

**LEASE AGREEMENT**

BY AND BETWEEN

**CITY OF ALAMEDA,**

a charter city and municipal corporation  
AS LANDLORD

and

**PACIFIC AUTOMATED LLC**

a California limited liability company  
AS TENANT

DATED May \_\_, 2014

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## INDEX OF EXHIBITS

### *Exhibit*

- A PREMISES: BUILDING
- A-1 LAND AREA
- A-2 PARKING AREAS
- A-2.2 COMMON AREAS
- B COMMENCEMENT LETTER
- C RENEWAL NOTICE
- D ACKNOWLEDGMENT OF RECEIPT
- E ENVIRONMENTAL QUESTIONNAIRE
- F RULES AND REGULATIONS
- G TENANT WORK LETTER

## LEASE AGREEMENT

### BASIC LEASE INFORMATION{BX}

|                            |                                                                                                                                                                                                                                                                                       |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Lease Date:</i>         | May __, 2014                                                                                                                                                                                                                                                                          |
| <i>Landlord:</i>           | City of Alameda,<br>a charter city and municipal corporation                                                                                                                                                                                                                          |
| <i>Landlord's Address:</i> | 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<br><br>Notice Copy to:<br>PM Realty Group, L.P., as Agent for<br>City of Alameda<br>101 W. Atlantic Avenue<br>Alameda, CA 94501<br>Tel: (510) 749-0304 |
| <i>Tenant:</i>             | Pacific Automated, LLC<br>a California limited liability company dba Brix Beverage                                                                                                                                                                                                    |
| <i>Tenant's Address:</i>   | Pacific Automated, LLC<br>1951 Monarch Street, Unit 200<br>Alameda, CA 94501<br>Tel: (415) 913-0146<br><br>Notice Copy to:<br>Pacific Automated LLC<br>c/o Levine Law Group<br>5801 Christie Avenue, Suite 837<br>Emeryville, CA 94608<br>Tel: (415) 412-4242                         |
|                            |                                                                                                                                                                                                                                                                                       |



|                                     |                                                                                                                                                                                                                              |                                          |                          |
|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|--------------------------|
| <i>Premises:</i>                    | Those certain premises located at 1951 Monarch Street, Unit 200, Alameda, CA consisting of approximately Eighteen Thousand, One Hundred and Fifty-Nine (18,159) rentable square feet, as depicted on <b>Exhibit A</b> .      |                                          |                          |
| <i>Building:</i>                    | Building 25 (the “ <b>Building</b> ”)                                                                                                                                                                                        |                                          |                          |
| <i>Length of Term:</i>              | Sixty (60) months, subject to adjustment in accordance with Section 3.1                                                                                                                                                      |                                          |                          |
| <i>Estimated Commencement Date:</i> | May 1, 2014                                                                                                                                                                                                                  |                                          |                          |
| <i>Estimated Expiration Date:</i>   | April 30, 2019                                                                                                                                                                                                               |                                          |                          |
| <i>Extension Option:</i>            | One option to extend the Term for a period of five (5) years.                                                                                                                                                                |                                          |                          |
| <i>Base Rent:</i>                   | <i>Months</i>                                                                                                                                                                                                                | <i>Monthly Base Rent per square foot</i> | <i>Monthly Base Rent</i> |
|                                     | 1 – 23                                                                                                                                                                                                                       | \$0.35                                   | \$6,355.65*              |
|                                     | 24 – 43                                                                                                                                                                                                                      | \$0.47                                   | \$8,534.73               |
|                                     | 44 – 60                                                                                                                                                                                                                      | \$0.49                                   | \$8,817.91               |
|                                     | *Subject to abatement pursuant to Section 4.1(b) below                                                                                                                                                                       |                                          |                          |
| <i>Tenant's Share:</i>              | 50% Interior Common Areas as depicted on Exhibit A-2.2<br>33.33% Balance of Common Areas                                                                                                                                     |                                          |                          |
| <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>Security Deposit:</i>            | Eight Thousand, Eight Hundred, Seventeen Dollars and 91/100 (\$8,817.91)                                                                                                                                                     |                                          |                          |

|                       |                                                                                                                                                                                                                                                                      |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Permitted Use:</i> | Warehouse, beverage distribution, food grade equipment leasing, maintenance and repair, beverage bottling, and retail fountain bar, or any other related lawful use subject to Landlord's prior written approval.                                                    |
| <i>Parking:</i>       | Tenant shall have the right, on a non-exclusive basis, 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 6.5 herein below |
| <i>Brokers:</i>       | PM Realty Group (Landlord)                                                                                                                                                                                                                                           |

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** is made and entered into by and between CITY OF ALAMEDA, a charter city and municipal corporation (“**Landlord**”) and PACIFIC AUTOMATED, LLC, a California limited liability company, dba Brix Beverage (“**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.

#### 1.1 Lease Agreement

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, Landlord does hereby lease to Tenant and Tenant does hereby hire and take from Landlord, the Premises described below, upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

1.2 Termination of License. Tenant currently occupies the Premises under a License Agreement, dated April \_\_, 2014 between the City as Lessor and Tenant as Licensee (the “**License**”). It is the intent of the parties hereto that the License shall be and is terminated as of the Lease Date specified in the Basic Lease Information, except those indemnification obligations which survive the termination of the License for claims occurring prior to the date of this Lease. Tenant’s continued use and occupancy of the Premises shall be pursuant to the terms of this Lease.

### 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 a nonexclusive license for Tenant and its employees, agents, suppliers, customers and patrons to use the land area appurtenant to the Premises as generally depicted on **Exhibit A-1** attached hereto (“**Land**”). The foregoing notwithstanding, Landlord grants to Tenant an exclusive license for Tenant and its employees, agents, suppliers, customers and patrons to use the Land designated on **Exhibit A-2** for parking purposes (the “**Parking Areas**”). Tenant may also use the Parking Areas for the loading and unloading of trucks shipping items to and from the Premises. Landlord shall not be required to enforce Tenant’s rights to use any parking spaces in the Parking Areas. Landlord reserves the right, from time to time, to stripe, restripe or otherwise designate those areas of the Land (exclusive of the Parking Areas) which may be used for

parking purposes. Under no circumstances may the Land be utilized for the storage (beyond 72 consecutive hours), repair or maintenance of any vehicles. Vehicles may be parked in the Parking Areas for reasonable periods in excess of 72 consecutive hours. Should Tenant or its agents, employees or invitees use the Land or Parking Areas or any portion thereof in violation of this Section 2.2, Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to tow away any vehicle involved and charge the cost of towing and storage to Tenant, which cost shall be immediately payable upon demand by Landlord as Additional Rent. Neither Landlord nor any Landlord Related Party (as defined in Section 14.1 below) shall be liable for: (a) loss or damage to any vehicle or other personal property parked or located upon or within the Land or Parking Areas, whether pursuant to this license or otherwise and whether caused by fire, theft, explosions, strikes, riots, or any other cause whatsoever other than the gross negligence or willful misconduct of Landlord; or (b) injury to or death of any person in, about or around any parking spaces or any portion of the Land or Parking Areas or any vehicles parked thereon whether caused by fire, theft, assault, explosion, riot or any other cause whatsoever other than the gross negligence or willful misconduct of Landlord, 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 separate from the Lease and in the event an attempt to assign such rights separately is made, such assignment shall be void. Landlord shall have no maintenance obligations for the Land or Parking Areas and all provisions of this Lease concerning Tenant's rights and obligations governing its use and occupancy of the Premises that are not inconsistent with this Section 2.2 shall be applicable to the Land and Parking Areas. Landlord shall have no obligations to maintain any improvements or structure located within the Parking Areas. In addition to the foregoing, if Tenant desires storage rights outside of the Premises or other such uses of the Parking Areas, Tenant shall provide a narrative written description and plans showing such uses for Landlord's review and approval, such approval not to be unreasonably withheld, conditioned or delayed. If Tenant obtains Landlord's approval for outside storage or other uses, the same shall be properly screened in Landlord's reasonable discretion.

2.3 Common Areas. In addition to the Premises, and subject to the rules and regulations attached hereto as **Exhibit F**, Tenant shall have the non-exclusive right, in common with all other parties occupying the Building, to use the areas designated by Landlord as depicted in **Exhibit A-2.2** (collectively the "**Common Areas**"). The use of the Common Areas shall be for the non-exclusive use of Tenant and Tenant's employees, agents, suppliers, customers and patrons, in common with Landlord and all other tenants of the Building and such other persons to whom Landlord has previously granted, or may hereafter grant, rights of usage. Tenant shall not be entitled to use the Common Areas for storage of goods, vehicles, refuse or any other items. Landlord reserves the right to alter, modify, enlarge, diminish, reduce or eliminate the Common Areas from time to time in its sole discretion, provided that in exercising any such right Landlord shall not unreasonably impair or interfere with access to the Premises and/or Tenant's possession or use thereof. If Tenant shall use any of the Common Areas for storage of any items without Landlord's consent, Tenant shall pay all fines and other charges imposed upon either Landlord or Tenant by any fire, building or other regulatory body, and Tenant shall pay all costs reasonably incurred by Landlord to clear that portion of the Common Areas so used by Tenant and dispose of such items thereon.

