practicable following the execution of this Lease. Tenant’s obtaining a Certificate of Occupancy and Use Permit, and obtaining tentative approvals from the ABC and TTB of Tenant’s applications for the ABC License and TTB Approvals shall be deemed to constitute satisfaction of the Liquor License, Permits and Approvals Contingency. Tenant shall notify Landlord promptly following satisfaction of the Liquor License, Permits and Approvals Contingency. If such Liquor License, Permits and Approvals Contingency is not satisfied by the date which is one hundred and eighty (180) days following the Commencement Date of this Lease, then either Landlord or Tenant shall have the right to terminate this Lease upon thirty (30) days prior written notice to the other; provided, however, that if the Liquor License, Permits and Approvals Contingency is satisfied within such thirty (30) days’ notice period, such election to terminate this Lease shall be nullified and voided, and this Lease shall continue in full force and effect. The date of satisfaction of the Liquor License, Permits and Approvals Contingency is referred to herein as the “Contingency Satisfaction Date.” In the event of any termination of this Lease pursuant to this Section 3.3, Landlord shall refund to Tenant any prepaid rent, (but shall retain the Security Deposit), and neither party shall have any further liability or obligation to the other under this Lease.

### 3.4 Option to Renew.

(a) Renewal Options. Tenant shall have one (1) option to extend the Term (a “**Renewal Option**”) for a period of five (5) years (“**Renewal Term**”). The Renewal Option may be exercised only by the entity identified as the Tenant in the Basic Lease Information and may not be exercised by any other sublessee or assignee or by any other successor or assign unless such sublessee or assignee was previously consented to by Landlord’s written consent pursuant to Section 13.1. The Renewal Option shall be effective only if Tenant is not in Default under this Lease, either at the time of exercise of the Renewal Option or the time of commencement of the Renewal Term. Tenant shall exercise its 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 twelve (12) months nor less than six (6) months prior to expiration of the initial Term. Any such notice given by Tenant to Landlord shall be irrevocable. If Tenant fails to exercise the Renewal Option in a timely manner as provided for above, said Renewal Option shall be void.

(b) Terms and Conditions. If Tenant exercises the Renewal Option, the Term shall be extended for an additional period of five (5) years upon the same terms and conditions as the initial Term except that (i) there shall be no further Renewal Options 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 an amount equal to the greater of (A) the “Fair Market Rent” prevailing at the commencement of said Renewal Term or (B) the Base Rent in effect at the end of the initial 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 3.4, “**Fair Market Rent**” means the prevailing rental rate per square foot then being obtained by landlords for comparable buildings or spaces located in the City of Alameda, 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 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 thirty (30) 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. Upon request, Landlord shall promptly provide the comparable lease data information from other commercial lease transactions used to establish 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 five (5) years’ experience negotiating commercial lease transactions in the cities of Alameda and Oakland, 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. After the Renewal Rate has been determined for the first year of the Renewal Term, the Monthly Base Rent for the Premises shall increase at the annual rate of three percent (3%) throughout said Renewal Term.

#### 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 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. Upon execution of this Lease, Tenant shall also pay to Landlord the amount of the Security Deposit as specified in the Basic Lease Information.

(b) Abatement. Notwithstanding anything in this Article 4 to the contrary, so long as Tenant is not in Default hereunder, Tenant shall be entitled to an abatement of a portion or all of Base Rent for twelve (12) full calendar months during the first year of the Term as described below (the "**Abatement Period**"). The abatement of Base Rent shall be a rent credit in the aggregate amount of two hundred sixty-seven thousand seven

hundred fifty-seven dollars (\$267,757.00) for the purpose of enabling Tenant to fund improvements to the Building (“**Physical Improvement Credit**”) and a rent credit in the aggregate amount of one hundred thousand dollars (\$100,000.00) for the purpose of providing Tenant reasonable time to satisfy the Liquor License, Permits and Approvals Contingency (“**Contingency Credit**”), which Physical Improvement Credit and Contingency Credit shall be applied against the Base Rent in the amounts set forth in the table below. The total amount of Base Rent abated during the Abatement Period is referred to herein as the “**Abated Base Rent.**” As conditions precedent to receiving the Physical Improvement Credit and the Contingency Credit, Tenant must (i) within one hundred fifty (150) days of the Commencement Date deliver to the Base Reuse Manager (as set forth in the Basic Lease Information) documentary evidence of Tenant’s successful submission of a building permit application to the City of Alameda Building Department and (ii) on the first day of each calendar month deliver to the Base Reuse Manager documentary evidence of Tenant’s timely response to any design review comments from the City of Alameda Building Department, provided Tenant shall have a minimum of 15 days from receipt of comments from the City to respond to such comments. As an additional condition precedent to receiving the Contingency Credit, Tenant must within ninety (90) days of the Commencement Date deliver to the Base Reuse Manager documentary evidence of Tenant’s successful submission of the applications to the ABC for the ABC License and to the TTB for the TTB Approvals. Notwithstanding anything in the foregoing to the contrary, in the event Tenant satisfies the Liquor License, Permits and Approvals Contingency prior to the end of the Abatement Period, the Contingency Credit shall thereafter no longer apply. Tenant’s failure to satisfy any of the aforementioned conditions precedent shall result in Tenant’s forfeiture of future Contingency Credit and retroactive forfeiture of past Contingency Credit applied to Base Rent.

| <i>Month</i> | <i>Physical Improvement Credit</i> | <i>Contingency Credit</i> |
|--------------|------------------------------------|---------------------------|
| 1            | \$11,888.50                        | \$8,261.50                |
| 2            | \$11,888.50                        | \$8,261.50                |
| 3            | \$11,888.50                        | \$8,261.50                |
| 4            | \$25,787.94                        | \$8,357.28                |
| 5            | \$25,787.94                        | \$8,357.28                |
| 6            | \$25,787.94                        | \$8,357.28                |
| 7            | \$25,787.94                        | \$8,357.28                |
| 8            | \$25,787.94                        | \$8,357.28                |
| 9            | \$25,787.94                        | \$8,357.28                |
| 10           | \$25,787.94                        | \$8,357.28                |

|       |              |              |
|-------|--------------|--------------|
| 11    | \$25,787.94  | \$8,357.28   |
| 12    | \$25,787.94  | \$8,357.28   |
| Total | \$267,757.00 | \$100,000.00 |

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 including, but not limited to, Tenant’s share of Utilities in accordance with Article 8 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 (5<sup>th</sup>) 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 (30<sup>th</sup>) 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. OPERATING EXPENSES AND TAXES.

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

(a) **Tenant’s Share** shall mean the percentage figure so specified in the Basic Lease Information. The rentable area of the Premises specified in the Basic Lease Information is conclusive and binding upon Tenant. Tenant’s Share has been computed by dividing the rentable area of the Premises by the total rentable area of the Building.

(b) **Tax and Expense Year** shall mean each twelve (12) consecutive month period commencing July 1<sup>st</sup> and ending on June 30<sup>th</sup> of each year or partial year during the Term, provided that Landlord, upon notice to Tenant, may change the Tax and Expense 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 and Expenses shall be equitably adjusted for the Tax and Expense 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, Land or Landlord's interest in the Building or Land, 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 bonds and assessments, all charges, fees and levies for or with respect to transit, housing, police, fire, flood control, infrastructure, or other governmental or quasi-governmental services or purported benefits to or burdens attributable to the Land or 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. 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, 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 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.

(d) **Expenses** shall mean all costs of management, operation, maintenance, insuring and repair of the (i) structural elements of the Building; (ii) common area maintenance, which shall include Tenant's fifty percent (50%) share of water main, fire alarm panel and roof maintenance; and (iii) Landlord's property insurance, if any.

5.2 Determination and Payment of Operating Expenses and Taxes. Tenant shall pay to Landlord as Additional Rent one-twelfth (1/12<sup>th</sup>) of Tenant's Share of the Taxes and the Expenses for each Tax and Expense Year, or portion thereof, on or before the first day of each month during such Tax and Expense 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 and Expense Year and Tenant shall thereafter make payments hereunder on the basis of such revised estimates. With reasonable promptness after the end of each Tax and Expense Year, Landlord shall submit to Tenant a statement showing the actual amount which should have been paid by Tenant with

respect to Taxes and Expenses for the past Tax and Expense 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**”). Landlord’s Statement shall set forth in reasonable detail, and shall contain a line-item breakdown showing at least the following major categories (as applicable): (i) maintenance and repairs; (ii) landscaping; (iii) utilities (electricity; gas; water and sewer); and (iv) insurance. 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 and Expenses for the then current Tax and Expense 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 and Expense Year, Tenant’s Share of Taxes and Expenses for the Tax and Expense 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 and Expense Year in which the Expiration Date occurs to and including the Expiration Date bears to 365. Where the calculation of Expenses and Taxes for a Tax and Expense 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. At no time shall Tenant have the right to install, operate or maintain telecommunications or any other equipment on the roof or exterior areas of the Building, except as may be necessary for Tenant’s Permitted Use of the Premises and Tenant’s installation of such equipment is done in full compliance with Article 10. 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, including correcting any construction-related accessibility standards within the Premises, 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, invalidate, or prevent the procuring of any insurance, protecting against loss or damage to the Building 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 Building.

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. 2013-199794 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, Parking Area 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**”).

6.5 Machinery. Subject to Landlord’s prior written approval, Tenant shall not install or operate any machinery, refrigerating or bearing device or air-conditioning apparatus in or about the Premises which would impose unreasonable substantial additional loads on the facilities of the building. In the event Landlord denies Tenant’s installation or use of any machinery, upon Landlord’s prior written consent, Tenant may, at its sole cost and expense, upgrade the facilities of the building to accommodate Tenant’s installation or use of any machinery required.

## 7. **SECURITY DEPOSIT.**

Concurrently with its 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. 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 Default 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 refunded to the Tenant after the expiration or earlier termination of this Lease. 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.

8.2 Water Infrastructure. Water to Alameda Point has been supplied by East Bay Municipal Utility District ("**EBMUD**"), but the water system itself was designed, installed and historically operated by the Navy. The water system infrastructure at Alameda Point was neither built, nor maintained to the standards of EBMUD. Furthermore, it is understood there is one (1) water meter currently installed to serve the Building. Until the water supply systems is improved as required by EBMUD, and separate water meters are installed for each of the leased suites within the Building, Tenant cannot become an EBMUD customer. Landlord will bill Tenant for its pro rata share of water usage at the same rate paid by the City to EBMUD as described in Section 8.1 above. It is the City's intent to replace the water infrastructure at Alameda Point and, to that end, it has entered into a phased water system infrastructure agreement with EBMUD. At such time as the water system is improved to meet the requirements set forth in EBMUD's Regulations Governing Water Service and water can be and is separately metered to the Premises, the City will cease providing water and Tenant will be required to contract directly with EBMUD. If Tenant desires that a second meter or sub meter be installed, Tenant must obtain City's approval, and Tenant shall pay all costs of separating interior plumbing distribution

to the Premises, and fees assessed by EBMUD for establishing water service to a second meter serving the Premises including, but not limited to, System Capacity Charges (“SCC”) and Water Capacity Fees (“WCF”). Tenant is encouraged to contact EBMUD to obtain an estimate of the amount of WCF and SCC that it will be obligated to pay.

8.3 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.

## 9. **PERSONAL PROPERTY AND POSSESSORY INTEREST TAXES.**

9.1 Tenant’s Tax Obligation. “**Taxes**” as used in this Section 9 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 defined in Section 9.1 above) 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. Such possessory interest taxes while Tenant is vested with the possessory interest of the Premises is referred to herein as “**Possessory Interest Taxes.**” 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 Personal Property 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 expiration or 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 in its proprietary capacity only; provided, however, that Landlord shall have the right in its sole and absolute discretion to withhold its consent to any 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) 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 Ten Thousand Dollars (\$10,000) and, (d) 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 to such Second Request within five (5) business days after receipt by Landlord, the

Plans in question shall be deemed disapproved by Landlord. If Landlord disapproves 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 Tenant's Plans. Landlord's approval of an Alteration shall not be deemed a representation by Landlord that the Alteration complies with Law. In addition, Tenant shall pay Landlord a fee for Landlord's oversight and coordination of any Alteration equal to five percent (5%) of the total costs of the Alteration, to the extent the costs of the Alteration is equal to or less than \$100,000; plus four percent (4%) of the costs of the Alteration to the extent that the costs of the Alteration is in excess of \$100,000, but not more than \$500,000; plus three percent (3%) of any portion of the costs of the Alteration in excess of \$500,000. 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, 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 ten (10) days following the imposition of 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.

