

**GROUND LEASE AGREEMENT
CARNEGIE BUILDING AND FOSTER HOUSE**

by and between

CITY OF ALAMEDA

and

CARNEGIE INNOVATION HALL

DATED AS OF December __, 2019

GROUND LEASE AGREEMENT
(Carnegie Building and Foster House)

THIS GROUND LEASE AGREEMENT (this "Lease") is entered into as of December __, 2019 ("Effective Date") by and between the CITY OF ALAMEDA, a municipal corporation ("Landlord"), and CARNEGIE INNOVATION HALL, a California nonprofit public benefit corporation ("Tenant").

RECITALS

- A. Landlord owns that certain real property referred to as the Carnegie Building located at 2264 Santa Clara Avenue, and the Foster House located at 1429 Oak Street, both situated in Alameda, California, which will subsequently be more particularly described on Exhibit A attached hereto ("Legal Description"), as further described in Section 2.5 (b) (collectively, "Premises").
- B. The Premises was designated by the Alameda City Council, ("City Council") pursuant to Resolution No. 9732, dated April 6, 1982, as an Alameda Historic Monument. The Premises is also listed on the United States Department of the Interior National Register of Historic Places.
- C. The Premises have fallen into disrepair and will require that substantial capital improvements, estimated in 2018 to cost approximately \$6,600,000, be performed to allow the Premises to be open to the public. Through this Lease, Landlord desires to facilitate the rehabilitation and activation of the Premises.
- D. Landlord has determined that there is significant community benefit in rehabilitating and restoring this historic asset and causing it to be open to the public and therefor, is willing to offer Tenant economic concessions in the form of rent abatement, to facilitate this Project.
- E. In September 2018, the City Council approved a Request for Qualification ("RFQ") for the Premises with the goal of finding a tenant that would provide cultural, educational and/or economic benefits to the community, restore and maintain the historic character of the Premises, and provide for public use of the Premises as frequently as possible. Two Statements of Qualifications were received in response to the RFQ, and in February 2019, a selection committee chose Tenant's proposal to create a Carnegie Innovation Hall at the Premises as the winning proposal.
- F. On February 13, 2019, the City held a community meeting to provide additional information to the public and gather feedback on Tenant's proposal. The proposal received widespread support at the meeting. On April 13, 2019, Tenant and its team held the first of a series of community meetings, with the goal of better understanding the community's desires and needs for the Premises.
- G. Tenant intends restore the Premises to be used for the Carnegie Innovation Hall to provide cultural, educational and possibly, economic benefits to the City. The

restoration of the Premises will be undertaken by Tenant pursuant to a construction schedule, performance standards and other terms and conditions in this Lease.

- H. Landlord desires to lease the Premises to Tenant for a period of thirty-three (33) years pursuant to the terms and conditions of this Lease, and Tenant desires to lease the Premises from Landlord, as further described herein. As further described in Section 2.4, Tenant also has an option to extend the term of the Lease for an additional thirty-three (33) years.
- I. Tenant currently is accessing the Premises to conduct due diligence and to conduct fund-raising and feasibility activities in the office space contained therein pursuant to that certain License Agreement dated July 19, 2019 (the "License").
- J. Tenant shall have a period of one hundred twenty (120) days from the Effective Date of this Lease in which to: (i) complete investigation of the Property; (ii) begin design review and begin obtaining permits and approvals; and (iii) begin satisfaction of the conditions precedent required for the Commencement Date to occur. Construction will commence on or after the Commencement Date.

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are incorporated herein by reference, and the covenants, representations, warranties, and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto do hereby agree as follows:

ARTICLE 1. **DEFINITIONS**

Section 1.1 Definitions.

For the purposes of this Lease, the following defined terms shall have the meanings ascribed thereto in this Article 1.

(a) Annual Rent: The rent due annually to Landlord from Tenant pursuant to Section 5.1 of this Lease.