2.4 Possession. Tenant accepts the Premises in "AS IS" "WITH ALL FAULTS" condition and configuration without any representations or warranties by Landlord, and 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 or the Building for the conduct of Tenant's business. Landlord shall not be liable for any latent or patent defects in the Premises, Land or Parking Areas excepting Tenant Improvements constructed by Landlord, if any, and the Common Areas. Tenant shall be responsible for requesting an inspection and obtaining a Certificate of Occupancy for the Premises 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, the fixtures, and equipment therein, and all other parts of the Building including Common Areas within and around the Building and the Land 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 Common Areas. 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 impairment of or 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 or from the Premises. 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, 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 sixtieth (60th) full calendar month following the Commencement Date ("**Expiration Date**"), unless sooner terminated or extended as hereinafter provided. The foregoing notwithstanding, in the event the term of the License is less than three (3) months, the balance of such term shall be added to the Term of this Lease. Promptly following the Commencement Date, Landlord and Tenant shall enter into a letter agreement substantially in the form attached hereto as **Exhibit B**, specifying and confirming the Commencement Date and the Expiration Date; if Tenant fails to execute and deliver such letter agreement to Landlord within ten (10) business days after Landlord's delivery of the same to Tenant, said letter agreement will be deemed final and binding upon Tenant.

3.2 [Intentionally Omitted.]

3.3 Option to Renew.

(a) Renewal Options. Tenant shall have one (1) option to extend the Term (“**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 or an assignee that is a Tenant Affiliate and may not be exercised by any other sublessee or assignee or by any other successor or assign. 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 the 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 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, the 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) ninety-five percent (95%) of the “Fair Market Rent” prevailing at the commencement of the 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 under an agreement with or otherwise through Tenant. Landlord shall be responsible for all brokerage costs and/or finder fees associated with Tenant’s exercise of any Renewal Option made by parties claiming under an agreement with or otherwise through Landlord.

(c) Renewal Rate. For purposes of this Section 3.3, “**Fair Market Rent**” means the prevailing rental rate per rentable 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 and for comparable terms. 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 Fair Market Rent and resulting Renewal Rate (“**Renewal Rate Notice**”). Tenant shall have twenty (20) days (“**Response Period**”) after receipt of the Renewal Rate Notice to advise Landlord whether or not Tenant agrees with Landlord’s determination of the Fair Market Rent and resulting Renewal Rate or if Tenant disagrees, the amount proposed by Tenant as the Fair Market Rent and resulting Renewal Rate. If Tenant does not respond to Landlord in writing within the Response Period, then Tenant shall be deemed to have accepted



the Fair Market Rent and resulting 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 Fair Market Rent and resulting Renewal Rate, then such determination shall be final and binding on the parties. If Tenant notifies Landlord in writing during the Response Period that Tenant disagrees with Landlord's determination of the Fair Market Rent and resulting 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 of experience negotiating commercial lease transactions in the cities of Alameda and Oakland, California. 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. 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 appointed ("**Broker Negotiation Period**") to attempt to mutually agree upon Fair Market Rent. 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. 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. Landlord and Tenant shall each bear one half (1/2) cost of appointing the third broker and paying the third broker's fees. 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 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). The foregoing notwithstanding, in no event shall the Renewal Rate be less the Base Rent in effect at the end of the previous term. Such determination shall be final and binding upon the parties. Promptly following determination of Fair Market Rent and resulting 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 the 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 or abatement (except as expressly provided in this Lease) 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, in the event the term of the License is less than three (3) months and so long as Tenant is not in Default hereunder, Tenant shall be entitled to an abatement of Base Rent for the first three (3) full calendar months of its occupancy of the Premises, whether under the License or pursuant to this Lease (the “**Abatement Period**”). The total amount of Base Rent abated during the Abatement Period is referred to herein as the “Abated Base Rent”. If Tenant is in Default hereunder at any time during the Term, (i) all previously Abated Base Rent shall immediately become due and payable and (ii) if such Default occurs prior to the expiration of the Abatement Period, there shall be no further abatement of Base Rent pursuant to this Section 4.1(b). The payment by Tenant of the Abated Base Rent in the event of a Default shall not limit or affect any of Landlord’s rights pursuant to this Lease or at law or in equity. During the Abatement Period, only Base Rent shall be abated and all Additional Rent and other costs and charges specified in this Lease shall remain due and payable pursuant to the provisions hereof.

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, Percentage Rent, Additional Rent and all other amounts payable hereunder from Tenant to Landlord. Unless otherwise specified herein, all items of Rent other than Base Rent shall be due and payable by Tenant on or before the date that is thirty (30) days after billing by Landlord.

4.3 Late Charge. Other remedies for non-payment of Rent notwithstanding, if any monthly Base Rent installment or Additional Rent is not received by Landlord on or before the fifth (5th) business day following the due date, or any payment due Landlord by Tenant which does not have a scheduled date is not received by Landlord on or before the thirtieth (30th) day following the date on which 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) business 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 for Expenses (as hereinafter defined) the percentage figure so specified in the Basic Lease Information, and for Taxes shall mean the quotient resulting from dividing the rentable area of the Premises by the total rentable area of the Building. The rentable area of the Premises specified in the Basic Lease Information is conclusive and binding upon Tenant. In the event that either the rentable area of the Premises or the total rentable area of the Building is changed or re-measured by Landlord (which Landlord shall have the right to do from time to time), Tenant’s Share for Taxes and the rentable area of the Premises and Building will be appropriately adjusted; and, as to the Tax and Expense Year in which such change occurs, for purposes of this Article 5, Tenant’s Share shall be determined on the basis of the number of days during such Tax and Expense Year to which each such percentage is applicable.

(b) **“Tax and Expense Year”** shall mean each twelve (12) consecutive month period commencing July 1st and ending on June 30th of each year or partial year during the Term, provided that Landlord, upon notice to Tenant, may change the Tax 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 and charges levied (if at all) upon or with respect to the Building or Common Areas, any personal property of Landlord used in the operation of the Building or Common Areas, or Landlord’s interest in the Building or Common Areas, other than personal property or possessory interest taxes. Taxes shall include, without limitation and whether now existing or hereafter enacted or imposed, all general real property taxes, all general and special assessments, all charges, fees and levies for or with respect to transit, housing, police, fire or other governmental or quasi-governmental services or purported benefits to or burdens attributable to the Building or any occupants thereof, all service payments in lieu of taxes, and any tax, fee or excise on the act of entering into this Lease or any other lease of space in the Building or any occupants thereof, on the use or occupancy of the Building, on the rent payable under any lease or in connection with the business of renting space in the Building, that are now or hereafter levied or assessed against Landlord or the Building by the United States of America, the State of California, the City of Alameda, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may now or hereafter be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Taxes, whether or not now customary or in the contemplation of the parties on the date of this Lease. 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, insurance and repair of the (i) roof and structural elements of the Building; (ii) fire and life safety systems; and (iii) Common Area maintenance.

5.2 Determination and Payment of Operating Expenses and Taxes. Tenant shall pay to Landlord as Additional Rent one-twelfth (1/12th) 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 reasonably estimated by Landlord and billed by Landlord to Tenant; provided, however, that Landlord shall have the right to revise such estimates from time to time in Landlord's reasonable discretion, and Tenant shall thereafter make payments hereunder on the basis of such revised estimates. Within one hundred and twenty (120) days after the close of each Tax and Expense Year, or as soon thereafter as is reasonably practicable, 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. 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 promptly refunded to Tenant. 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 for up to one (1) full year, and such Additional Rent for such period (if any) shall be payable by Tenant within thirty (30) days following 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 without the prior written consent of Landlord. 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

provided that 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, Building or with respect to the suitability or fitness of either for the conduct of Tenant's business or for any other purpose.

6.2 Compliance with Laws. Tenant shall comply with all laws, ordinances, rules, regulations and codes, of all municipal, county, state and federal authorities, including the Americans With Disabilities Act, as amended, (42 U.S.C. Section 1201 et seq. [the "ADA"]) (collectively, "**Laws**") pertaining to Tenant's use and occupancy of the Premises and the conduct of its business. Tenant shall be responsible for making all improvements and alterations necessary to bring the Premises into compliance with applicable ADA requirements and to ensure that the Premises remain in compliance throughout the Term of this Lease. Landlord shall be responsible for such alterations and improvements as may be necessary to bring the common areas of the Building (including restrooms located within the Common Areas, into compliance with the ADA and any of the other Laws), unless such work is necessitated by Tenant's use of the Premises (in which case Tenant shall be responsible for such costs). 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, which was 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. 2013-199810 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 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, Common Areas or Premises, are collectively referred to herein as the

**“Restrictions.”** Any use of the Premises shall comply with the Restrictions and a failure to so comply shall constitute a Default under this Lease.