10.5 Tenant Improvements. Tenant shall cause its construction contractors and subcontractors to carry out the following minimum improvements to the Premises in accordance with the requirements of **Exhibit G** (Work Letter) attached hereto, together with the Tenant Improvements (as defined in **Exhibit G**):

- (a) Reconnection of boiler system.
- (b) Testing and certification of boiler system.
- (c) Installation of stills and distillation equipment.
- (d) Reinstate all bar equipment for tasting rooms in compliance with all Laws.
- (e) Planning, design, construction and installation of kitchen equipment for food service to the tasting rooms in compliance with all Laws.
- (f) Electrical upgrades for distillation equipment in compliance with all Laws.
- (g) Electrical upgrades for tasting room equipment in compliance with all Laws.

## 11. MAINTENANCE AND REPAIR OF PREMISES.

### 11.1 Maintenance and Repair by Tenant.

(a) Tenant Maintenance. Tenant shall, at its sole cost and expense, maintain the Premises in good repair and in a neat and clean, first-class 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; and (x) telephone and data equipment, and cabling.

(b) Tenant Repair. Tenant shall further, at its own costs and expense, repair or restore any damage or injury to all or any part of the Land, Parking Area, Building and Premises caused by Tenant or Tenant's agents, employees, invitees, licensees, visitors or contractors, including but not limited to repairs or replacements necessitated by (i) the construction or installation of improvements to the Premises by or on behalf of Tenant; (ii) the moving of any property into or out of the Premises; or Tenant's use and occupancy of the Premises. If Tenant fails to make such repairs or replacement within fifteen (15) days after notice from Landlord, then Landlord may, at its option, upon prior reasonable notice to Tenant (except in an emergency) make the required repairs and replacements and the costs of such repairs or replacement (including Landlord's administrative charge) shall be charged to Tenant as Additional Rent and shall become due and payable by Tenant with the monthly installment of Base Rent next due hereunder.

11.2 Maintenance and Repair by Landlord. Except as set forth herein, Landlord is not responsible for maintenance and repair of the Premises, Building and Parking Area. Landlord shall maintain in good repair (i) the structural elements of the Building, including structural elements of exterior walls and foundations, but excluding any glass and exterior doors., provided such repairs are not necessitated by the actions or inactions of Tenant, Tenant's invitees or anyone in the employ or control of Tenant. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932, and Sections 1941 and 1942 of the California Civil Code or any similar or successor Laws now or hereby in effect. Tenant shall immediately give Landlord written notice of the need for repair of the items for which Landlord is responsible. If Tenant or Tenant's invitees or anyone in the employed or control of Tenant caused any damages necessitating such repair, then Tenant shall pay to Landlord the cost thereof, immediately upon demand therefor. Except as otherwise expressly set forth in this Lease, Tenant waives any right to terminate this Lease or offset or abate Rent by reason of any failure of Landlord to make repairs to the Premises or Building.

## **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 commonly 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, 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 or transported to or from the Premises or Building 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.) 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 material 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's 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 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 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 arising from Tenant’s occupancy, use or operations, or any other action by Tenant or its contractors, employees, agents, assigns, invitees, or subtenants giving rise to liability, civil or criminal, or any other action by Tenant or its contractors, employees, agents, assigns, or subtenants giving rise to responsibility under any Hazardous Materials Laws. 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.

12.8 Consent to Alcoholic Spirits. Landlord hereby consents to Tenant's use and production of alcoholic spirits for human consumption, and the materials required for said production, provided that Tenant remains in strict compliance with all applicable Hazardous Materials Laws and all covenants and conditions of the Lease, throughout the Term of the Lease.

### 13. ASSIGNMENT AND SUBLETTING.

13.1 Landlord Consent Required. Subject to Sections 13.5 and 13.6 below, Tenant shall not voluntarily or by operation of law, (a) mortgage, pledge, hypothecate or encumber this Lease or any interest therein, or (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 or any interest herein or subleased the Premises or any part thereof. A transfer of greater than fifty percent (50%) interest (whether stock, partnership interest, membership interest or otherwise) of Tenant, either in one (1) transaction or a series of transactions shall be deemed to be an assignment under this Lease.

13.2 Landlord Recapture. In the event of an assignment of this Lease or subletting of more than twenty percent (20%) of the rentable square footage of the Premises, Landlord shall have the right to recapture the portion of the Premises that Tenant is proposing to transfer. If Landlord exercises its right to recapture, this Lease shall automatically be amended (or terminated if the entire Premises is being assigned or sublet) to delete the applicable portion of the Premises effective on the proposed effective date of the Transfer, although Landlord may require Tenant to execute a reasonable amendment or other document reflecting such reduction or termination.

13.3 Reasonable Consent. If Tenant intends to assign this Lease or sublet the Premises or any part thereof, Tenant shall give Landlord written notice of such intent ("**Transfer Notice**"). Tenant's Transfer Notice shall be accompanied by a copy of the proposed assignment or sublease between Tenant and the proposed assignee or subtenant, together with current and three (3) years' prior financial statements, if available, for the proposed assignee or subtenant, which financial statement shall be prepared in accordance with generally accepted accounting principles. Tenant shall provide Landlord with any additional information or documentation reasonably requested by Landlord within ten (10) business days after receiving Landlord's request. Landlord shall then have a period of ninety (90) days following receipt of such additional information (or 90 days after receipt of Tenant's Transfer Notice if no additional information is requested) within which to notify Tenant in writing that Landlord elects either (a) to exercise its recapture rights in accordance with Section 13.2 in which event Tenant will be relieved of all further obligations hereunder as to such space as of the date specified in

Landlord's notice terminating the Lease with respect to the relevant space, (b) to permit Tenant to assign this Lease or sublet such space as described in the Transfer Notice, subject, however, to prior written consent to the proposed assignment or sublease or (c) deny Tenant's request to assign this Lease or sublet such space. Among other factors upon which Landlord may base a withholding of consent are the following: (i) the use of the Premises by such proposed assignee or subtenant would not be a Permitted Use; (ii) the financial condition of the proposed assignee or subtenant is such that, in Landlord's reasonable determination, it would be unable to perform its obligations under the proposed sublease or assignment; (iii) the portion of the Premises proposed to be sublet is irregular in shape and/or does not permit safe or otherwise appropriate means of ingress and egress, or does not comply with other Laws or regulations; (iv) Landlord or Landlord's agents have negotiated with the proposed assignee or subtenant with regard to the leasing of space at the Property, at any time within the preceding six (6) months; or (v) any other reasonable basis that Landlord may assert. Landlord's rights under this Section 13.3 shall only be exercised by the City Council, unless Council first delegates such exercise to the City Manager. Additionally, if City Council is unable to meet within the 90-day period for Landlord to make an election in response to the request under the Transfer Notice, due to emergency or for any other reason, then such 90-day period shall extend to the first available City Council meeting at which such request may be agendaized for City Council hearing, unless the City Council has already delegated the election to the City Manager.

13.4 Transfer Premium. If Landlord consents to any requested assignment or sublease (each a "**Transfer**") and the assignee or subtenant pays to Tenant an amount in excess of the Rent due under this Lease (after deducting Tenant's reasonable, actual expenses in obtaining such assignment or sublease, such expenses being limited to (a) any Alterations to the subject space made in order to achieve the Transfer, or contributions to the cost thereof, amortized in equal monthly installments over the then remainder of the Term and (b) any commercially reasonable brokerage commissions, reasonable attorneys' fees and reasonable advertising and marketing costs incurred by Tenant in connection with the Transfer) ("**Transfer Premium**"). Tenant shall pay fifty percent (50%) of such Transfer Premium to Landlord as and when the monthly payments are received by Tenant.

13.5 Intentionally Omitted.

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.

#### 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, contractors, invitees or licensees in or about the Building or Land (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, 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, contractors 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, Building or Land 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, Building or Land 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, Building or Land. 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 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, Lincoln Property Company 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 of Loss") fire and casualty insurance policy. 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. Intentionally Omitted.

(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 of at least twelve (12) months estimated gross earning, as defined in the standard form of business interruption insurance policy, of Tenant at the Premises, which insurance shall be on an "all risk" basis (or its equivalent).

(f) Automobile Liability. Tenant shall 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.

(g) Liquor Liability Insurance. Tenant shall maintain Liquor Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) per occurrence / Two Million Dollars (\$2,000,000) annual aggregate covering claims arising out of or related to Tenant's manufacturing, distribution, or sale of alcohol during the term of this Lease. Such policy shall name the City as an additional insured.

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 Property 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.

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. During the Term, Landlord may, at its sole and absolute discretion, keep in effect property insurance covering the Building in amounts not less than the full insurance replacement value thereof (but not on any Alterations or any of Tenant's Property) with customary limits and deductibles, together with such other types of insurance coverage, if any, as Landlord, in Landlord's sole discretion, may elect to carry.

## 16. DAMAGE OR DESTRUCTION.

### 16.1 Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises (or Hazardous Material Condition for which Tenant is not responsible), other than Tenant's Property (as defined at Section 15.1(b)), or Alterations (as defined at Article 10), which can reasonably be repaired in six (6) months or less from the date of the damage or destruction. Landlord shall notify Tenant 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. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Tenant has the responsibility to repair or replace pursuant to the provisions of Section 11.1.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises (or Hazardous Material Condition for which Tenant is not responsible), other than Tenant's Property (as defined at Section 15.1(b)), or Alterations (as defined at Article 10), which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction. Landlord shall notify Tenant 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.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Tenant's Property (as defined at Section 15.1(b)), or Alterations (as defined at Article 10), which was caused by an event required to be covered by the insurance described in Section 15.4, irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Landlord (excluding Alterations) at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Laws governing the Premises, and without deduction for depreciation.

(e) **"Hazardous Material Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Material as (defined in Section 12.1), in, on, or under the Premises which requires repair, remediation, or restoration.

16.2 Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, Landlord shall repair such damage (but not Tenant's Property or Alterations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided,

however, that Tenant shall, at Landlord's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Landlord shall make any applicable insurance proceeds available to Tenant on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, Tenant shall promptly contribute the shortage in proceeds (except as to the deductible which is Tenant's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Landlord shall have no obligation to fully restore the unique aspects of the Premises unless Tenant provides Landlord with the funds to cover same, or adequate assurance thereof, within ten (10) days following receipt of written notice of such shortage and request therefor. If Landlord receives said funds or adequate assurance thereof within said ten (10) day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not so received, Landlord may nevertheless elect by written notice to Tenant within ten (10) days thereafter to: (a) make such restoration and repair as is commercially reasonable with Landlord paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (b) have this Lease terminate thirty (30) days thereafter. Tenant shall not be entitled to reimbursement of any funds contributed by Tenant to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Section 16.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

16.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Tenant (in which event Tenant shall make the repairs at Tenant's expense), Landlord may either: (a) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, or (b) terminate this Lease by giving written notice to Tenant within thirty (30) days after receipt by Landlord of knowledge of the occurrence of such damage. Such termination shall be effective sixty (60) days following the date of such notice. In the event Landlord elects to terminate this Lease, Tenant shall have the right within ten (10) days after receipt of the termination notice to give written notice to Landlord of Tenant's commitment to pay for the repair of such damage without reimbursement from Landlord. Tenant shall provide Landlord with said funds or satisfactory assurance thereof within thirty (30) days after making such commitment. In such event this Lease shall continue in full force and effect, and Landlord shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Tenant does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

16.4 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.

16.5 Damage Near End of Term. If at any time during the last six (6) months of this Lease Term (or the last 6 months of any Renewal Term) there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Landlord may terminate

this Lease effective sixty (60) days following the date of occurrence of such damage by giving a written termination notice to Tenant within thirty (30) days after the date of occurrence of such damage. Notwithstanding the foregoing, if Tenant at that time has an exercisable option to extend this Lease or to purchase the Premises, then Tenant may preserve this Lease by (a) exercising such option and (b) providing Landlord with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is ten (10) days after Tenant's receipt of Landlord's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Tenant duly exercises such option during such period and provides Landlord with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Landlord shall, at Landlord's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Tenant fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Tenant's option shall be extinguished.