(b) Applicable CC&Rs & Easements: All covenants, conditions, restrictions, and easements that are now or hereafter recorded against the Premises and/or the Property and (i) are identified as exceptions to coverage in the Title Commitment; (ii) are required by the City or one or more Governmental Authorities in connection with the construction or development of (A) the Project, or (B) the Improvements; (iii) arise by or through Tenant or Tenant's contractors, agents, or licensees; or (iv) are Permitted Exceptions as defined in Section 2.5(b).

(c) Approved Construction Documents: The construction plans and specifications submitted by Tenant and approved by the City in connection with the City's grant of the necessary permits and approvals for the Project, together with any modifications thereto processed and approved, as appropriate, in accordance with applicable City ordinances, rules and regulations.

(d) Approved Financing: All of Tenant's loans and financing approved by Landlord for development of the Project.

(e) Approved Financing Documents: The documents that evidence the Approved Financing.

(f) Capital Improvement Costs: The amount needed to pay for the Improvements contemplated by Tenant and governed by one or more construction contracts, plus all other costs associated with the Project.

(g) Casualty: As defined in Section 13.1.

(h) Certificate of Occupancy: The document given by City to approve occupancy of the Premises.

(i) City: The City of Alameda, California.

(j) Commencement Date: The date exclusive possession of the Premises is delivered by City to Tenant, following satisfaction or waiver of all conditions precedent thereto and recordation of the Memorandum of Lease.

(k) Contractor: The licensed, qualified general contractor(s) engaged by Tenant and approved by City to construct the Improvements.

(l) Date Confirmation Memo: A memorandum prepared by Tenant, in a form and substance acceptable to Landlord, and delivered to Landlord by Tenant within five (5) days following the occurrence of each Milestone described on the Milestone Schedule, in order to confirm in writing the date on which a particular Milestone occurred; the Parties agree that a particular Milestone shall not be deemed satisfied until Landlord countersigns a copy of the Date Confirmation Memo and returns it to Tenant.

(m) Event of Default: As described in Article 14 hereof.

(n) Extension Term: The thirty-three (33) year period following the initial Term of this Lease which Tenant may elect to exercise, as described in Section 2.4.

(o) First Mortgage Loan: The Construction First Mortgage Loan or the Permanent First Mortgage Loan or if both have been paid off and the deed of trust related to such loans have been released, the loan that is next in priority order.

(p) First Mortgagee: The holder of the First Mortgage Loan or "Bank".

(q) Force Majeure Delay: The period of delay caused by any of the following: strikes, lockouts or other labor disturbances; one or more acts of a public enemy; war; riot; sabotage; blockade; freight embargo; floods; earthquakes; fires; unusually severe weather; quarantine restrictions; lack of transportation; court order; delays resulting from changes in any applicable laws, rules, regulations, ordinances or codes; inability to secure necessary labor, materials or tools (provided that the Party claiming Force Majeure Delay has taken reasonable

action to obtain such materials or substitute materials on a timely basis); a development moratorium, as defined in California Government Code section 66452.6(f); and any other causes beyond the reasonable control and without fault of the Party claiming an extension of time that prevents said Party from performing its obligations under this Lease.

(r) Governmental Authorities: Any applicable federal, state, or local governmental or quasi-governmental entities, subdivisions, agencies, authorities, or instrumentalities having jurisdiction over the Premises, the Improvements, Landlord or Tenant.

(s) Hazardous Materials: Any flammable explosives, radioactive materials, hazardous wastes, petroleum and petroleum products and additives thereof, toxic substance or related materials, including without limitation any substances defined as or included within the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “toxic substances under any applicable federal, state or local laws, ordinances or regulations.

(t) Improvements: The improvements related to the cultural, educational and performing arts facility to be created at the Premises, including, without limitation, all capital improvements, structural improvements, utility work, earthquake work and related ancillary improvements, together with any and all replacements or substitutions therefor or modifications thereto.