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

## **7. SECURITY DEPOSIT.**

Concurrently with the execution of this Lease, Tenant shall deliver to Landlord the amount identified in the Basic Lease Information as the Security Deposit to be held by Landlord without liability for interest (unless required by Law) as security for the performance of Tenant’s obligations hereunder. The Security Deposit is not an advance payment of Rent or a measure of damages. Landlord may from time to time and without prejudice to any other remedy provided in this Lease or by Law, use all or a portion of the Security Deposit to the extent necessary to satisfy past due Rent or to satisfy Tenant’s breach under this Lease or to reimburse or compensate Landlord for any liability, expense, loss or damage which Landlord may suffer or incur by reason thereof. If Landlord so uses or applies all or any portion of the Security Deposit, then within fifteen (15) days after demand therefore, Tenant shall deposit cash with Landlord in an amount sufficient to restore the Security 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 such payments have been made, the Security Deposit, or such balance thereof remaining, will be refunded to the Tenant within thirty (30) days 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, 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”**). In accordance with California Public Resources Code section 25402.10, Tenant shall, upon written request, promptly provide Landlord with monthly electrical usage data (in either electronic or paper format) for the Premises for the period of time so requested by Landlord. In the alternative, and at Landlord’s option, Tenant shall provide any written authorization or other documentation required by Landlord to request information regarding Tenant’s electrical usage data with respect to the Premises directly from the utility company providing electricity to the Premises.

8.2 No Liability of Landlord. Except in the case of Landlord’s gross negligence or willful misconduct, in no event shall Landlord be liable or responsible for any loss, damage, expense or liability, including, without limitation, loss of business or any consequential damages,



arising from any failure or inadequacy of any service or Utilities provided to the Premises or the Building, whether resulting from any change, failure, interference, disruption or defect in supply or character of the service or Utilities provided to the Premises or the Building, or arising from the partial or total unavailability of the service or utility to the Premises or the Building, 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. In accordance with California Public Resources Code section 25402.10, Tenant shall, upon written request, promptly provide Landlord with monthly electrical usage data (in either electronic or paper format) for the Premises for the period of time so requested by Landlord. In the alternative, and at Landlord's option, Tenant shall provide any written authorization or other documentation required by Landlord to request information regarding Tenant's electrical usage data with respect to the Premises directly from the utility company providing electricity to the Premises.

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

9.1 Tenant's Tax Obligation. Tenant shall pay all Taxes (as hereinafter defined) levied or imposed against the Premises or Tenant's personal property or trade fixtures placed by Tenant in or about the Premises during the Term. "Taxes" shall mean all taxes, assessments and governmental charges, whether federal, state, county or municipal, and whether general or special, ordinary or extraordinary, foreseen or unforeseen, imposed upon, the Premises, the Building, 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 Possessory Interest Taxes. The interest created by this Lease may at some time be subject to property taxation under the laws of the State of California. If property taxes are imposed, the party in whom the possessory interest is vested may be subject to the payment of the taxes levied on such interest. This notice is included in this Lease pursuant to the requirements of section 107.6 (a) of the Revenue and Taxation Code of the State of California.

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

## **10. ALTERATIONS.**

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

that Landlord shall have the right in its sole and absolute discretion to withhold its consent to any Alteration which adversely in any material respect 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. 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 adversely in any material respect affect the structural portion of the Buildings or the systems serving the Buildings, (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 Twenty-Five Thousand Dollars (\$25,000) and, (d) are performed in full compliance with the terms of 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 reasonably paid by Landlord for third party examination of Tenant's plans for Alterations. 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 four percent (4%) of the hard costs of the Alteration. 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. Landlord's failure to so notify Tenant in response to such request shall excuse Tenant from any requirement to remove any or all of such Alterations. All costs of any Alterations (including, without limitation, the removal thereof, if required) shall be borne by Tenant. If Tenant fails when required to promptly complete the removal of any Alterations and/or to repair any damage caused by the removal, Landlord may, following notice of such failure to Tenant, do so and may charge the reasonable costs thereof to Tenant. All Alterations shall be made in a first-class, workmanlike manner and in a manner that will not disturb other tenants, in accordance with Landlord's then-current guidelines 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 and ad valorem or property tax 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 Building) 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, 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's liens or any other liens against the Premises or Buildings 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, cause such lien to be released of record by payment or by 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's Work. Notwithstanding the foregoing provisions of this Article 10, the initial tenant improvements to be installed by Tenant at the outset of the Term of this Lease shall be governed by the Tenant Work Letter attached hereto as **Exhibit G**.

## **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) any additions to or modifications of the existing fire life safety systems located within and serving the Premises, 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 (provided, however, that Tenant

shall have no obligation to maintain and/or repair the HVAC system previously used by one or more predecessor occupants for removal of exhaust or other chemical vapors, or at all if Tenant does not use the HVAC systems exclusively serving all or any portion of the Premises); (viii) [intentionally omitted]; (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 located within or exclusively serving the Premises.

(b) Tenant Repair. Tenant shall further, at its sole cost and expense, repair or restore any damage or injury to all or any part of the Building 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 Alterations or other improvements to the Premises by or on behalf of Tenant and (ii) the moving of any property into or out 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 reasonable 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. Landlord shall maintain in good repair (a) the structural elements of the Building, including structural elements of exterior walls and foundations; (b) the roof of the Building; (c) the existing fire and life safety system serving the Building; and (d) Common Areas of the Building, 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. Subject to the waiver of subrogation provision set forth in Article 15 below, if Tenant or Tenant's invitees or anyone in the employ or control of Tenant causes 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, except in the event and to the extent such failure makes the Premises untenantable.

## 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 problems 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 Property is 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 Representatives**”) 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’s Representatives 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 meaningful risk of contamination or damage or expose Landlord to any liability therefor.

12.3 Remediation Obligations. If at any time during the Term, any contamination of the Premises by Hazardous Materials shall occur where such contamination is caused by the act or omission of Tenant or Tenant’s Representatives (“**Tenant’s Contamination**”), then Tenant, at Tenant’s sole cost and expense, shall promptly and diligently remove 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 or security caused by the Tenant Contamination. Landlord and Tenant shall jointly prepare a remediation plan in compliance with all Hazardous Materials Laws and the provisions of this Lease. In addition to all other rights and remedies of Landlord hereunder, if Tenant does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Tenant's Contamination, and thereafter commence the required remediation of any Hazardous Materials released or discharged in connection with Tenant's Contamination within thirty (30) days after all necessary approvals and consents have been obtained, and thereafter continue to prosecute such remediation to completion in accordance with the approved remediation plan, then Landlord, in its sole discretion, shall have the right, but not the obligation, to cause such remediation to be accomplished, and Tenant shall reimburse Landlord within fifteen (15) business days of Landlord's demand for reimbursement of all amounts reasonably paid by Landlord (together with interest on such amounts at the highest lawful rate until paid), when such demand is accompanied by proof of payment by Landlord of the amounts demanded. Tenant shall promptly deliver to Landlord, copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Premises as part of Tenant's remediation of any Tenant's Contamination. The foregoing notwithstanding, "Tenant's Contamination" shall not refer to or include any Hazardous Materials that were not clearly introduced to the Premises by Tenant or Tenant's Representatives. As an example, if lead dust or asbestos are found on the Premises, unless there is clear evidence that Tenant introduced those Hazardous Materials to the Premises, those Hazardous Materials shall not be considered "Tenant's Contamination," and it shall be Landlord's, and not be Tenant's, responsibility to take remedial action relating to such Hazardous Materials.

12.4 Environmental Permits. Tenant, its contractors, assigns or subtenants shall be solely responsible for obtaining, 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, at all reasonable times and upon reasonable notice, the Premises for compliance with environmental, safety, and occupational health laws and regulations, regardless of whether Landlord is responsible for enforcing or complying with them. 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, that Landlord agrees 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 (collectively,

“**Landlord Representatives**”) by reason of entrance of such Landlord Representatives onto the Premises except in the event of the gross negligence or willful misconduct of Landlord or any Landlord Representatives while on 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. 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**”). Landlord’s execution of this Lease constitutes Landlord’s approval of the Environmental Questionnaire and Tenant’s use of the Hazardous Materials set forth therein in compliance with Hazardous Materials Laws. 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 and 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. The foregoing notwithstanding, if Landlord fails to timely notify Tenant of Landlord’s approval or disapproval of any such Hazardous Materials Handling Plan, Tenant shall have the right to provide Landlord with a second written request for approval (a “**Second Request**”) that specifically identifies the Hazardous Materials Handling Plan and contains the following statement in bold and capital letters: “**THIS IS A SECOND REQUEST FOR APPROVAL OF A HAZARDOUS MATERIALS HANDLING PLAN PURSUANT TO THE PROVISIONS OF SECTION 12.6 OF THE LEASE. IF LANDLORD FAILS TO RESPOND WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN LANDLORD SHALL**



**BE DEEMED TO HAVE APPROVED THE HAZARDOUS MATERIALS HANDLING PLAN DESCRIBED HEREIN.”** If Landlord fails to respond to such Second Request within five (5) business days after receipt by Landlord, the Hazardous Materials Handling Plan in question shall be deemed approved by Landlord. If Landlord timely delivers to Tenant a notice of Landlord’s disapproval of any Hazardous Materials Handling Plan, Tenant may revise said Plan and resubmit the same to Landlord; in such event the scope of Landlord’s review of such revised Hazardous Materials Handling Plan 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 Hazardous Materials Handling Plan shall be governed by the provisions as set forth above in this Section 12.6.