**16.6 Abatement of Rent.** In the event of Premises Partial Damage, Premises Total Destruction or Hazardous Material Condition for which Tenant is not responsible under this Lease, 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, Hazardous Material Condition, 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, in Landlord's reasonable opinion, for the purposes for which they were constructed; or (b) the Premises or Building cannot be repaired, restored or replaced at reasonable expense to an economically profitable unit, then Landlord 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 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 five (5) 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:

(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, and as referred to in part (iii) above, shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

(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 200% 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 Subordination to Mortgages. Tenant accepts this Lease subject and subordinate to any mortgage(s), deed(s) of trust, ground lease(s) or other lien(s) now or subsequently arising upon the Premises, or Building and any ground lease(s) or other agreements or covenants

running with the land now or subsequently arising upon the Building, and to renewals, modifications, refinancing and extensions thereof (collectively referred to as a “**Mortgage**”). The party having the benefit of a Mortgage shall be referred to as a “**Mortgagee**”. This clause shall be self-operative, but upon request from a Mortgagee, Tenant shall, within ten (10) days written request therefor from Landlord, execute a commercially reasonable subordination agreement in favor of the Mortgagee. Landlord shall use commercially reasonable efforts to obtain for Tenant a non-disturbance provision in any such subordination agreement. As an alternative, a Mortgagee shall have the right at any time to subordinate its Mortgage to this Lease. Upon request, Tenant, shall attorn to any successor to Landlord’s interest in this Lease.

22.2 **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 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.

## **23. TENANT’S ESTOPPEL CERTIFICATE.**

Within ten (10) days after written request therefor, Tenant shall execute and deliver to Landlord, in a form provided by or satisfactory to Landlord, an estoppel certificate stating, that this Lease is in full force and effect, describing any amendments or modifications thereto, acknowledging that this Lease is subordinate or prior, as the case may be, to any Mortgage and stating any other information Landlord 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 Landlord 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 the Building, 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.

## **24. RELOCATION.**

Landlord shall have the right to relocate the entire Premises upon all the following terms, covenants and conditions: (a) Landlord shall have the right to relocate the Premises on not less than ninety (90) days prior written notice given to Tenant at any time during the Term or

any extension or renewal thereof; (b) the relocated Premises must be of substantially comparable size to the initial Premises; (c) if Tenant has not occupied the Premises, Landlord shall reimburse Tenant for (i) the necessary and reasonable costs incurred by Tenant in planning for the space of the initial Premises which have been previously improved by Landlord and have no benefit to Tenant's in the relocation Premises and (ii) such other costs as Tenant may incur as a direct result of relocation which have been previously approved by Landlord; (d) if Tenant is occupying the Premises at the time Landlord gives notices of any such relocation, Landlord shall pay the cost of moving Tenant, its property and equipment to the relocated Premises and shall, without cost or expense to Tenant, improve the new Premises with improvements substantially similar to those located in the space Tenant is to vacate; and (e) all of the other terms, covenants, and conditions of this Lease shall remain unchanged and in full force and effect, except that the Basic Lease Information shall be revised (i) to identify the location of the Premises after such relocation; (ii) state the new rentable square feet of the new Premises, Base Rent and Security Deposit relative to the relocated Premises; and (f) should Landlord exercise its right to relocate Tenant, Tenant shall have the unilateral right to terminate this Lease without penalty on written notice to Landlord delivered within sixty (60) days of receipt of the notice of relocation.

## **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 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 employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender identity, gender expression, age, sexual orientation, or military and veteran status. The employees of Tenant shall be treated during employment, without regard to their employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender identity, gender expression, age, sexual orientation, or military and veteran status. 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 employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender identity, gender expression, age, sexual orientation, or military and veteran status.

(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.

26.3 Prevailing Wages and Related Requirements. Tenant acknowledges and agrees any Alterations made by or on behalf of Tenant to the Premises, or any portion thereof, which are 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.) Tenant shall comply with any applicable laws, rules and regulations related to construction wages and other construction matters, if and to the extent applicable to the Premises after the Commencement Date including, but not limited to, the provision of Labor Code Section 1720 et seq., and/or Section 2-67 of the Alameda Municipal Code. From and after the Commencement Date, Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord), and hold harmless the Landlord Related Parties against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Tenant and its contractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., to require any contractor or subcontractor listed on a bid proposal for a public works project be registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5, to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code, 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's obligation to indemnify, defend and hold harmless under this Section 26.3 shall survive termination of this

Lease, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

26.4 Impact of Project Stabilization Agreement. The City of Alameda has adopted a Project Stabilization Agreement (“PSA”) requirement for certain construction projects. See City of Alameda Resolution No. 15740. Where applicable, Tenant shall negotiate in good faith in an effort to enter into a mutually agreeable PSA with the Building and Construction Trades Council of Alameda County (“BTC”), consistent with the criteria set forth in Resolution 15740 for a covered construction project under the Resolution.

26.5 Tenant Indemnity. From and after the Commencement Date, Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord), and hold harmless the Landlord and Landlord Related Parties against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Tenant and its contractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., to require any contractor or subcontractor listed on a bid proposal for a public works project be registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5, to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code, to require the general contractor for any prevailing wage work to furnish electronic certified payroll records directly to the Labor Commissioner at: \*\*\*\*\*apps.dir.ca.gov/ecpr/das/altlogin. Tenant’s obligation to indemnify, defend and hold harmless under this Section 26.5 shall survive termination of this Lease, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

## **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 No Recovery of Litigation Fees and Costs. In the event of any litigation, including administrative proceedings, relating to this Agreement, including but not limited to any action or suit by any party, assignee or beneficiary against any other party, beneficiary or assignee, to enforce, interpret or seek relief from any provision or obligation arising out of this Agreement, the parties and litigants shall bear their own attorney’s fees and costs. No party or litigant shall be entitled to recover any attorneys’ fees or costs from any other party or litigant, regardless of which party or litigant might prevail.

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. 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. 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. All signage shall comply with Landlord’s signage design criteria, as exist from time to time. All signs approved by Landlord are subject to local authority permit requirements. In addition, any style, size, materials and attachment method of any such signage shall be subject to Landlord’s prior written consent. 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. Unless otherwise expressly agreed herein, Landlord reserves the right to install, and retain all revenues from the installation of, such advertising signs on the Premises, including the roof, as do not unreasonably interfere with the conduct of Tenant’s business. Tenant shall immediately remove any signs that do not comply with the Landlord’s approval procedure and have not been approved in advance by Landlord.

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.

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 not change any existing locks, or attach any additional locks or similar devices to any door or window, without providing to Landlord

one set of keys therefor. All keys must be returned 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 former Naval Air Station Alameda may be located within the Building or 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. Neither this Lease, nor any memorandum, affidavit nor other writing with respect thereto, shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant without the prior written consent of Landlord, which may be granted or withheld in Landlord's sole and absolute discretion. Any recording thereof in violation of this provision shall make this Lease null and void at Landlord's election.

27.11 Article and Section Titles. The Article and Section titles use herein are not to be consider 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.

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. Inspection by Certified Access Specialist. Landlord discloses that the Premises have not undergone inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) which provides: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Pursuant to the foregoing

Section 1938(e), Tenant acknowledges and agrees that, if Tenant wishes to have the Premises inspected by a CASp: (i) Tenant must notify Landlord on or before the date when Tenant executes this Lease pursuant to the election below; (ii) the inspection will be at Tenant's sole cost and expense; (iii) the inspection must be scheduled through Landlord and in coordination with the Building's property manager; (iv) any repairs or modifications necessary to correct any violation of construction-related accessibility standards that is noted in the CASp report shall be Tenant's responsibility; and (v) Tenant must provide a copy of the CASp report to Landlord on completion. By initialing below, Tenant represents that:

Tenant wishes to have a CASp inspection of the Premises                      Initials: \_\_\_\_\_

Tenant hereby waives its right a CASp inspection of the Premises   Initials: \_\_\_\_\_

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. 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 therefore waives 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. 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. Such subdivision may require the reservation of easements for utilities and access to adjacent properties or buildings. 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 preparation of a Compliance Strategy consistent with the Transportation Demand Management Plan and payment of transportation program fees.

27.26 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.

[Remainder of Page Blank; Signature Page Follows]

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: \_\_\_\_\_  
Jennifer Ott  
City Manager

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

**TENANT:**


The Gold Bar Spirits Company Inc.,  
a Delaware corporation

By:  \_\_\_\_\_  
Elliott Gillespie (Feb 20, 2024 19:25 PST)  
Name: Elliott Gillespie  
Title: President

Date: Feb 20, 2024

Approved as to Form

By:  \_\_\_\_\_  
5603710A604544F...  
Len Aslanian  
Assistant City Attorney

By:  \_\_\_\_\_  
Mike Thumm (Feb 21, 2024 06:39 EST)  
Name: Mike Thumm  
Date: Feb 21, 2024

Recommended for Approval

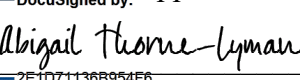
By:  \_\_\_\_\_  
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Abigail Thorne-Lyman  
Director  
Base Reuse and Economic Development