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. The foregoing notwithstanding, Tenant shall have no indemnity obligations hereunder for any costs, expenses, liabilities, fines, or penalties resulting from the presence of any Hazardous Materials in, on, under, or about the Premises or Land as of the date Tenant first took possession of the Premises, whether under this Lease or the License. This provision shall survive the expiration or termination of this 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, (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 unreasonably withheld, conditioned or delayed, provided that (i) Tenant is not then in Default under this Lease nor is any event then occurring which, 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 except to a Tenant Affiliate. A transfer of an interest greater than fifty percent (50%) (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 in a transaction in which Landlord’s consent is required hereunder, 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 (which right must be exercised, if at all, in accordance with the provisions of

Section 13.3 hereof), 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 an amendment or other document reasonably 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. Tenant's 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 thirty (30) days following receipt of such additional information (or 30 days after receipt of Tenant's 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, subject, however, to prior written consent to the proposed assignment or sublease or (c) to deny Tenant's request to assign this Lease or sublet such space with a statement of the basis for such denial. 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 applicable 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 any time within the preceding six (6) months; or (v) any other reasonable basis that Landlord may assert.

13.4 Transfer Premium. If Landlord consents to any requested assignment or sublease (each "**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 Tenant Affiliates. Notwithstanding anything to the contrary contained in Section 13.1, Tenant may, without obtaining the prior consent of Landlord, and without the payment of any amounts pursuant to Section 13.4, sublet or license the use of all or any part of the Premises or assign this Lease to a Tenant Affiliate, provided that (a) Tenant shall give not less than fifteen

(15) days' prior written notice thereof to Landlord (to the extent such notice is permitted by applicable Law), (b) Tenant shall continue to be fully obligated under this Lease, and (c) any such assignee or sublessee shall expressly assume and agree to perform all the terms and conditions of this Lease to be performed by Tenant and to use the Premises only for a Permitted Use (but with respect to a sublease, only with respect to that portion of the Premises that is the subject of the sublease and excluding all rental obligations of Tenant hereunder). As used herein, "**Tenant Affiliate**" means (i) an entity controlling, controlled by or under common control with Tenant, (ii) a successor corporation or other entity related to Tenant by merger, consolidation, nonbankruptcy reorganization, or government action, or (iii) a purchaser of all or substantially all of Tenant's assets located in the Premises; and a party shall be deemed to "control" another party for purposes of the definition contained in the aforesaid clause (i) only if the first party owns more than fifty percent (50%) of the stock or other beneficial interests of the second party or has the power to direct or cause the direction of the management or policy of the second party, or the first and second party share the same, or substantially the same (defined as a majority of directors on the "controlled" entity's board or similar management structure are also on the other entity's board or similar management structure), board of directors or other management structure.

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 for credit against any Rent due hereunder 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 or 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 reasonable costs and expenses (including without limitation, the reasonable fees of Landlord's counsel) incurred in connection with 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, or 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 otherwise 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 its trustees, members, principals, beneficiaries, partners, elected officials, officers, directors, employees, property managers, Mortgagees and agents (“**Landlord Related Parties**”) harmless against and from all liabilities, obligations, damages, penalties, claims, actions, costs, charges, judgment and expenses (including reasonable attorneys’ fees, costs and disbursements) (collectively referred to as “**Losses**”), arising from (a) the use of, or any activity done, permitted or suffered in or about the Premises (b) any activity done, permitted or suffered by Tenant or Tenant’s agents in or about the Building (c) any act, neglect, fault, or 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 or any Landlord Related Parties. 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 Landlord Related Parties from responsibility for, waives its entire claim of recovery for and assumes all risks of (i) damage to property or injury to person in or about the Premises or the Building from any cause whatsoever except to the extent caused by the gross negligence or willful misconduct of Landlord or 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 the gross negligence or willful misconduct of Landlord or any Landlord Related Party, Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord and Landlord Related Parties for any injury or damage to any person or property occurring or incurred in connection with or in any way relating to the Premises or Building from any cause. Without limiting the foregoing, neither Landlord nor any Landlord Related Party shall be liable for and there shall be no abatement rent for (a) any damage to Tenant’s property stored with or entrusted to any Landlord Related Party, (b) loss of or damage to any property by theft or any other wrongful or illegal act, or (c) any injury or damage to person or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Premises or Building or from the pipes, appliances, appurtenance or plumbing works thereof or from the roof, street or surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Premises or Building or from any other cause whatsoever, (d) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises or (e) any latent or other defects in the Premises or the Building. Tenant agrees that in no case shall Landlord or any Landlord Related Party be responsible or liable on any theory for any injury to Tenant’s business, loss of profits, loss of income or any other form of consequential damage.

14.3 Survival/No Impairment. The obligations of Tenant under this Article 14 shall survive any termination of this Lease. The foregoing indemnity obligations shall not relieve any insurance carrier of its obligations under any policies required to be carried by either party pursuant to this Lease, to the extent that such policies cover the peril or occurrence that results in the claims that are 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, PM Realty Group L.P. and such other parties in interest as Landlord may from time to time reasonably designate to Tenant in writing, as additional insureds. Such additional insureds shall be provided at least the same extent of coverage as is provided to Tenant under such policies. The additional insured endorsement shall be in a form at least as broad as endorsement form number CG 20 11 01 96 promulgated by the Insurance Services Office

(b) Personal Property Insurance. Tenant shall maintain in full force and effect on all of its personal property, furniture, furnishings, trade fixtures, and equipment from time to time located in, on or upon the Premises ("**Tenant's Property**"), and any Alterations (as defined in Article 10) in an amount not less than one hundred percent (100%) of their full replacement value from time to time during the Term, providing protection against all perils, included within the standard form of "all-risk" (i.e., "Special Cause or Loss") fire and casualty insurance policy. 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) Commercial Pollution Legal Liability. Commercial Pollution Legal Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).

(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 covering loss of at least approximately twelve (12) months of income.

(f) Automobile Liability. If Tenant owned vehicles are operated on or about the Building or Common Areas, Tenant shall, at Tenant's expense, maintain in full force and effect during the Term of this Lease, Commercial Automobile Liability Insurance providing coverage for any vehicle owned by Tenant and used in the conduct of its business. Such policy shall be in an amount of not less than One Million Dollars (\$1,000,000) combined singled limit. Such policy of insurance shall be issued by an insurance company authorized to do business in the state of California and rated A-: VII or better in the Best's Key Rating Guide.

15.2 Requirements For All Policies. Each policy of insurance required under Section 15.1 shall: (a) be in a form, and written by an insurer, reasonably acceptable to Landlord, (b) be maintained at Tenant's sole cost and expense, and (c) require at least thirty (30) days' written notice to Landlord prior to any cancellation, nonrenewal or modification of insurance coverage. Insurance companies issuing such policies shall have rating classifications of "A-" or better and financial size category ratings of "VII" or better according to the latest edition of the Best Key Rating Guide. All insurance companies issuing such policies shall be admitted carriers licensed to do business in the state where the Property is located. Any deductible amount under such insurance shall not exceed \$15,000. 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 (30) days prior written notice of any cancellation or modification. Landlord and Tenant agree, to the extent such waivers are commercially reasonable, to have their respective insurance companies waive any rights of subrogation that such company may have against Landlord or Tenant, as the case may be.

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

15.4 Landlord's Insurance. During the Term and any extension thereof, Landlord shall keep in effect property insurance covering the Buildings in amounts not less than the full insurance replacement value thereof (but not on any Alterations or any 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, other than Tenant's Property (as defined at Section 15.1(b)) or Alterations (as defined in 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

Premises Partial Damage or Premises Total 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, other than Tenant’s Property (as defined at Section 15.1(b)) or Alterations (as defined in 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 Premises Partial Damage or Premises Total Destruction.

(c) **“Insured Loss”** shall mean damage or destruction to improvements on or about the Premises, other than Tenant’s Property (as defined at Section 15.1(b)) or Alterations (as defined in 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 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, at Landlord’s expense, 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 and in such event, Tenant shall make any applicable insurance proceeds available to Landlord on a reasonable basis for that purpose; 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 insurance required to be carried by Tenant was not in force or the insurance proceeds are not sufficient to effect such repair by Landlord, 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) business 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) business day period, the party responsible for making the repairs shall diligently proceed to 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 on the thirtieth (30th) day thereafter. Tenant shall not be entitled to reimbursement of any funds contributed by Tenant to repair or restore any such damage or destruction to the extent such funds are used for such repair or restoration. 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 or restoration 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) business 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 Landlord 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 Premises Total Destruction. If the Premises Total 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 six (6) months of any Renewal Term) there is damage for which the cost to repair exceeds two (2) months' Base Rent, whether or not an Insured Loss, Landlord or Tenant may terminate this Lease effective sixty (60) days following the date of occurrence of such damage by giving a written termination notice to the other 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, 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) business 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 a 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. All other obligations of Tenant hereunder shall be performed by Tenant, and Landlord shall have no liability for any such damage, destruction, remediation, repair or restoration except as a result of its gross negligence or willful misconduct or as provided herein.

## 17. CONDEMNATION.

If the whole or if any material part of the Premises or Building is taken or condemned for any public or quasi-public use under either state or federal law, by eminent domain or purchase in lieu thereof (a "**Taking**"), and (a) such Taking renders the Premises or Building unsuitable for the purposes for which they were leased; 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, to 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 the terminating party 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 fixtures, 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, provided 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 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 twenty (20) days after notice to Tenant or, if such failure cannot reasonably be cured within such twenty (20) day period, Tenant fails within such twenty (20)-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.

(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 in Section 18.2 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 at 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 limited to the interest of Landlord in the Building (and the income therefrom and the proceeds thereof) as the same may from time to time be encumbered. Tenant shall look solely to Landlord's interest in the Building (and the income therefrom and the proceeds thereof) 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 a reasonable time (not to exceed thirty (30) days to cure the alleged default, unless the nature of the default is such that more than thirty (30) days are reasonably necessary to cure such default) 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) as required to be removed 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 and holds over without the express written consent of Landlord, occupancy of the Premises after termination shall be that of a tenancy at sufferance. Tenant's occupancy shall be subject to all the terms and provisions of this Lease and Tenant shall pay an amount (on a per month basis without reduction for partial months during the holdover) equal to 150% of the sum of the Base Rent due for the period immediately preceding the holdover. No holding over by Tenant shall operate to extend the Term. If Tenant does not surrender possession at the end of the Term or sooner termination of this Lease, Tenant shall indemnify and hold Landlord harmless from and against any and all losses or liability resulting from delay in Tenant so surrendering the Premises, including, without limitation, 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 encumbering the Premises, or Building and any ground lease(s) or other agreements or covenants running with the land now or subsequently encumbering 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, provided that 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 delivery of 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 reasonably be necessary to commence and complete a foreclosure proceeding.

### 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 financing with respect to the Building or Property, 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 or other lender.

### 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 to other premises (the "**Relocation 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 Relocation Premises must be of substantially comparable in access size and configuration 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 in the relocation Premises and (ii) such other properly documented costs as Tenant may reasonably incur as a direct result of relocation;

(d) if Tenant is occupying the Premises at the time Landlord gives notice of any such relocation, Landlord shall (i) pay the cost of moving Tenant, its property and equipment to the Relocation Premises, (ii) shall, without cost or expense to Tenant, improve the Relocation Premises with improvements substantially similar to those located in the space Tenant is to vacate; and (iii) shall pay such other properly documented costs as Tenant may reasonably incur as a direct result of the relocation; 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 Relocation Premises, Base Rent (which shall be based upon the same rent per square foot of leasable area as set forth in the Basic Lease Information) and Security Deposit relative to the Relocation Premises.

## **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 to the party's respective Notice Address(es) set forth in the Basic Lease Information. 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 of this Lease, and with respect only to employment or employees at the Premises, Tenant agrees as follows:

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



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

(c) Tenant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by Landlord, 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 employees and applications for employment.

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.

## 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 of such state and proper venue in the County of Alameda.

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

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

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

27.6 Signs. Tenant shall not place any sign upon the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided however, that Tenant may place a sign on the exterior of the Premises containing Tenant's name and logo so long as said sign complies with the applicable legal criteria of the City of Alameda, including Landlord's signage design criteria. All signage shall comply with Landlord's signage design criteria, as exist from time to time. In addition, any style, size, materials and attachment method of any such signage shall be subject to Landlord's prior written consent which consent shall not be unreasonably withheld, conditioned or delayed. 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 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.

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 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 one or more 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. The foregoing notwithstanding, Tenant may, at its sole cost and expense, install its own security system ("**Tenant's Security System**") in the Premises; provided, however, that Tenant's Security System shall at all times be fully compatible with all base Building systems exclusive of any pre-existing security system in the Building. Tenant shall, at Tenant's sole cost and expense, cause Tenant's Security System to be properly installed, monitored, maintained, and operated. Notwithstanding anything to the contrary set forth in this Lease, Tenant agrees to remove Tenant's Security System upon the expiration or

sooner termination of this Lease. All keys must be returned to Landlord at the expiration or earlier termination of this Lease. Tenant shall have no claim against Landlord for exercise of its rights of access hereunder other than for Landlord's gross negligence or willful misconduct. Portions of the utilities systems serving other buildings on the Property may be located within the Premises. Tenant agrees to allow Landlord and its utility supplier reasonable access to the Premises for operation, maintenance, repair and replacement of these utilities systems as may be required. In executing operation, maintenance, repair or replacement of these systems, Landlord agrees to take commercially reasonable steps to limit interference with the use of the Premises by Tenant.

27.9 Waiver of Right to Jury Trial. Landlord and Tenant waive their respective rights to trial by jury of any contract or tort claim, counterclaim, cross-complaint, or cause of action in any action, proceeding, or hearing brought by either party against the other on any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant's use or occupancy of the Premises, including without limitation any claim of injury or damage or the enforcement of any remedy under any current or future law, statute, regulation, code, or ordinance. Landlord and Tenant agree that this paragraph constitutes a written consent to waiver of trial by jury within the meaning of California Code of Civil Procedure Section 631(f)(2), and Tenant does hereby authorize and empower Landlord to file this paragraph and/or this Lease, as required, with the clerk or judge of any court of competent jurisdiction as a written consent to waiver of jury trial. If the waiver set forth in this Section 27.9 is determined by any court to be invalid because it was executed prior to the commencement of any action, then Landlord and Tenant each covenant and agree to execute and deliver to the other, within five (5) days after 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 consent 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 Paragraph Titles. The paragraph titles used herein are not to be considered a substantive part of this Lease, but merely descriptive aids to identify the paragraph to which they refer. 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 been 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 adopted approving Tenant's execution hereof, thereby binding itself to the terms of this Lease and identifying the person(s) authorized to execute this Lease on behalf of Tenant.

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

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

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

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

27.17 Certified Access Specialist Disclosure. In accordance with Civil Code Section 1938, Landlord hereby discloses that the Premises have not undergone inspection by a Certified Access Specialist for purposes of determining whether the Building has or does not meet all applicable construction related accessibility standards pursuant to Civil Code Section 55.53.

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

27.19 Entire Agreement. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understandings pertaining to any such matter shall be effective for any purpose. It is specifically understood and agreed that this Lease supersedes and replaces the License Agreement. 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 in reasonable respects from time to time by Landlord. Any reasonable additions or modifications to those rules shall be binding upon Tenant's upon Landlord's delivery of a copy to Tenant.

27.21 Financial Statement. Within thirty (30) days after Landlord's written request (but not more often than once in any consecutive twelve-month period, 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, and hereby does, waive any and all claims for relocation benefits, assistances and/or payments under Government Code Sections 7260 et seq., 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 Subdivision and Development of the 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 Buildings, Land and Parking Areas are located. 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 or interfere with and/or materially disrupts or interferes with Tenant's rights under this Lease.

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



## 28. RIGHT OF FIRST OFFER.

28.1 Right of First Offer. Subject to the terms of Section 28.2 below, Tenant shall have during the initial Term (but not any Renewal Term), a right of first offer (the “**Right of First Offer**”) to lease either or both of the spaces in the Building, Units 100 and 300 (either or both the “**Additional Space**”) contiguous to the Premises as the same becomes vacant or available (as reasonably determined by Landlord) prior to Landlord marketing the Additional Space to the general public; provided, however, that Tenant’s rights with respect to the Additional Space shall be subordinate and subject to the existing rights, if any, of other tenants with respect to the Additional Space as such rights exist as of the date of this Lease and Landlord makes no representations or warranties with respect to the existence or nonexistence of such rights of other tenants. When Landlord becomes aware that Units 100 and/or 300 is or will become vacant and available, it shall promptly provide Tenant with written notice (the “**Availability Notice**”) which shall specify the terms under which Landlord would be willing to lease the Additional Space, including, but not limited to (i) the specific unit or units of Available Space available; (ii) the length of the proposed lease term; (iii) the proposed Base Rent for the Additional Space and annual increases thereto (which shall be Landlord’s reasonable determination of Fair Market Rent), rent abatement and any other economic concessions (collectively, “**ROFO Economics**”), and (iv) the date on which the Additional Space will become available for Tenant’s occupancy. Tenant shall, within twenty (20) business days following the date the Availability Notice is given, notify Landlord in writing that either (a) Tenant elects to accept the terms stated in the Availability Notice, in which case the parties shall promptly enter into an amendment to this Lease (other than the ROFO Economics, the amendment to the Lease to incorporate the Additional Space shall be upon the same terms and conditions as the Lease) or (b) Tenant does not elect to lease the Additional Space. If Tenant fails for any reason to respond to the Availability Notice, then Tenant shall be deemed to have elected not to lease the Additional Space. If Tenant does not elect to lease the Additional Space, then Landlord may market the Additional Space to others without further notice or offer to Tenant, and may enter into any lease with respect to the Additional Space; provided that if at any time after Tenant’s election (deemed or otherwise) not to lease the Additional Space Landlord causes the listing amount for the Base Rent or the overall ROFO Economics to be reduced by an amount greater than ten percent (10%), Landlord shall re-offer the Additional Space to Tenant by delivery of a new Availability Notice specifying the ROFO Economics and Tenant shall have a new fourteen (14) business day period to respond, all as set forth above. Tenant’s Right of First Offer is ongoing and shall revive each time Units 100 and/or 300 become available during the initial Term. All payments of Rent with respect to the Additional Space, or any portion thereof, shall be made to Landlord at the same time, place and manner as set forth in the Lease.