EXHIBIT A-1

LAND AREA

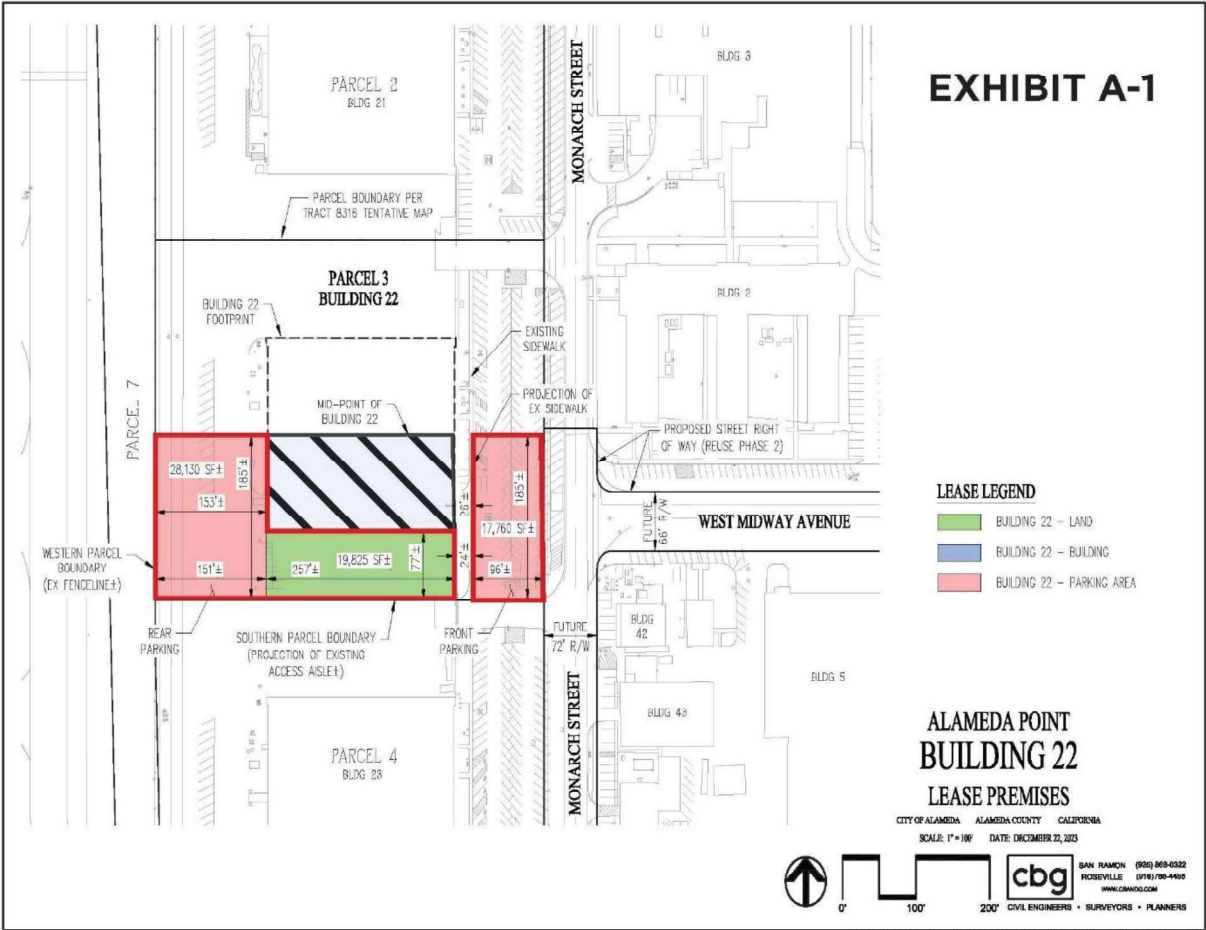


EXHIBIT A-2  
PARKING

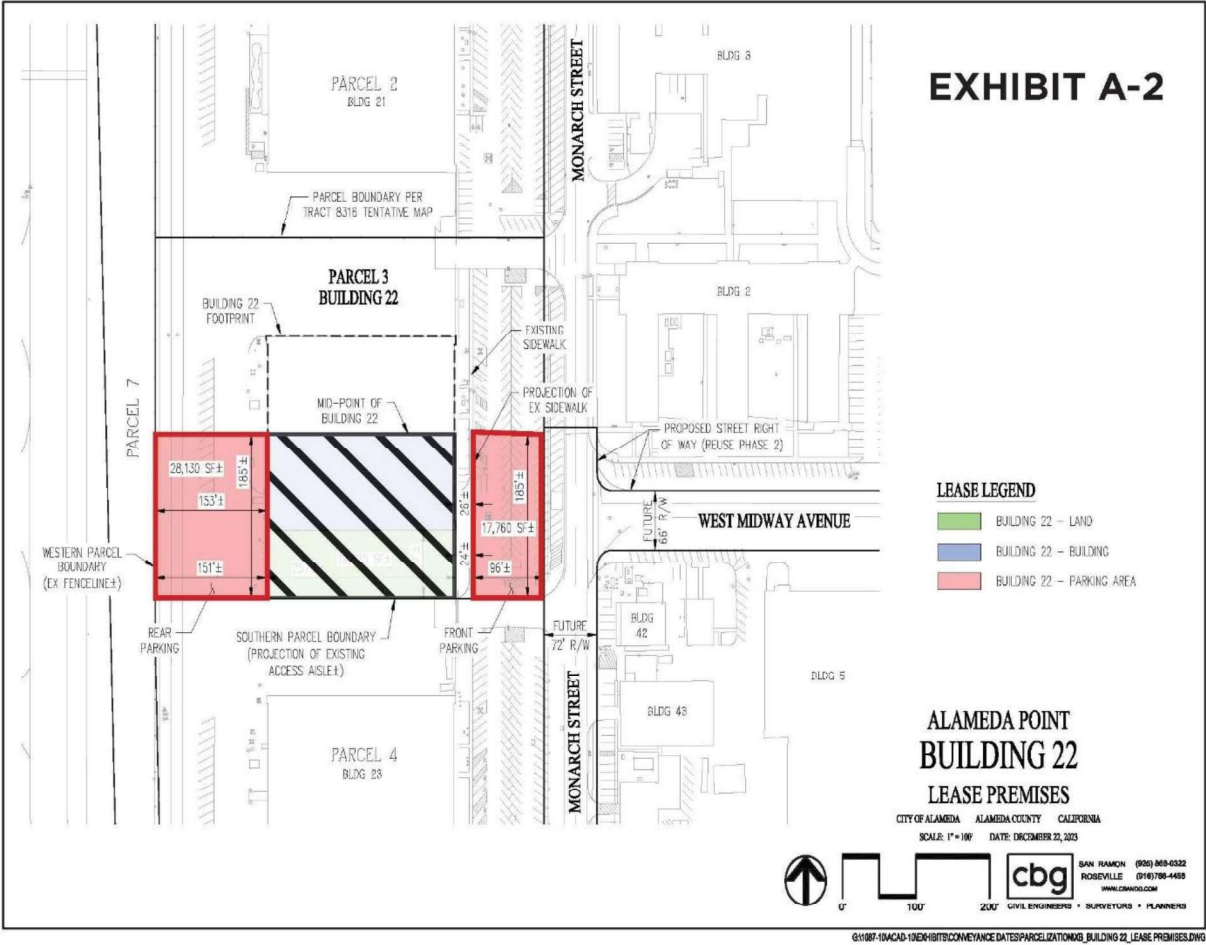
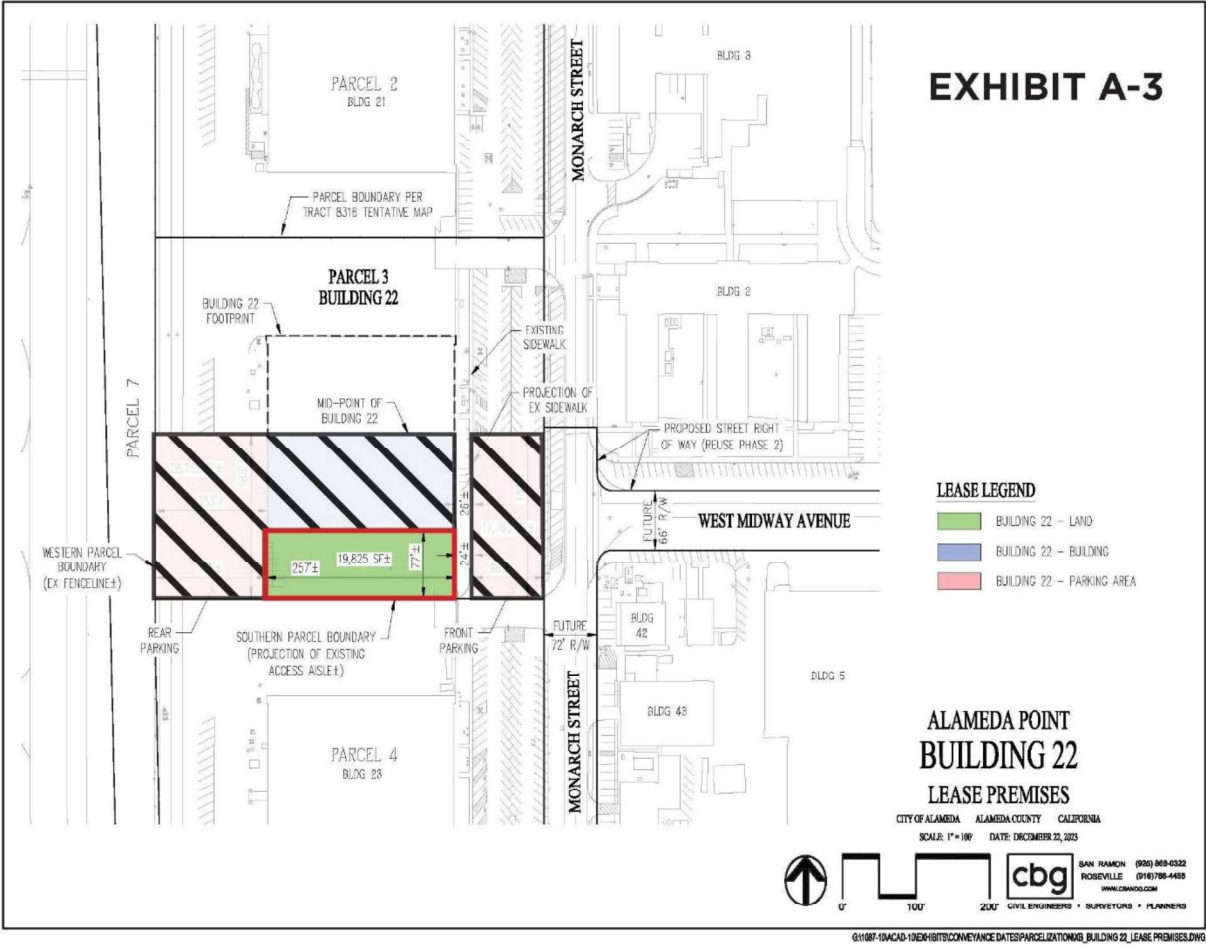


EXHIBIT A-3  
YARD



## EXHIBIT B COMMENCEMENT LETTER

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

Re: Lease dated as of \_\_\_\_\_, 202\_\_, by and between City of Alameda, as Landlord, and The Gold Bar Spirits Company Inc., a Delaware corporation, as Tenant, for approximately 32,500 rentable square feet in the Building 22 located at 2505 Monarch Street, 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 | Tenant: The Gold Bar Spirits Company Inc. |
| By: _____                 | By: _____                                 |
| Name: _____               | Name: _____                               |
| Title: _____              | Title: _____                              |

[Exhibit Do not sign]

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

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

Re: Lease dated as of \_\_\_\_\_, 202\_\_, by and between City of Alameda, as Landlord, and The Gold Bar Spirits Company Inc., a Delaware corporation, 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:

---

The Gold Bar Spirits Company Inc.

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

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

[Exhibit Do not sign]

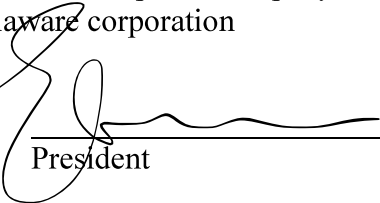
### **ACKNOWLEDGMENT OF RECEIPT**

Pursuant to that certain Lease Agreement entered into by and between City of Alameda, a charter city and municipal corporation ("Landlord") and The Gold Bar Spirits Company Inc., a Delaware corporation ("Tenant") dated as of February 21, 2024 ("Lease") Tenant hereby acknowledges that Landlord has provided it with copies of the following documents:

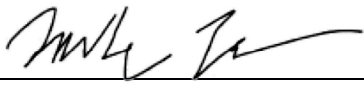
- Quitclaim Deed from the United States of America, acting by and through the Department of the Navy to the City of Alameda, dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199794 of Official Records in the Office of the County Recorder, Alameda County, California ("Quitclaim Deed");
- Declaration 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.

The Gold Bar Spirits Company Inc.,  
a Delaware corporation

By:   
Its: President

Date: February 21, 2024

By:   
Its: CFO

Date: February 21, 2024

## 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:

Lincoln Property Company, as Agent for  
City of Alameda  
950 W. Mall Square, suite 239  
Alameda, CA 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.

2.1 Will any hazardous materials be used or stored onsite?

|                             |                              |                             |
|-----------------------------|------------------------------|-----------------------------|
| Hazardous Wastes            | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Hazardous Chemical Products | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

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. \_\_\_\_\_

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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. \_\_\_\_\_

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

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. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.**

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.

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: \_\_\_\_\_

## **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. Landlord shall have the right to control and operate the public portions of the Building and the public facilities, including the fence separating the Land from the fish and wildlife area, as well as facilities furnished for the common use of the tenants, in such manner as it deems best for the benefit of the tenants generally.

2. 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 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. Tenant is responsible for the safe storage and removal of all pallets. Pallets shall be stored behind screen enclosures at locations approved by Landlord.

8. Tenant shall not store or permit the storage or placement of merchandise in or around the areas surrounding the Premises. No displays or sales of merchandise shall be allowed in the Parking Area or other areas surrounding the Premises.

9. 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.

10. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substances of any kind whatsoever shall be thrown therein. The expense of the repair of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose employees, agents, visitors or licensees shall have caused the same.

11. Tenant shall cooperate fully with Landlord to ensure the effective operation of the Building's air conditioning systems. If Tenant shall so use the Premises that noxious or objectionable fumes, vapors and/or odors are created, then Tenant shall provide proper ventilation equipment for the discharge of such fumes, vapors and odors so that they shall not enter into the air conditioning system or be discharged into other vents or flues of the building or annoy any of the other tenants of the Building or adjacent property. The design, location and installation of such equipment shall be subject to the Landlord's approval.

12. All window coverings installed by Tenant and visible from the outside of the Building require the prior written approval of Landlord.

13. The sashes, sash doors, skylights, windows and doors that reflect or admit light or air into the halls, passageways or other public places in the Building shall not be covered or obstructed by Tenant.

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

15. 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.

16. Tenant shall not permit any animals, including, but not limited to, household pets (but excluding service animals, which are permitted), to be brought or kept in or about the Premises or Building.

17. 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.

18. 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.

19. No tenant shall use or permit the use of any portion of the Premises for living quarters, sleeping apartments or lodging rooms.

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

21. 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 expense, 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.

22. Tenant shall not use the name of the Building for any purpose other than as the address of the business to be conducted by Tenant in the Premises, nor shall Tenant use any picture of the Building in its advertising, stationary or in any other manner without the prior written permission of Landlord. Landlord expressly reserves the right at any time to change said name without in any manner being liable to Tenant therefor.

23. Tenant, its employees and agents shall not loiter in or on the entrances, corridors, sidewalks, lobbies, courts, halls, stairways, elevators, or vestibules 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.

24. Landlord reserves the right to exclude from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of these Rules and Regulations.

25. 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, Building and Parking Area, 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.

## EXHIBIT G

### WORK LETTER

This work agreement (“**Work Letter**”) is attached to and made a part of this Lease. It is the intent of this Work Letter that Tenant shall be permitted freedom in the design and layout of the Premises, consistent with applicable building codes and requirements of law, including without limitation the Americans with Disabilities Act, and with sound architectural and construction practice, provided that neither the design nor the implementation of the Tenant Improvements (hereinafter defined) shall cause any detriment to the operation of the Building’s HVAC, mechanical, plumbing, life safety, electrical or other systems or to other Building operations or functions. Capitalized terms not otherwise defined in this Work Letter shall have the meanings set forth in this Lease. In the event of any conflict between the terms hereof and the terms of the Lease, the terms hereof shall prevail for the purposes of design and construction of the Tenant Improvements.