28.2 Additional Terms for Right of First Offer. The Right of First Offer granted herein may be exercised only by the entity identified as the Tenant in the Basic Lease Information or an assignee that is a Tenant Affiliate and may not be exercised by any other sublessee or assignee. Tenant shall have the right to exercise the Right of First Offer if Tenant (a) is in Default under this Lease at the time of exercise or (b) has received more than two (2) written notices of any monetary event of Default during the immediately preceding twelve (12) month period.



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:   
John Russo  
City Manager

Date: 7/7/14

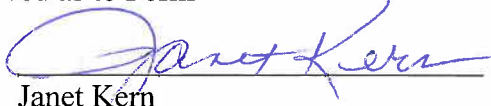
**TENANT:**

Pacific Automated LLC,  
a California limited liability company

By:   
Name: SKY PACE  
Title: CEO

Date: 5/1/14

Approved as to Form

By:   
Janet Kern  
City Attorney

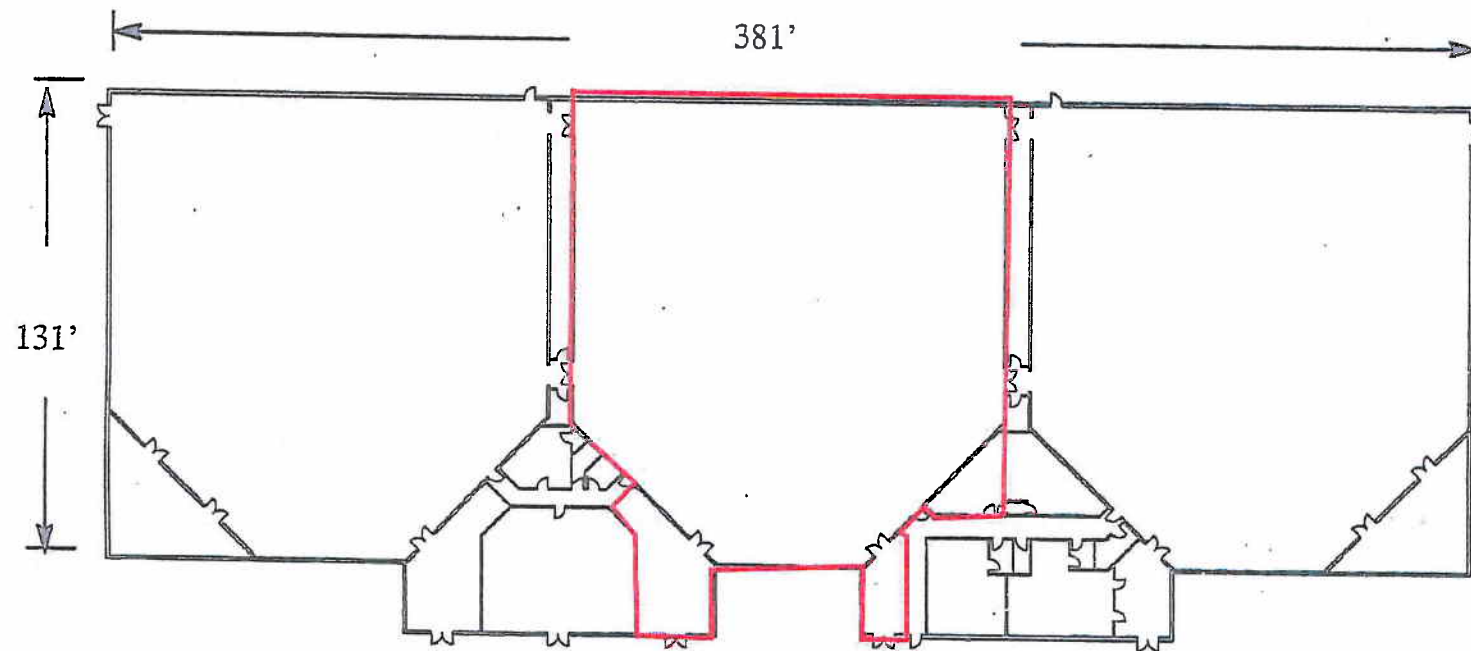
**EXHIBIT A**

**PREMISES: BUILDING**

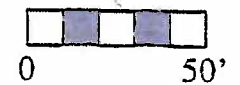


# BUILDING 25 CORROSION CONTROL FACILITY

EXHIBIT A  
PREMISES



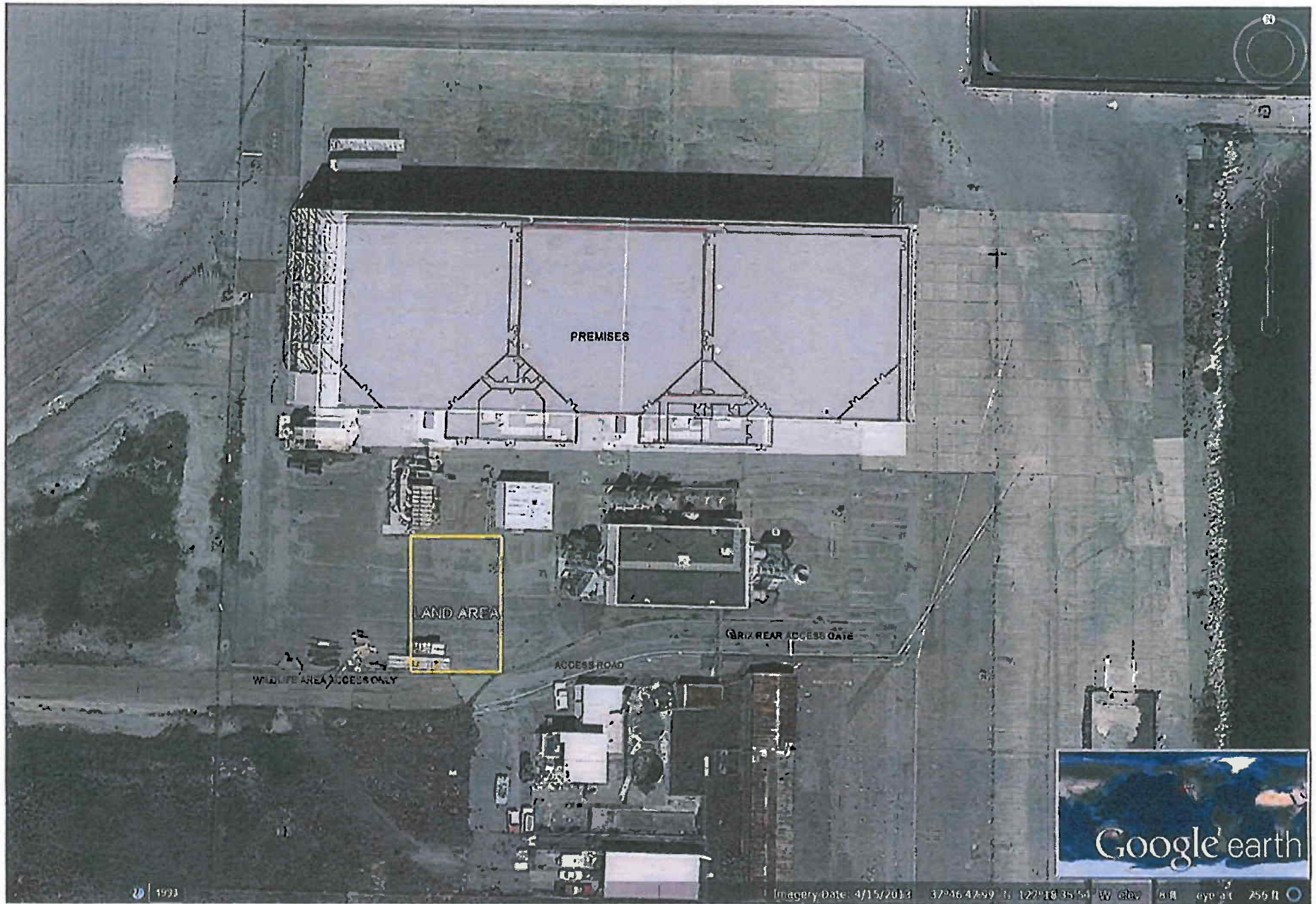
SCALE:



**EXHIBIT A-1**

**LAND AREA**

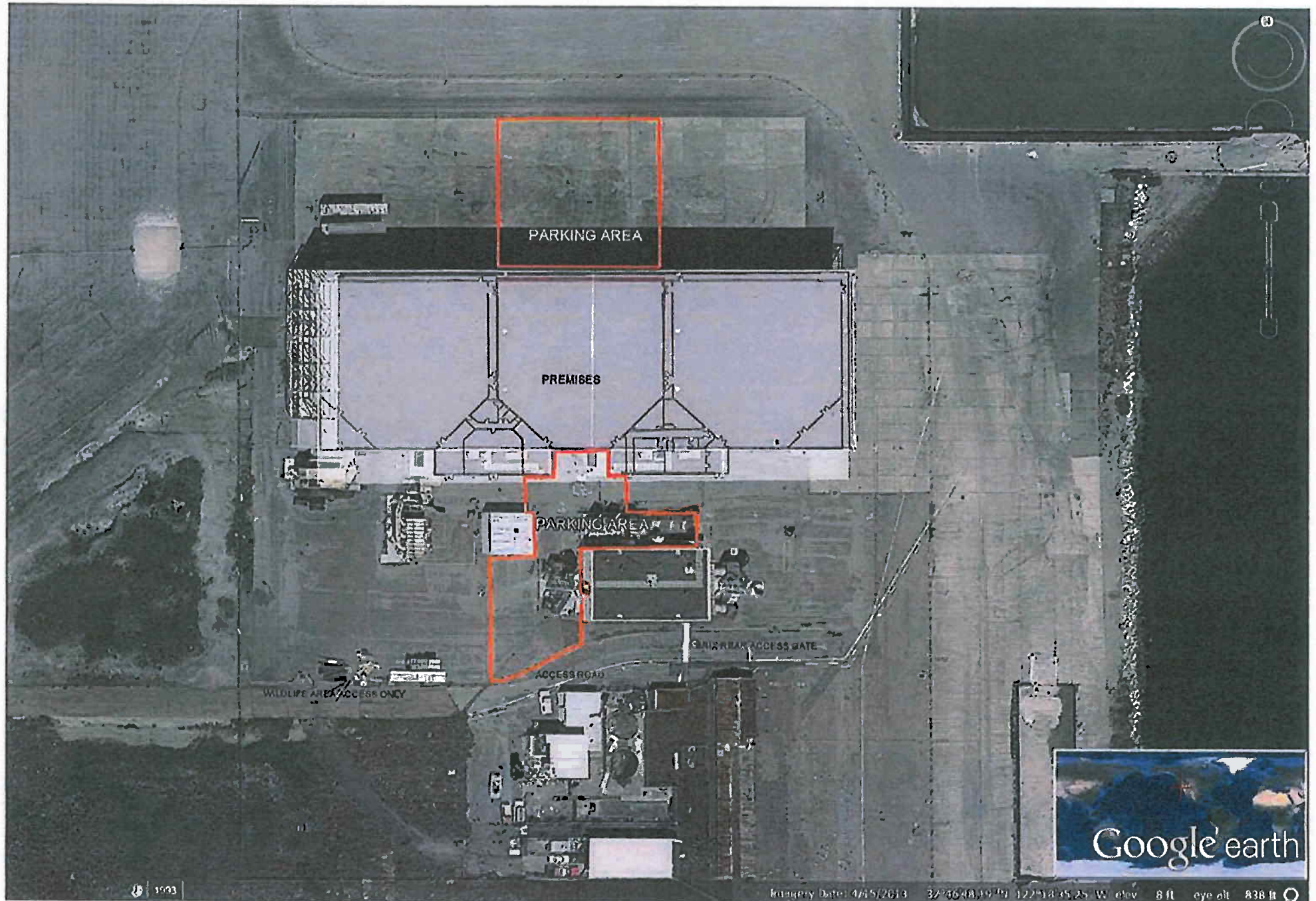
EXHIBIT A-1  
LAND AREA





**EXHIBIT A-2**  
**PARKING AREAS**

EXHIBIT A-2  
PARKING AREAS



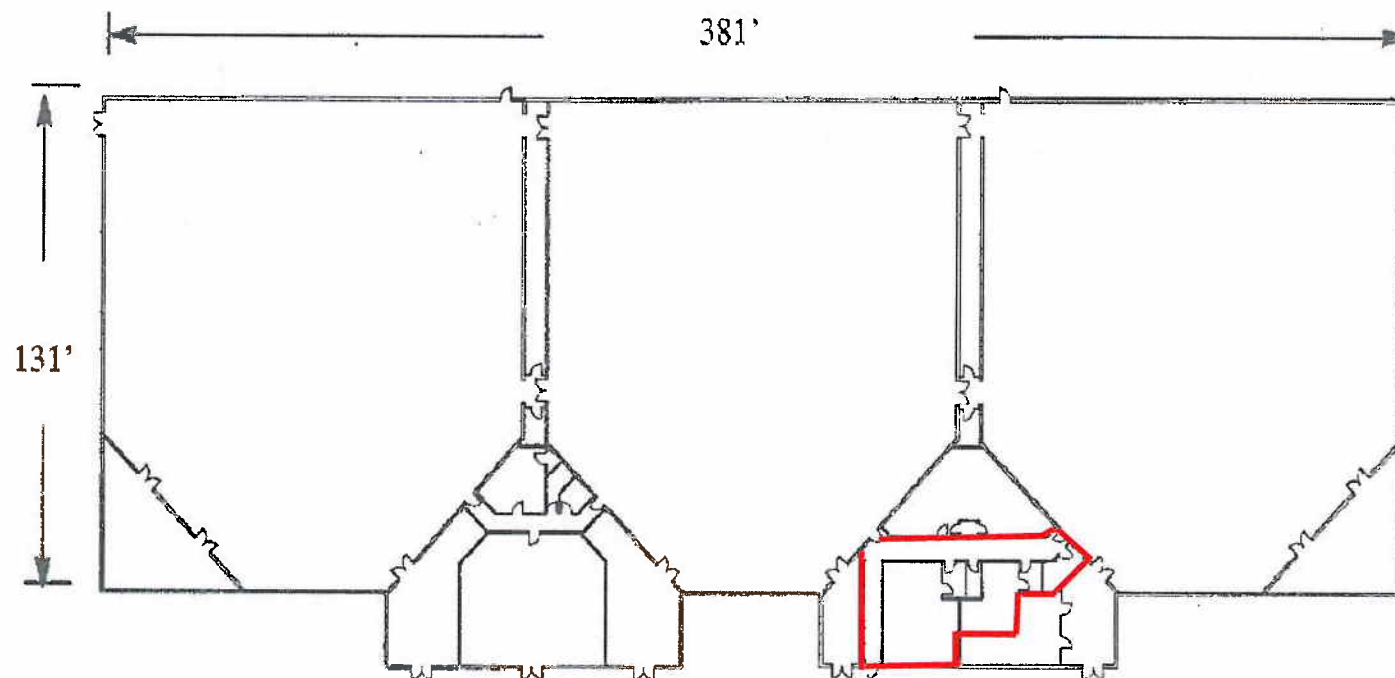
**EXHIBIT A-2.2**  
**COMMON AREAS**



# BUILDING 25

EXHIBIT A-2.2

COMMON AREA INTERIOR



SCALE:



**EXHIBIT B**  
**COMMENCEMENT LETTER**

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

Re: Lease dated as of \_\_\_\_\_, 2014, by and between City of Alameda, as Landlord, and Pacific Automated LLC, a California limited liability company, as Tenant, for 18,159 rentable square feet in Building 25 located at 1951 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 \_\_\_\_\_;
3. The expiration of the Abatement Period 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: PACIFIC AUTOMATED LLC |
| By: _____                 | By: _____                     |
| Name: _____               | Name: _____                   |
| Title: Property Manager   | Title: _____                  |

[Exhibit Do not sign]



**EXHIBIT C**

**RENEWAL NOTICE**

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

Re: Lease dated as of \_\_\_\_\_, 2014, by and between City of Alameda, as Landlord, and  
\_\_\_\_\_, a(n) \_\_\_\_\_ as Tenant.

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

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

Sincerely :

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

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

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

[Exhibit Do not sign]

## EXHIBIT D

### ACKNOWLEDGMENT OF RECEIPT

Pursuant to that certain Lease Agreement entered into by and between City of Alameda, a charter city and municipal corporation ("Landlord") and Pacific Automated LLC, a California limited liability company ("Tenant") dated as of May \_\_\_\_, 2014 ("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. 2013-199810 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 that failure to do so shall constitute a Default under the Lease.

Pacific Automated LLC,  
a California limited liability company

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

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

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

**EXHIBIT E**  
**ENVIRONMENTAL QUESTIONNAIRE**

## **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 the right to control and operate the public portions of the Building and the public facilities, 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, common areas or on streets adjacent thereto for the purpose of advertising or display. Landlord shall have the right to remove any such unapproved item without notice and at Tenant's expense.

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 common areas surrounding the Premises. No displays or sales of merchandise shall be allowed in the parking lots or other common areas.

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 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 or any of the common areas.

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, servants, 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 expenses, cause the same to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord.

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, stationery 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, vestibules or any common areas of the building for the purpose of smoking tobacco products or for any other purposes, nor in any way obstruct such areas, and shall use them only as a mean of ingress and egress from the Premises.

24. Landlord reserves the right to exclude from the Building or Common Areas any person who, in the judgment of Landlord, is intoxicated or under the influence 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, common areas of the Building and Building, and for the preservation of good order therein, as well as for the convenience of other occupants and tenants thereof. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all tenants of the Building. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition to its occupancy of the Premises.

## EXHIBIT G

### TENANT WORK LETTER

This Exhibit is attached to and made a part of the Lease Agreement (the “**Lease**”) by and between CITY OF ALAMEDA, a charter city and municipal corporation (“**Landlord**”) and PACIFIC AUTOMATED, LLC, a California limited liability company, dba Brix Beverage (“**Tenant**”) for those premises consisting of approximately Eighteen Thousand, One Hundred and Fifty-Nine (18,159) rentable square feet in Building 25, located at 1951 Monarch Street, Unit 200, Alameda, CA (the “**Premises**”).