#### 1. TENANT IMPROVEMENTS.

1.1 As-Is Condition. Landlord shall have no obligation to perform or cause the performance or construction of any improvements in or to the Premises and in accordance with the terms and conditions of the Lease, Landlord shall deliver the Premises to Tenant in its “as is” and “with all faults” condition. Except as may be set forth in the Lease, Tenant hereby acknowledges that Landlord has made no representations or warranties to Tenant with respect to the condition of the Premises.

1.2 Tenant Improvements. Tenant, at its sole cost and expense, shall furnish and install in the Premises in accordance with the terms of this Work Letter, the improvements set forth in the Tenant’s Plans (hereinafter defined) which are subject to Landlord’s approval (which shall not be unreasonably withheld, conditioned or delayed) in accordance with the terms of this Work Letter, below (“**Tenant Improvements**”). All costs of all design, space planning, and architectural and engineering work for or in connection with the Tenant Improvements, including without limitation all drawings, plans, specifications, licenses, permits or other approvals relating thereto, and all insurance and other requirements and conditions hereunder, and all costs of construction, including supervision thereof, shall be at Tenant’s sole cost and expense.

#### 2. PLANS AND SPECIFICATIONS.

2.1 Space Planner. Tenant shall retain the services of its architect or designer (the “**Space Planner**”) to design the Tenant Improvements in the Premises and prepare the Final Space Plan (hereinafter defined) and the Contract Documents (hereinafter defined). The Space Planner shall meet with the Landlord and/or Landlord’s building manager from time to time to obtain information about the Building and to insure that the improvements envisioned in the Contract Documents do not interfere with and/or affect the Building or any systems therein. The Space Planner shall prepare all space plans, working drawings, and plans and specifications in conformity with base Building plans and systems, and the Space Planner shall coordinate its plans and specifications with the Landlord’s engineers (hereinafter defined) and Landlord’s representatives. All fees of the Space Planner shall be borne solely by Tenant.

2.2 Engineers. Tenant shall retain the services of mechanical, electrical, plumbing and structural engineers who are commercially insured, bonded and licensed in their trade (the “**Engineers**”) to (i) design the type, number and location of all mechanical systems in the Premises, including without limitation the heating, ventilating and air conditioning system therein, fire alarm system and to prepare all of the mechanical plans, (ii) to assist Tenant and the Space Planner in connection with the electrical design of the Premises, including the location and capacity of light fixtures, electrical receptacles and other electrical elements, and to prepare all of the electrical plans, (iii) to assist Tenant and the Space Planner in connection with plumbing-related issues involved in designing the Premises and to prepare all of the plumbing plans and (iv) assist Tenant and the Space Planner in connection with the structural elements of the Space Planner’s design of the Premises and to prepare all of the structural plans. All fees of the Engineers shall be borne solely by Tenant.

### 3. **TIME SCHEDULE.**

3.1 Plan Delivery. On or before the date Tenant submits its plans to the Building Department, Tenant shall furnish to Landlord for its review and approval, which shall not be unreasonably withheld conditioned or delayed, a proposed detailed space plan for the Tenant Improvements (the “**Final Space Plan**”) prepared by the Space Planner, in consultation with Landlord and the Engineers. The Final Space Plan shall contain the information and otherwise comply with the requirements therefor described in Schedule G-1 attached hereto. Landlord shall endeavor to advise Tenant of Landlord’s approval or disapproval of the Final Space Plan within ten (10) Business Days after Tenant submits the Final Space Plan to Landlord. Landlord’s objections shall not materially prevent or prohibit Tenant’s business operations. Tenant shall use commercially reasonable efforts to revise the proposed Final Space Plan to meet Landlord’s objections, if any, and resubmit the Final Space Plan to Landlord for its review and approval within five (5) Business Days of Tenant’s receipt of Landlord’s objections, if any. If Landlord fails to timely notify Tenant of Landlord’s approval or disapproval of any such Final Space Plan within ten (10) Business Days, Tenant shall have the right to provide Landlord with a written request for approval that specifically identifies the applicable Final Space Plan and contains the following statement in bold and capital letters: “THIS IS A REQUEST FOR APPROVAL OF PLANS PURSUANT TO THE PROVISIONS OF THE LEASE”. If Landlord fails to respond to such notice request within five (5) Business Days after receipt by Landlord, the Final Space Plan shall be deemed approved by Landlord subject to any permit requirement.

3.2 Contract Documents. Within ten (10) Business Days after Landlord approves the Final Space Plan, Tenant shall furnish to Landlord for its review and approval, all architectural plans, working drawings and specifications (the “**Contract Documents**”) necessary and sufficient (i) for the construction of the Tenant Improvements; and (ii) to enable Tenant to obtain a building permit for the construction of the Tenant Improvements by the Contractor (hereinafter defined). The Contract Documents shall contain the information and otherwise comply with the requirements therefore described in Schedule G-2 attached hereto and shall set forth the location of any core drilling by Tenant. Landlord shall endeavor to advise Tenant of Landlord’s approval or disapproval of the Contract Documents, or any of them, within five (5) Business Days after Tenant submits the Contract Documents to Landlord. Landlord’s objections, if any, shall not materially prevent or prohibit Tenant’s business operations (except in the instance Tenant seeks to core drill in an area that is restricted). Tenant shall use commercially reasonable efforts to revise the Contract

Documents to meet Landlord's reasonable objections, if any, and resubmit the Contract Documents to Landlord for its review and approval within five (5) Business Days of Tenant's receipt of Landlord's objections, if any. Landlord shall endeavor to advise Tenant of Landlord's approval or disapproval of the revised Contract Documents within five (5) Business Days after Tenant submits the same. If Landlord fails to timely notify Tenant of Landlord's approval or disapproval of any such Contract Documents within five (5) Business Days, Tenant shall have the right to provide Landlord with a written request for approval that specifically identifies the applicable Contract Documents and contains the following statement in bold and capital letters: "THIS IS A REQUEST FOR APPROVAL OF CONTRACT DOCUMENTS PURSUANT TO THE PROVISIONS OF THE LEASE". If Landlord fails to respond to such notice request within five (5) Business Days after receipt by Landlord, the Contract Documents shall be deemed approved by Landlord subject to any permit requirement. Notwithstanding anything herein to the contrary, approval by Landlord of the Contract Documents shall not constitute an assurance by Landlord that the Contract Documents: (a) satisfy Legal Requirements (hereinafter defined), (b) are sufficient to enable Tenant to obtain a building permit for the undertaking of the Tenant Improvements in the Premises, or (c) will not interfere with, and/or otherwise affect, base Building or base Building systems. The Final Space Plan and the Contract Documents are referred to collectively herein as the "**Tenant's Plans.**"

3.3. Tenant Improvements. The Tenant Improvements shall be of a clean, good and operating condition and quality, commensurate with the level of improvements for a tenant in an industrial warehouse building in the Alameda County area. The Tenant's Plans shall be prepared in accordance with a Landlord's CAD format for working drawings in conformity with the base Building plans and Building systems and with information furnished by and in coordination with Landlord and Engineers. Tenant's Plans shall comply with all applicable building codes, laws and regulations (including without limitation the Americans with Disabilities Act), shall not contain any improvements which interfere with or require any changes to or modifications of the Building's HVAC, mechanical, electrical, plumbing, life safety or other systems without Landlord's express written approval, or to other Building operations or functions, and, unless Tenant agrees in writing to pay all such excess costs or charges, shall not increase maintenance or utility charges for operating the Building. Notwithstanding anything to the contrary contained in this Work Letter, Landlord shall have the right to disapprove, in its sole discretion, any portion of the Tenant's Plans that Landlord believes will or may negatively affect the structure of the Building or will or may negatively affect the mechanical, electrical, plumbing, life safety, HVAC or other base Building systems.

3.4 Excavations. In the event Tenant intends to perform any Tenant Improvements that involve excavations below the surface of the Building (whether inside or outside) or construction of a permanent structure upon the Land, 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. 2013199838 of Official Records of

the County of Alameda, the Site Management Plan for Alameda Point and, if required, shall obtain a Marsh Crust Permit.

#### **4. BASE BUILDING CHANGES.**

4.1 Delay Due To Building Changes. If Tenant requests work to be done in the Premises or for the benefit of the Premises that necessitates revisions or changes in the design or construction of the base Building or affect Building systems, any such changes shall be subject to the prior written approval of Landlord, in its sole discretion. Tenant shall be responsible for all costs and delays resulting from such design revisions or construction changes, including architectural and engineering charges, and any special permits or fees attributed thereto.

4.2 Changes. In the event that Tenant requests any changes to the Contract Documents or the Final Space Plan after Landlord has approved same, including pursuant to Section 4.3 of this Exhibit G, or if it is determined that the Contract Documents prepared in accordance with the Final Space Plan do not conform to the plans for the base Building, deviate from applicable Legal Requirements or contain improvements which will or may interfere with and/or affect the base Building or any of the base Building systems, or in the event of any change orders, Tenant shall be responsible for all costs and expenses and all delay resulting therefrom, including without limitation costs or expenses relating to (i) any additional architectural or engineering services and related design expenses, (ii) any changes to materials in process of fabrication, (iii) cancellation or modification of supply or fabricating contracts, (iv) removal or alteration of work or plans completed or in process, or (v) delay claims made by any subcontractor.

4.3 Landlord Approval. No changes shall be made to the Contract Documents without the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; *provided, however*, that Landlord shall have the right to disapprove, in its sole discretion, any such change that Landlord reasonably believes will affect the structure of the Building or will affect the mechanical, electrical, plumbing, life safety, HVAC or other base Building systems. Landlord shall not be responsible for delay in occupancy by Tenant because of any changes to the Final Space Plan or the Contract Documents after approval by Landlord, or because of delay caused by or attributable to any deviation by the Contract Documents from applicable Legal Requirements. Tenant shall be required to pay to Landlord the costs incurred by Landlord in connection with any changes to the Contract Documents or Final Space Plan, in full, within thirty (30) days after invoice. As used herein, the term “**Legal Requirements**” means any laws, ordinances, regulations and orders of the United States of America, the State of California, the City of Alameda and any other governmental authority with jurisdiction over the Building or the construction of the Tenant Improvements.

#### **5. COST OF TENANT IMPROVEMENTS/ALLOWANCES.**

5.1 Construction Costs. All costs of design and construction of the Tenant Improvements, including without limitation the costs of all space planning, architectural and engineering work related thereto, all governmental and quasi-governmental approvals and permits required therefor, any costs incurred by Landlord because of changes to the base Building or the base Building systems, all construction costs, contractors’ overhead and profit, insurance and other

requirements and all other costs and expenses incurred in connection with the Tenant Improvements (collectively, “**Construction Costs**”), shall be paid by Tenant.

## 6. CONSTRUCTION.

6.1 General Contractor. Tenant shall retain a general contractor licensed in the State of California and approved by Landlord to undertake construction of the Tenant Improvements (the “**Contractor**”). Notwithstanding the foregoing, Tenant may act as its own general contractor, provided Tenant has agreed in writing to comply with the requirements and obligations of the Contractor described herein and in the Lease, has provided written notice to Landlord that Tenant intends to act as its own general contractor, and Landlord has consented in writing prior to the commencement of any construction for which Tenant will act as its own general contractor. In the event Tenant has elected to act as its own general contractor, and has obtained Landlord consent in writing to do so, all references to the Contractor, as that term is used herein, shall be construed to mean Tenant. The Contractor shall be responsible for obtaining, at Tenant’s cost, all permits and approvals required for the construction of the Tenant Improvements.