This Tenant Work Letter shall set forth the terms and conditions relating to the construction of the Premises. This Tenant Work Letter is essentially organized chronologically and addresses the issues of the construction of the Premises, in sequence, as such issues will arise during the actual construction of the Premises. All references in this Tenant Work Letter to Paragraphs of “this Lease” shall mean the relevant portions of the Lease, and all references in this Tenant Work Letter to Sections of “this Tenant Work Letter” shall mean the relevant portions of Sections 1 through 3 of this Tenant Work Letter.

#### 1. CONSTRUCTION DRAWINGS

**1.1 Selection of Architect/Construction Drawings.** Tenant shall retain an architect/space planner approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed (the “**Architect**”) to prepare the “Construction Drawings,” as that term is defined in this Section 1.1. To the extent necessary, Tenant shall retain the engineering consultants approved by Landlord (the “**Engineers**”), which approval shall not be unreasonably withheld or delayed, to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, life safety, and sprinkler work in the Premises. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the “**Construction Drawings.**” All Construction Drawings shall substantially comply with Landlord’s specifications and shall be in a drawing format reasonably acceptable to Landlord. Landlord’s review of the Construction Drawings as set forth in this Section 1, shall be for its sole purpose and shall not imply Landlord’s review of the same, or obligate Landlord to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord’s space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith, except to the extent that Landlord has specifically requested a modification to the Construction Drawings as a condition to Landlord’s approval of the Construction Drawings, and shall not be responsible for any omissions or errors contained in the Construction Drawings, and Tenant’s waiver and indemnity set forth in this Lease shall specifically apply to the Construction Drawings. Furthermore, Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the base building drawings, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Each time Landlord is granted the right to review, consent to or approve

the Construction Drawings or any component thereof (collectively, “**Consent**”), such Consent shall not be unreasonably withheld, conditioned or delayed.

**1.2 Completion of Construction Drawings.** Based on the Final Space Plan, Tenant, the Architect and the Engineers shall promptly complete the Construction Drawings for the Premises in a form which is sufficient to allow contractors to bid on the work and to obtain applicable permits and shall submit such Construction Drawings to Landlord for Landlord’s approval. Such Construction Drawings may be submitted in one or more stages at one or more times, provided that Tenant shall ultimately supply Landlord with three (3) completed copies signed by Tenant of such Construction Drawings. Landlord shall, within ten (10) business days after Landlord’s receipt of each stage of the Construction Drawings, either (i) approve the Construction Drawings, (ii) approve the Construction Drawings subject to specified conditions which must be stated in a reasonably clear and complete manner to be satisfied by Tenant prior to submitting the Approved Construction Drawings for permits as set forth in Section 1.4 below of this Tenant Work Letter, or (iii) disapprove and return the Construction Drawings to Tenant with reasonably clear and complete requested revisions. If Landlord fails to respond to Tenant’s request for approval within ten (10) days after receipt thereof, Tenant may thereafter deliver written notice to Landlord requesting a response and, if Landlord thereafter fails to respond within five (5) business days after receipt of said notice, Landlord’s approval shall be deemed given. If Landlord disapproves the Construction Drawings, Tenant may resubmit the Construction Drawings to Landlord at any time, and Landlord shall approve or disapprove the resubmitted Construction Drawings, based upon the criteria set forth in this Section 1.2, within five (5) business days after Landlord receives such resubmitted Construction Drawings. Such procedure shall be repeated until the Construction Drawings are approved.

**1.3 Approved Construction Drawings.** The Construction Drawings for the Tenant Improvements shall be approved by Landlord (the “**Approved Construction Drawings**”) prior to the commencement of construction of the Tenant Improvements. In the event that Tenant shall submit the Construction Drawings to Landlord in more than one stage, Landlord shall be entitled to approve a stage and to subsequently disapprove of such stage, provided that a material problem is found to exist which is evident only following Landlord’s review of subsequent drawings. Tenant shall cause to be obtained all applicable building permits required in connection with the construction of the Tenant Improvements (“**Permits**”). Tenant hereby agrees that neither Landlord nor Landlord’s consultants shall be responsible for obtaining any Permits or certificate of occupancy for the Premises and that obtaining the same shall be Tenant’s responsibility; provided, however, that Landlord shall cooperate with Tenant in performing ministerial acts reasonably necessary to enable Tenant to obtain any such Permits or certificate of occupancy. No material changes, modifications or alterations in the Approved Construction Drawings may be made without the prior written consent of Landlord pursuant to the terms of Section 1.4 below.

**1.4 Change Orders.** In the event Tenant desires to change the Approved Construction Drawings, Tenant shall deliver notice (the “**Drawing Change Notice**”) of the same to Landlord, setting forth in detail the changes (the “**Tenant Change**”) Tenant desires to make to the Approved Construction Drawings. Landlord shall, within five (5) business days of receipt of a Drawing Change Notice either (i) approve the Tenant Change, or (ii) disapprove the Tenant Change and deliver a notice to Tenant specifying in reasonably sufficient detail the reasons for

Landlord's disapproval. If Landlord fails to respond to Tenant's request for approval within ten (10) days after receipt thereof, Tenant may thereafter deliver written notice to Landlord requesting a response and, if Landlord thereafter fails to respond within five (5) business days after receipt of said notice, Landlord's approval shall be deemed given. Any additional costs which arise in connection with such Tenant Change shall be paid by Tenant; provided, however, that to the extent the Tenant Improvement Allowance has not been depleted, such payment shall be made out of the Tenant Improvement Allowance.

## **2. CONSTRUCTION OF THE TENANT IMPROVEMENTS**

### **2.1 Tenant's Selection of Contractors.**

(a) The Contractor. Tenant shall retain a licensed general contractor (the "**Contractor**") pre-approved by Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed, prior to Tenant causing the Contractor to construct the Tenant Improvements.

(b) Tenant's Agents. All major trade subcontractors and suppliers used by Tenant must be approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, provided that, subject to the terms hereof, Tenant shall cause Landlord's designated structural, mechanical and life safety subcontractors to be retained in connection with the Tenant Improvements. If Landlord does not approve any of Tenant's proposed major subcontractors, or material suppliers, Tenant shall submit other proposed trade subcontractors, or material suppliers for Landlord's written approval. The Contractor and the Contractor's subcontractors (collectively, "**Tenant's Contractors**") and their respective workers shall conduct their activities in and around the Premises, the Building and the Project in a harmonious relationship with all other subcontractors, laborers, materialmen and supplies at the Premises and Building (such major trade subcontractors and material suppliers along with all other laborers, materialmen, and suppliers, and the Contractor to be known collectively as "**Tenant's Agents**").

### **2.2 Construction of Tenant Improvements by Tenant's Agents.**

(a) Tenant's Agents.

(i) Landlord's General Conditions for Tenant's Agents and Tenant Improvement Work. Tenant's and Tenant's Agents' construction of the Tenant Improvements shall comply with the following: (A) the Tenant Improvements shall be constructed in material conformance with the Approved Construction Drawings; and (B) Tenant shall abide by all construction guidelines and reasonable rules made by Landlord's property manager with respect to any matter, within reason, in connection with this Tenant Work Letter, including, without limitation, the construction of the Tenant Improvements.

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

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

(iv) Insurance Requirements.

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

(B) Special Coverages. Contractor shall carry "Builder's All Risk" insurance, in an amount approved by Landlord but not more than the amount of the Contract, covering the construction of the Tenant Improvements, and such other insurance as Landlord may reasonably require, it being understood and agreed that the Tenant Improvements shall be insured by Tenant pursuant to this Lease immediately upon completion thereof. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord (to the extent they are generally required by landlords of comparable buildings) and shall be in a form and with companies as are required to be carried by Tenant pursuant to the terms of this Lease.

(C) General Terms. Certificates for all insurance carried pursuant to this Section shall be delivered to Landlord before the commencement of construction of the Tenant Improvements and before the Contractor's equipment is moved onto the Project. All such policies of insurance must contain a provision that the company writing said policy will give Landlord thirty (30) days' prior notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance. In the event that the Tenant Improvements are damaged by any cause during the course of the construction thereof and this Lease is not terminated, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's Agents shall maintain all of the foregoing insurance coverage in force until the completion of the Tenant Improvements. All such insurance relating to property, except Workers' Compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary



insurance as respects the owner and that any other insurance maintained by Landlord is excess and noncontributing with the insurance required hereunder.

(b) Governmental Compliance. The Tenant Improvements shall comply in all respects with the following: (i) all Laws; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; (iii) the applicable standards of the International Building Code (2003); and (iv) building material manufacturer's specifications. (collectively, the "**Code**").

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

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

**2.3 Notice of Completion; Copy of Record Set of Plans.** Within ten (10) days after completion of construction of the Tenant Improvements, Tenant shall prepare a Notice of Completion, which Landlord shall execute if factually correct, and Tenant shall cause such Notice of Completion to be recorded in the office of the Recorder of the County of Alameda in accordance with Section 8182 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and record the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Construction Drawings as necessary to reflect all changes made to the Approved Construction Drawings during the course of construction, (B) to certify to the best of their knowledge that the updated drawings are true and correct, which certification shall survive the expiration or termination of this Lease, and (C) to deliver to Landlord two (2) CD-ROMs of such updated Approved Construction Drawings, in



CAD format, within thirty (30) days following issuance of a certificate of occupancy for the Premises, and (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the Premises.

### **3. MISCELLANEOUS**

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

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

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

Exhibit 1  
Final Space Plan