6.2 Construction. In undertaking the Tenant Improvements, Tenant and/or the Contractor shall strictly comply with the following conditions:

(a) No work involving or affecting the Building’s structure or the plumbing, mechanical, electrical or life/safety systems of the Building shall be undertaken without (i) the prior written approval of Landlord which approval shall not be unreasonably withheld, conditioned or delayed, whether pursuant to its approval of Tenant’s Plans or otherwise, (ii) intentionally deleted; (iii) compliance by Tenant with the insurance requirements; and (iv) compliance by Tenant with all of the terms and provisions of this Work Letter;

(b) All Tenant Improvement work shall be performed in strict conformity with (i) the final approved Tenant’s Plans; (ii) all applicable codes and regulations of governmental authorities having jurisdiction over the Building and the Premises; (iii) valid building permits and other authorizations from appropriate governmental agencies, when required, which shall be obtained by Tenant, at Tenant’s expense; and (iv) Landlord’s construction policies, rules and regulations attached hereto as Schedule G-3, as the same may be reasonably modified by Landlord from time to time (“**Construction Rules**”). Any work not acceptable to the appropriate governmental agencies or not reasonably satisfactory to Landlord shall be promptly replaced at Tenant’s sole expense. Notwithstanding any failure by Landlord to object to any such work, Landlord shall have no responsibility therefor; and

(c) Before any work is commenced or any of Tenant’s, Contractor’s or any subcontractor’s equipment is moved onto any part of the Building, Tenant shall deliver to Landlord copies of certificates evidencing the following types of insurance coverage in the following minimum amounts, which policies shall be issued by companies approved by Landlord, shall be maintained by Tenant at all times during the performance of the Tenant Improvements, and which shall name Landlord as additional insured:

- (1) Worker's compensation coverage in the maximum amount required by law and employer's liability insurance in an amount not less than \$500,000.00 and \$500,000.00 per disease; and
- (2) Comprehensive general liability policy to include products /completed operations, premises/operations, blanket contractual broad form property damage and contractual liability with limits in an amount per occurrence of not less than \$1,000,000.00 Combined Single Limit for bodily injury and property damage and \$1,000,000.00 for personal injury.
- (3) Automobile liability coverage, with bodily injury limits of at least \$1,000,000.00 per accident.

## **7. PERMITS AND LICENSES.**

7.1 Permits. Tenant shall be solely responsible for procuring, at its sole cost and expense, all permits and licenses necessary to undertake the Tenant Improvements and, upon completion of the Tenant Improvements, to occupy the Premises. Tenant's inability to obtain, or delay in obtaining, any such license or permit shall not delay or otherwise affect the Commencement Date or any of Tenant's obligations under this Lease.

## **8. INSPECTION.**

8.1 Inspection. Landlord is authorized, at its sole cost and expense, to make such inspections of the Premises during construction as it deems reasonably necessary or advisable. Upon completion of the Tenant Improvements the Tenant shall within five (5) business days give notice of the same to Landlord's property management company in order that Tenant representatives and property manager representatives can coordinate, arrange and complete a walk-through of the Premises with the completed Tenant Improvements in place in order for Landlord's property managers to be informed of and understand the systems installed in the Premises.

## **9. INDEMNIFICATION; LIENS; COMPLETION.**

9.1 Indemnity. Tenant shall indemnify Landlord and hold it harmless from and against all claims, injury, damage or loss (including reasonable attorneys' fees) sustained by Landlord as a result of the construction of the Tenant Improvements in the Building and Premises, and any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant.

9.2 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, Tenant Improvements or any of Tenant's interests under this Lease for any labor or materials furnished to Tenant in connection with work performed by or at the direction of Tenant. In the event that Tenant shall not, within ten (10) days following the imposition of 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.

9.3 Completion. Upon completion, Tenant shall furnish Landlord through Landlord's property manager with copies of all building permits, at least three (3) sets of "as built" Plans (as well as a set in CAD format, if requested by Landlord) if so prepared, or if not, "field modified" plans of the application for permit set of plans for the Tenant Improvements, completion affidavit and full and final unconditional waivers of liens and will provide a copy of and cause a Notice of Completion to be recorded in the Office of the Recorder of the County of Alameda. Under no circumstances shall Landlord be required to pay, during the Term any ad valorem or other Taxes on the Tenant Improvements, Tenant hereby covenanting to pay all such taxes when they become due.

#### WORK LETTER SCHEDULES

Schedule G-1 Requirements for Final Space Plan

Schedule G-2 Requirements for Contract Documents

Schedule G-3 Construction Rules and Regulations

## **SCHEDULE G-1**

### **REQUIREMENTS FOR FINAL SPACE PLAN**

Floor plans, together with related information for mechanical, electrical and plumbing design work, showing partition arrangement and reflected ceiling plans (three (3) sets), including without limitation the following information:

- a. identify the location of bathrooms and office rooms and density of occupancy;
- b. indicate the density of occupancy for all rooms;
- c. identify the location of any food service areas or vending equipment rooms;
- d. identify areas, if any, requiring twenty-four (24) hour air conditioning;
- e. indicate partitions that are to extend from floor to underside of structure above or require special acoustical treatment;
- f. identify the location of rooms for, and layout of, telephone, information technology and communication equipment;
- g. identify the locations and types of plumbing required for toilets (other than core facilities), sinks, drinking fountains, etc.;
- h. indicate light switches in offices and all other rooms in the Premises;
- i. indicate the layouts for specially installed equipment, including computer equipment, trade fixtures, and the size and capacity of mechanical and electrical services required and heat rejection of the equipment;
- j. indicate the dimensioned location of: (A) electrical receptacles (one hundred twenty (120) volts), including receptacles and telephone outlets and their respective locations (wall or floor), and (B) electrical receptacles for use in the operation of Tenant's business equipment which requires two hundred eight (208) volts or more and separate electrical circuits;
- k. indicate proposed layout of sprinkler and other life safety and fire protection equipment, including any special equipment and raised flooring;
- l. indicate the swing of each door;
- m. indicate a schedule for doors and frames, complete with hardware, if applicable; and
- n. indicate any special systems to be installed.

[Remainder of Page Blank]

## **SCHEDULE G-2**

### **REQUIREMENTS FOR CONTRACT DOCUMENTS**

Final architectural detail and working drawings, finish schedules and related plans (three (3) reproducible sets) including without limitation the following information and/or meeting the following conditions:

- a. materials, colors and designs of wallcoverings, floor coverings and window coverings and finishes;
- b. paintings and decorative treatment required to complete all construction;
- c. complete, finished, detailed mechanical, electrical, plumbing and structural plans and specifications for the Tenant Improvements, including but not limited to the fire and life safety systems and all work necessary to connect any special or non-standard facilities to the Building's base mechanical systems;
- d. all final construction drawings must be drawn to a scale of one-eighth (1/8) inch to one (1) foot and shall be made available in PDF and hard copy. Any architect or designer acting for or on behalf of Tenant shall be deemed to be Tenant's agent and authorized to bind Tenant in all respects with respect to the design and construction of the Premises; and
- e. Tenant shall not request any work which would: (1) not comply with all applicable laws, rules, regulations and requirements of any governmental department having jurisdiction over the construction of the Building and/or the Premises, including specifically, but without limitation, the Americans with Disabilities Act; (2) be incompatible with the building plans filed with the appropriate governmental agency from which a building permit is obtained for the construction of the Tenant Improvements or with the occupancy of the Building; or (3) delay the completion of the Premises or any part thereof. Tenant shall not oppose or delay changes required by any governmental agency affecting the construction of the Tenant Improvements in the Premises.

[Remainder of Page Blank]

### **SCHEDULE G-3**

#### **CONSTRUCTION RULES AND REGULATIONS**

1. Tenant and/or the general contractor will supply Landlord with a copy of all permits (if applicable) prior to the start of any work.
2. Tenant and/or the general contractor will post the building permit (if applicable) on a wall of the construction site while work is being performed.
3. Walk-off mats are to be provided at entrance doors.
4. Contractors will remove their trash and debris daily, or as often as necessary to maintain cleanliness in the Building. Landlord's Building trash containers are not to be used for construction debris. Landlord reserves the right to bill Tenant for any cost incurred to clean up debris left by the general contractor or any subcontractor.
5. No utilities (electricity, water, gas, plumbing) or services to the tenants are to be cut off or interrupted without first having requested, in writing, and secured, in writing, the permission of Landlord, which shall not be unreasonably withheld or delayed.
6. No electrical services are to be put on the emergency circuit, without specific written approval from Landlord.
7. When utility meters are installed, the general contractor must provide the property manager with a copy of the operating instructions for that particular meter.
8. Landlord will be notified of all work schedules of all workmen on the job and will be notified, in writing, of names of those who may be working in the building after "normal" business hours.
9. If within the building, passenger elevators shall not be used for moving building materials and shall not be used for construction personnel except in the event of an emergency. The designated freight elevator is the only elevator to be used for moving materials and construction personnel. This elevator may be used only when it is completely protected as determined by Landlord's building manager or engineer.
10. Contractors or personnel will use loading dock area for all deliveries and will not use loading dock for vehicle parking, unless otherwise reasonably necessary to enable Tenant to complete Tenant Improvements.
11. Contractors will be responsible for daily removal of waste foods, milk and soft drink containers, etc. and will not use any Building trash receptacles but trash receptacles supplied by them.
12. No building materials are to enter the Building by way of main lobby, if any, and no materials are to be stored in any lobbies at any time.

13. Construction personnel are not to eat in the lobby, if any, or in front of Building nor are they to congregate in the lobby or in front of Building.
14. Tenant will provide Landlord written notice in accordance with Section 25 of the Lease when work is completed for inspection. All damage to the Building will be determined at that time.
15. All key access, fire alarm work, or interruption of security hours must be arranged with Landlord's building manager or engineer.
16. There will be no radios allowed on job site.
17. All workers are required to wear a shirt, shoes, and full length trousers and any personal protective equipment as required by applicable OSHA regulations.
18. There will be no yelling or boisterous activities.
19. All construction materials or debris must be stored within the project confines or in an approved lock-up.
20. There will be no alcohol or controlled substances allowed or tolerated. There is to be no smoking in the Building.
21. The general contractor and Tenant shall be responsible for all loss or damage to their tools, equipment and materials and shall hold Landlord harmless for such loss and from any damages or claims.

[Remainder of Page Blank]

## 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:

Lincoln Property Company, as Agent for  
City of Alameda  
950 W. Mall Square, suite 239  
Alameda, CA 94501

(510) 749-0304; (510) 749-1095 fax

1. General Information.

Name of Responding Company: The Gold Bar Spirits Company Inc.

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

Prospective Tenant ☒ Existing Tenant ☐

Mailing Address: 201 Spear St Suite 1100 San Francisco, CA 94105

Contact Person and Title: Elliott Gillespie President

Telephone Number: ( 415 ) 234-0399

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

2505 Monarch - Street Building 22

Length of Lease Term: 72 months

Your Standard Industrial Classification (SIC) Code Number: 1101

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.

Distillery Operation, Distillation, Barrelling, Blending, Bottling and serving via Tasting room

2. Use and/or Storage of Hazardous Materials.

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). **See Attached Data Sheets for Sodium Carbonate, Citric Acid, Soda Ash (stored in small amounts, all in 50 pound bags on shelf and in tubs. Used for cleaning of wood barrels and disinfecting equipment.**

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. \_\_\_\_\_

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

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. \_\_\_\_\_

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 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. \_\_\_\_\_

\_\_\_\_\_  
N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_

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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. \_\_\_\_\_

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**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 | X _____ 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.

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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.**

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

adhesives or use solvents

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. \_\_\_\_\_

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

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

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.**

|  |   |
|--|---|
|  | <p>_____</p> <p></p> <p>a _____</p> <p>_____</p> <p>By: <u>Elliott Gillespie</u></p> <p>Title: <u>President</u></p> <p>Date: <u>February 17, 2024</u></p> |
|--|---|



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/16/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| <b>PRODUCER</b><br>Allied Brokers – JHIA<br>591 Lytton Avenue<br><br>Palo Alto CA 94301              | <b>CONTACT</b><br>NAME: JHIA Data<br>PHONE (A/C, No, Ext): (650) 328-1000<br>FAX (A/C, No): (650) 324-1142<br>E-MAIL: businessVIP@alliedbrokers.com<br><b>INSURER(S) AFFORDING COVERAGE</b><br><table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURER</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A : Philadelphia Insurance Company</td> <td>18058</td> </tr> <tr> <td>INSURER B : California Automobile Insurance Co.</td> <td>38342</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table> | INSURER | NAIC # | INSURER A : Philadelphia Insurance Company | 18058 | INSURER B : California Automobile Insurance Co. | 38342 | INSURER C : |  | INSURER D : |  | INSURER E : |  | INSURER F : |  |
|--|---|---------|--------|--|-------|---|-------|-------------|--|-------------|--|-------------|--|-------------|--|
| INSURER  | NAIC #  |         |        |  |       |   |       |             |  |             |  |             |  |             |  |
| INSURER A : Philadelphia Insurance Company   | 18058   |         |        |  |       |   |       |             |  |             |  |             |  |             |  |
| INSURER B : California Automobile Insurance Co.  | 38342   |         |        |  |       |   |       |             |  |             |  |             |  |             |  |
| INSURER C :  |   |         |        |  |       |   |       |             |  |             |  |             |  |             |  |
| INSURER D :  |   |         |        |  |       |   |       |             |  |             |  |             |  |             |  |
| INSURER E :  |   |         |        |  |       |   |       |             |  |             |  |             |  |             |  |
| INSURER F :  |   |         |        |  |       |   |       |             |  |             |  |             |  |             |  |
| <b>INSURED</b><br>The Gold Bar Spirits Co. Inc.<br>201 Spear St. #1100<br><br>San Francisco CA 94105 |   |         |        |  |       |   |       |             |  |             |  |             |  |             |  |

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE   | ADDL INSD                                     | SUBR WVD | POLICY NUMBER   | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                    |              |
|----------|---|---|----------|-----------------|-------------------------|-------------------------|---|--------------|
| A        | <b>COMMERCIAL GENERAL LIABILITY</b>   |   |          | PHPK2644336     | 01/17/2024              | 01/17/2025              | EACH OCCURRENCE                           | \$ 1,000,000 |
|          | CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR   |   |          |                 |                         |                         | DAMAGE TO RENTED PREMISES (Ea occurrence) | \$ 100,000   |
|          |   |   |          |                 |                         |                         | MED EXP (Any one person)                  | \$ 5,000     |
|          |   |   |          |                 |                         |                         | PERSONAL & ADV INJURY                     | \$ 1,000,000 |
|          |   |   |          |                 |                         |                         | GENERAL AGGREGATE                         | \$ 2,000,000 |
|          | GEN'L AGGREGATE LIMIT APPLIES PER:  |   |          |                 |                         |                         | PRODUCTS - COMP/OP AGG                    | \$ 2,000,000 |
|          | <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC |   |          |                 |                         |                         |   | \$           |
|          | OTHER:  |   |          |                 |                         |                         |   | \$           |
| B        | <b>AUTOMOBILE LIABILITY</b>   |   |          | BA0400000076310 | 09/30/2023              | 09/30/2024              | COMBINED SINGLE LIMIT (Ea accident)       | \$ 1,000,000 |
|          | ANY AUTO  |   |          |                 |                         |                         | BODILY INJURY (Per person)                | \$           |
|          | <input checked="" type="checkbox"/> OWNED AUTOS ONLY  | <input type="checkbox"/> SCHEDULED AUTOS      |          |                 |                         |                         | BODILY INJURY (Per accident)              | \$           |
|          | <input type="checkbox"/> HIRED AUTOS ONLY   | <input type="checkbox"/> NON-OWNED AUTOS ONLY |          |                 |                         |                         | PROPERTY DAMAGE (Per accident)            | \$           |
|          | <input type="checkbox"/> AUTOS ONLY   |   |          |                 |                         |                         |   | \$           |
| A        | <input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b>  |   |          | PHUB848679      | 01/17/2024              | 01/17/2025              | EACH OCCURRENCE                           | \$ 5,000,000 |
|          | <input checked="" type="checkbox"/> <b>EXCESS LIAB</b>  |   |          |                 |                         |                         | AGGREGATE                                 | \$ 5,000,000 |
|          | DED <input checked="" type="checkbox"/> RETENTION \$ 10,000   |   |          |                 |                         |                         |   | \$           |
|          | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>  |   |          |                 |                         |                         | PER STATUTE                               | OTH-ER       |
|          | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)                               | <input type="checkbox"/> Y / N                | N / A    |                 |                         |                         | E.L. EACH ACCIDENT                        | \$           |
|          | If yes, describe under DESCRIPTION OF OPERATIONS below  |   |          |                 |                         |                         | E.L. DISEASE - EA EMPLOYEE                | \$           |
|          |   |   |          |                 |                         |                         | E.L. DISEASE - POLICY LIMIT               | \$           |
| A        | Liquor Liability  |   |          | PHPK2644336     | 01/17/2024              | 01/17/2025              | Each Common Cause                         | \$1,000,000  |
|          |   |   |          |                 |                         |                         | Aggregate Limit                           | \$1,000,000  |

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Alameda, its City Council, Boards, Commissions, Officials, Employees and Volunteers are named additional insured as their interests may appear.

DocuSigned by:

Lisa Cooper /21/2024

913685A0DE0842C...

**CERTIFICATE HOLDER****CANCELLATION**

City of Alameda

 2263 Santa Clara Ave.  
 Alameda

CA 94501

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Mary Ann Meyers

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

02/21/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|  |  |  |  |
|--|--|--|--|
| <b>PRODUCER</b><br>AP INTEGO INSURANCE GROUP, LLC<br>375 Woodcliff Dr.<br>Suite 103<br>Fairport NY 14450 |  | <b>CONTACT NAME:</b> AP Intego Insurance Group, LLC<br><b>PHONE (A/C, No, Ext):</b> 888-289-2939<br><b>FAX (A/C, No):</b><br><b>E-MAIL ADDRESS:</b> certs@apintego.com                                   |  |
| <b>INSURED</b><br>GOLD BAR SPIRITS COMPANY INC<br>750 6Th Ave<br>San Francisco CA 94118                  |  | <b>INSURER(S) AFFORDING COVERAGE</b><br><b>INSURER A:</b> Employers Preferred Insurance Company<br><b>INSURER B:</b><br><b>INSURER C:</b><br><b>INSURER D:</b><br><b>INSURER E:</b><br><b>INSURER F:</b> |  |
|  |  | <b>NAIC #</b><br>10346   |  |


**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE  | ADDL INSR  | SUBR WVD                 | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS   |
|----------|--|--|--------------------------|---------------|-------------------------|-------------------------|--|
|          | <b>GENERAL LIABILITY</b><br><input type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR<br><input type="checkbox"/><br><input type="checkbox"/><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | <input type="checkbox"/>   | <input type="checkbox"/> |               |                         |                         | EACH OCCURRENCE \$<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$<br>MED EXP (Any one person) \$<br>PERSONAL & ADV INJURY \$<br>GENERAL AGGREGATE \$<br>PRODUCTS - COMP/OP AGG \$<br>\$                         |
|          | <b>AUTOMOBILE LIABILITY</b><br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> NON-OWNED AUTOS   | <input type="checkbox"/>   | <input type="checkbox"/> |               |                         |                         | COMBINED SINGLE LIMIT (Ea accident) \$<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$  |
|          | <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR<br><b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE<br>DED <input type="checkbox"/> RETENTION \$  | <input type="checkbox"/>   | <input type="checkbox"/> |               |                         |                         | EACH OCCURRENCE \$<br>AGGREGATE \$<br>\$   |
| A        | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below   | <input type="checkbox"/> Y / N<br><input type="checkbox"/> N / A | <input type="checkbox"/> | EIG544735400  | 12/24/2023              | 05/01/2024              | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER<br>E.L. EACH ACCIDENT \$ 1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$ 1,000,000<br>E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |
|          |  | <input type="checkbox"/>   | <input type="checkbox"/> |               |                         |                         |  |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

|  |  |
|--|--|
| City of Alameda<br><br>2263 Santa Clara Avenue<br><br>Alameda CA 94501 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br>AUTHORIZED REPRESENTATIVE<br> |
|--|--|

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ACORD 25 (2010/05)

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Clear All

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****GENERAL LIABILITY DELUXE ENDORSEMENT:  
CRAFT BREWERIES AND DISTILLERIES**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE**

It is understood and agreed that the following extensions only apply in the event that no other specific coverage for the indicated loss exposure is provided under this policy. If such specific coverage applies, the terms, conditions and limits of that coverage are the sole and exclusive coverage applicable under this policy, unless otherwise noted on this endorsement. The following is a summary of the Limits of Insurance and additional coverages provided by this endorsement. For complete details on specific coverages, consult the policy contract wording.

| <b>Coverage Applicable</b>  | <b>Limit of Insurance</b> | <b>Page #</b> |
|---|---------------------------|---------------|
| Damage to Premises Rented to You  | \$1,000,000               | 2             |
| Product Withdrawal Expense  | \$20,000                  | 2             |
| Expected or Intended Injury – Property Damage   | Included                  | 7             |
| Supplementary Payments – Bail Bonds   | \$2,500                   | 8             |
| Supplementary Payments – Loss of Earnings   | \$500 per day             | 8             |
| Employee Indemnification Defense Coverage   | \$25,000                  | 8             |
| Who Is An Insured<br>Additional Insured – Newly Acquired or Formed Organizations<br>Additional Insured – Managers and Supervisors (with Fellow Employee Coverage)<br>Additional Insured – Broadened Named Insured<br>Additional Insured – Blanket Additional Insureds When Required by Contract<br>Additional Insured – Managers, Landlords, or Lessors of Premises<br>Additional Insured – Lessors of Leased Equipment<br>Additional Insured – Vendors<br>Additional Insured – Owners, Lessees, or Contractors | Included                  | 8             |
| Duties in the Event of Occurrence, Offense, Claim or Suit   | Included                  | 10            |
| Unintentional Failure to Disclose Hazards   | Included                  | 11            |
| Transfer of Rights of Recovery Against Others To Us   | Clarification             | 11            |
| Liberalization  | Included                  | 11            |
| Bodily Injury – Includes Mental Anguish   | Included                  | 12            |
| Personal and Advertising Injury – Includes Abuse of Process, Discrimination   | Included                  | 12            |

## A. Damage to Premises Rented to You

If damage by fire to premises rented to you is not otherwise excluded from this Coverage Part:

1. The Damage To Premises Rented To You Limit section of the Declarations is amended to the greater of:

- a. \$1,000,000; or
- b. The amount shown in the Declarations as the Damage to Premises Rented to You Limit.

This is the most we will pay for all damage proximately caused by the same event, whether such damage results from fire, lightning, explosion, smoke, or leaks from automatic fire protective systems or any combination thereof;

2. The word fire is changed to fire, lightning, explosion, smoke, or leakage from automatic fire protective systems where it appears in:

- a. The last paragraph of **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Subsection 2. **Exclusions**;
- b. **SECTION III – LIMITS OF INSURANCE**, Paragraph 6.; and
- c. **SECTION V – DEFINITIONS**, Paragraph 9.a.; and

3. The words fire insurance are changed to insurance for fire, lightning, explosion, smoke, or leakage from automatic fire protective systems where it appears in **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Subsection 4. **Other Insurance**, Paragraph b. **Excess Insurance**.

## B. Product Withdrawal Expense

**THIS COVERAGE PROVIDES REIMBURSEMENT TO YOU FOR EXPENSES INCURRED BECAUSE OF A COVERED “PRODUCT WITHDRAWAL.” IT DOES NOT PROVIDE ANY LIABILITY COVERAGE OR COVERAGE FOR THE COST OR EXPENSE OF DEFENDING ANY CLAIM, SUIT, ADMINISTRATIVE ACTION OR OTHER CIVIL OR CRIMINAL PROCEEDING.**

**SECTION I – COVERAGES** is amended to include the following additional coverage:

### 1. Insuring Agreement

- a. We will reimburse you for “product withdrawal expenses” incurred by you because of a “product withdrawal” to which this insurance applies. The amount of such reimbursement is limited as described in Paragraph 3. below. No other obligation or liability to pay sums or perform acts or services is covered.
- b. This insurance applies to a “product withdrawal” only if the “product withdrawal” is initiated in the “coverage territory” during the policy period because:
  - (1) You determine that the “product withdrawal” is necessary; or
  - (2) An authorized government entity has ordered you to conduct a “product withdrawal.”

- c. We will reimburse “product withdrawal expenses” only if:
  - (1) The expenses are incurred within one year of the date the “product withdrawal” was initiated;
  - (2) The expenses are reported to us within one year of the date the expenses were incurred; and
  - (3) The product that is the subject of the “product withdrawal” was produced after the effective date of the policy.
- d. The initiation of a “product withdrawal” will be deemed to have been made only at the earliest of the following times:
  - (1) When you first announced, in any manner, to the general public, your vendors or to your employees (other than those employees directly involved in making the determination) your decision to conduct or participate in a “product withdrawal.” This applies regardless of whether the determination to conduct a “product withdrawal” is made by you or is requested by a third party; or
  - (2) When you first received, either orally or in writing, notification of an order from an authorized government entity to conduct a “product withdrawal.”
- e. “Product withdrawal expenses” incurred to withdraw “your products” which contain the same or substantially similar “defects” will be deemed to have arisen out of the same “product withdrawal.”

## 2. Exclusions

This insurance does not apply to “product withdrawal expenses” arising out of:

### a. Breach Of Warranty And Failure To Conform To Intended Purpose

Any “product withdrawal” initiated due to the failure of “your product” to accomplish its intended purpose, including any breach of warranty of fitness, whether written or implied. This exclusion does not apply if such failure has caused or is reasonably expected to cause “bodily injury” or physical damage to tangible property other than “your product.”

### b. Infringement Of Copyright, Patent, Trade Secret, Trade Dress Or Trademark

Any “product withdrawal” initiated due to copyright, patent, trade secret, trade dress, or trademark infringements.

### c. Deterioration, Decomposition or Chemical Transformation

Any “product withdrawal” initiated due to transformation of a chemical nature, deterioration or decomposition of “your product.” This exclusion does not apply if such deterioration, decomposition or transformation is caused by:

- (1) An error in manufacturing, design, or processing;
- (2) Transportation of “your product”; or

(3) "Product tampering."

**d. Goodwill, Market Share, Revenue, Profit Or Redesign**

The costs of regaining goodwill, market share, revenue or "profit" or the cost of redesigning "your product."

**e. Expiration Of Shelf Life**

Any "product withdrawal" initiated due to the expiration of the designated shelf life of "your product."

**f. Known Defect**

A "product withdrawal," initiated because of a "defect" in "your product" known to exist by the Named Insured or the Named Insured's "executive officers," prior to the date when this Coverage Part was first issued to you or prior to the time "your product" leaves your control or possession.

**g. Otherwise Excluded Products**

A recall of any specific products for which "bodily injury" or "property damage" is excluded under **COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** by endorsement.

**h. Governmental Ban**

A recall when "your product" or a component contained within "your product" has been:

(1) Banned from the market by an authorized government entity prior to the policy period;  
or

(2) Distributed or sold by you subsequent to any governmental ban.

**i. Defense Of Claim**

The defense of a claim or "suit" against you for liability arising out of a "product withdrawal."

**j. Third Party Damages, Fines and Penalties**

Any compensatory damages, fines, penalties, punitive or exemplary or other non-compensatory damages imposed upon the insured.

**k. Pollution-related Expenses**

Any loss, cost or expense due to any:

(1) Request, demand order, statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants."

### 3. Limits of Insurance and Deductible

For the purposes of this endorsement, **SECTION III – LIMITS OF INSURANCE** is deleted in its entirety and replaced with the following:

- a. The most we will reimburse you for the sum of all "product withdrawal expenses" incurred for all "product withdrawals" initiated during the policy period is \$20,000 aggregate.
- b. This limit is the most we will pay regardless of the number of:
  - (1) Insureds;
  - (2) "Product withdrawals" initiated; or
  - (3) Number of "your products" withdrawn.
- c. We will only pay for the amount of "product withdrawal expenses" which are in excess of a \$1,000 deductible. This deductible applies separately to each "product withdrawal." The \$20,000 aggregate limit will not be reduced by the amount of this deductible.

We may, or will if required by law, pay all or any part of the deductible amount. Upon notice of our payment of a deductible amount, you shall promptly reimburse us for the part of the deductible amount we paid.

### 4. Conditions

For the purposes of this additional coverage:

- a. The **Duties In The Event of Occurrence, Claim Or Suit** condition under **SECTION IV – CONDITIONS** is replaced by the following:

#### **Duties in the Event of a "Defect" Or a "Product Withdrawal"**

- (1) You must see to it that we are notified as soon as practicable of any actual, suspected or threatened "defect" in "your product," or any governmental investigation, that may result in a "product withdrawal." To the extent possible, notice should include:
  - (a) How, when and where the "defect" was discovered;
  - (b) The names and addresses of any injured persons and witnesses; and
  - (c) The nature, location and circumstances of any injury or damage arising out of use or consumption of "your product."
- (2) If a "product withdrawal" is initiated, you must:
  - (a) Immediately record the specifics of the "product withdrawal" and the date it was initiated; and

(b) Notify us as soon as practicable.

You must see to it that we receive written notice of the “product withdrawal” as soon as practicable.

(3) You must promptly take all reasonable steps to mitigate the expenses associated with a “product withdrawal.” Any “profit” that you receive from mitigating the expenses will be deducted for the amount of reimbursement that you will receive for “product withdrawal expense.”

(4) You and any other involved insured must:

(a) Immediately send us copies of pertinent correspondence received in connection with the “product withdrawal”;

(b) Authorize us to obtain records and other information; and

(c) Cooperate with us in our investigation of the “product withdrawal.”

b. The following additional condition is included under **SECTION IV – CONDITIONS:**

**Concealment Or Fraud**

We will not provide this additional coverage to you, or to any other insured, who at any time:

(1) Engaged in fraudulent conduct; or

(2) Intentionally concealed or misrepresented a material fact concerning a “product withdrawal” or “product withdrawal expense” incurred by you under this additional coverage.

**5. Definitions**

For the purposes of this additional coverage, the following definitions apply:

a. “Defect” means a defect, deficiency or inadequacy that creates a dangerous condition.

b. “Product tampering” is an act of intentional alteration of “your product” which has caused or is reasonably expected to cause “bodily injury” or physical injury to tangible property other than “your product.”

When “product tampering” is known, suspected or threatened, a “product withdrawal” will be limited to those batches of “your product” which are known or suspected to have been tampered with.

For the purpose of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

c. “Product withdrawal” means the recall or withdrawal:

(1) From the market; or

(2) From use by any other person or organization:

of "your products," or products which contain "your products" because of known or suspected "defects" in "your product," or known or suspected "product tampering," which has caused or is reasonably expected to cause "bodily injury" or physical injury to tangible property other than "your product."

For the purpose of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

d. "Product withdrawal expenses" means reasonable and necessary extra expenses, listed below, paid and directly related to a "product withdrawal":

(1) Costs of notification;

(2) Costs of stationery, envelopes, production of announcements and postage or facsimiles;

(3) Costs of overtime paid to your regular non-salaried employees and costs incurred by your employees, including costs of transportation and accommodations;

(4) Costs of computer time;

(5) Costs of hiring independent contractors and other temporary employees;

(6) Costs of transportation, shipping or packaging;

(7) Costs of warehouse or storage space; or

(8) Costs of proper disposal of "your products," or products that contain "your products," that cannot be reused, not exceeding your purchase price or your cost to produce the products.

e. "Profit" means the positive gain from business operation after subtracting all expenses.

### C. Expected or Intended Injury – Property Damage

**SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions,** Paragraph a. **Expected Or Intended Injury** is deleted in its entirety and replaced by the following:

#### a. Expected Or Intended Injury

"Bodily injury" or property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

## D. Supplementary Payments

**SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**, Items 1.b. and 1.d. are amended as follows:

- b. The limit for the cost of bail bonds is changed from \$250 to \$2,500; and
- d. The limit for loss of earnings is changed from \$250 a day to \$500 a day.

## E. Employee Indemnification Defense Coverage

**SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended to include the following:

We will pay, on your behalf, defense costs incurred by an “employee” in a criminal proceeding resulting from their duties related to the conduct of your business.

The most we will pay for any “employee” who is directly involved in a criminal proceeding is \$25,000 regardless of the number of “employees,” claims or “suits” brought or persons or organizations making claims or bringing “suits.”

## F. Who is An Insured

**SECTION II – WHO IS AN INSURED** is amended as follows:

### 1. Newly Acquired or Formed Organizations

If coverage for newly acquired or formed organizations is not otherwise excluded from this Coverage Part, Paragraph **3.a.** is amended to read:

- a. Coverage under this provision is afforded until the end of the policy period;

### 2. Each of the following is also an insured:

- a. **Managers and Supervisors** – Your managers and supervisors are also insureds, but only with respect to their duties as your managers and supervisors. Managers and supervisors who are your “employees” are also insureds for “bodily injury” to a co-“employee” while in the course of his or her employment by you or performing duties related to the conduct of your business.

This provision does not change Item 2.a.(1)(a) as it applies to managers of a limited liability company.

- b. **Broadened Named Insured** – Any organization and subsidiary thereof which you control and actively manage on the effective date of this Coverage Part. However, coverage does not apply to any organization or subsidiary not named in the Declarations as Named Insured, if they are also insured under another similar policy, but for its termination or the exhaustion of its limits of insurance.

- c. **Blanket Additional Insureds When Required by Contract** – Any person or organization where required by a written contract executed prior to the occurrence of a loss. Such person or organization is an additional insured for “bodily injury,” “property damage” or “personal and advertising injury” but only for liability arising out of the negligence of the named insured. The

limits of insurance applicable to these additional insureds are the lesser of the policy limits or those limits specified in a contract or agreement. These limits are included within and not in addition to the limits of insurance shown in the Declarations.

- d. Managers, Landlords, or Lessors of Premises** – Any person or organization with respect to their liability arising out of the ownership, maintenance or use of that part of the premises leased or rented to you subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any “occurrence” which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of that person or organization.

- e. Lessors of Leased Equipment – Automatic Status When Required in Lease Agreement With You** – Any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization is to be added as an additional insured on your policy. Such person or organization is an insured only with respect to liability for “bodily injury,” “property damage” or “personal and advertising injury” caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

A person’s or organization’s status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any “occurrence” which takes place after the equipment lease expires.

- f. Vendors** – Only with respect to “bodily injury” or “property damage” arising out of “your products” which are distributed or sold in the regular course of the vendor’s business, subject to the following additional exclusions:

- (1) The insurance afforded the vendor does not apply to:

- (a) “Bodily injury” or “property damage” for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
  - (i) The exceptions contained in Sub-paragraphs (d) or (f); or
  - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing.
- g. Owners, Lessees or Contractors** – Any person or organization, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:
  - (1) Your acts or omissions; or
  - (2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured when required by a contract.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

#### **G. Duties in the Event of Occurrence, Offense, Claim or Suit**

1. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 2.a.** the requirement that you must see to it that we are notified as soon as practicable of an "occurrence" or an offense, applies only when the "occurrence" or offense is known to:

- a. You, if you are an individual;
  - b. A partner, if you are a partnership; or
  - c. An "executive officer" or insurance manager, if you are a corporation.
2. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 2.** b. the requirement that you must see to it that we receive notice of a claim or "suit" as soon as practicable will not be considered breached unless the breach occurs after such claim or "suit" is known to:
- a. You, if you are an individual;
  - b. A partner, if you are a partnership; or
  - c. An "executive officer" or insurance manager, if you are a corporation.
3. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 2.** is amended to include the following additional provision:

Your rights under this coverage part will not be prejudiced if you fail to give us notice of an "occurrence," offense, claim or "suit" and that failure is solely due to your reasonable belief that the "bodily injury" or "property damage" is not covered under this coverage part. However, you shall give written notice of this "occurrence," offense, claim or "suit" to us as soon as you are aware that this insurance may apply to such "occurrence", offense claim or "suit."

#### H. Unintentional Failure To Disclose Hazards

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 6. Representations** is amended to include the following provision:

It is agreed that, based on our reliance on your representations as to existing hazards, if you should unintentionally fail to disclose all such hazards prior to the beginning of the policy period of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

#### I. Transfer of Rights of Recovery Against Others To Us

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 8. Transfer of Rights of Recovery Against Others To Us** includes the following clarification:

Therefore, the insured can waive the insurer's rights of recovery prior to the occurrence of a loss, provided the waiver is made in a written contract.

#### J. Liberalization

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS,** is amended to include the following additional condition:

##### **Liberalization**

If we revise this endorsement to provide more coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

**K. Bodily Injury – Mental Anguish**

**SECTION V – DEFINITIONS**, Paragraph 3. is amended to read:

“Bodily injury”:

- a. Means bodily injury, sickness or disease sustained by a person, and includes mental anguish resulting from any of these; and
- b. Except for mental anguish, includes death resulting from the foregoing (Item a. above) at any time.

**L. Personal and Advertising Injury – Abuse of Process, Discrimination**

If **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY COVERAGE** is not otherwise excluded from this Coverage Part, the definition of “personal and advertising injury” is amended as follows:

1. **SECTION V – DEFINITIONS**, Paragraph 14., Item b. is revised to read:

- b. Malicious prosecution or abuse of process;

2. **SECTION V – DEFINITIONS**, Paragraph 14. is amended to include the following:

“Personal and advertising injury” also means discrimination based on race, color, religion, sex, age or national origin, except when:

- a. Done intentionally by or at the direction of, or with the knowledge or consent of:
  - (1) Any insured; or
  - (2) Any executive officer, director, stockholder, partner or member of the insured;
- b. Directly or indirectly related to the employment, former or prospective employment, termination of employment, or application for employment of any person or persons by an insured;
- c. Directly or indirectly related to the sale, rental, lease or sublease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured; or
- d. Insurance for such discrimination is prohibited by or held in violation of law, public policy, legislation, court decision or administrative ruling.

The above does not apply to fines or penalties imposed because of discrimination.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

### **SCHEDULE**

**Name of Person or Organization:**

City of Alameda and Its Members,  
Officers, Directors, Agents, Volunteers,  
Employees, and Officials

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your operations or premises owned by or rented to you.