(u) Incidental Migration: The non-negligent activation, migration, mobilization, movement, relocation, settlement, stirring, passive migration, passive movement, and/or other incidental transport of Hazardous Materials.

(v) Indemnified Parties: Collectively, the City, its elected and appointed council members, officials, board members, commissions, officers, employees, attorneys, agents, volunteers and their successors and assigns.

(w) Insurance Requirements: The coverage requirements, whether now or hereafter in force, of City and/or Mortgagee, applicable to the Premises and/or the Improvements, or any portion thereof, to the extent so applicable.

(x) Inspection Period: The period beginning on the Effective Date and ending one hundred twenty (120) days after the Effective Date.

(y) Landlord Approval: At any time Landlord’s approval is sought or given, the City Manager or his or her designee shall be the party who has authority to give such approval or disapproval.

(z) Landlord’s Estate: Landlord’s fee estate in the land constituting the Premises.

(aa) Lease: This ground lease.

(bb) Lease Year: A calendar year.

(cc) Legal Requirements: All laws, statutes, codes, ordinances, orders, rules, regulations, and requirements of all Governmental Authorities and the appropriate agencies,

officers, departments, boards, and commissions thereof, whether now or hereafter in force, applicable to Landlord, Tenant, the Premises, the Improvements, or any portion thereof, to the extent so applicable.

(dd) Memorandum of Lease: The memorandum of the Lease to be recorded against the Premises in the Official Records in the form attached hereto as Exhibit B.

(ee) Milestone Schedule: The particular obligations which Tenant must carry out and the dates to which Tenant must adhere (each a “Milestone”) related thereto in order to (i) satisfy the conditions precedent to the Commencement Date, and (ii) cause the commencement of operations to occur at the Premises.

(ff) Mortgage: Any mortgage, deed of trust, security agreement, or collateral assignment executed in connection with the Approved Financing encumbering Tenant’s Estate created hereunder as a leasehold deed of trust lien.

(gg) Mortgagee: The holder, mortgagee, grantee, or secured party under any Mortgage and its successors and assigns.

(hh) Net Condemnation Award: The net amounts owed or paid to the Parties and Mortgagee(s), if any, or to which either of the Parties and Mortgagee(s), if any, may be or become entitled by reason of any Taking or pursuant to any agreement with any condemning authority which has been made in settlement of any proceeding relating to a Taking, less any costs and expenses incurred by the Parties and Mortgagee(s), if any, in collecting such award or payment.

(ii) New Lease: Shall have the meaning given such term in Section 10.6.

(jj) Official Records: The official land records of Alameda County.

(kk) Outside Commencement Date: The last date by which the Commencement Date must occur, as describe in Milestone 10 of the Milestone Schedule attached hereto as Exhibit D.

(ll) Party: Landlord or Tenant, as applicable. Landlord and Tenant shall be referred to collectively as the “Parties.”

(mm) Person: An individual, partnership, corporation, limited liability company, trust, unincorporated association, or other entity or association.

(nn) Premises: As defined in Recital A and described on Exhibit A attached hereto and made a part hereof

(oo) Project: The Improvements to be constructed and the project to be developed by Tenant at the Premises in accordance with this Lease, such that the Carnegie Innovation Hall can be created and operated.

(pp) Project Approvals: All approvals required to construct and occupy the Improvements including, but not limited to, building permit, historical commission approval,

sign permit, use permit, encroachment permits and any other permit or consent by a governmental authority with jurisdiction over the Improvements; the obtaining of all Project Approvals is a condition precedent to Tenant commencing construction of any Improvements at the Premises.

(qq) Property: The property as shown on the map of the Property attached hereto as Exhibit C.

(rr) Rent: As described in Section 5.1 hereof.

(ss) Taking: A taking during the Term hereof of all or any part of the Premises and/or the Improvements, or any interest therein or right accruing thereto, as a result of the exercise of the right of condemnation or eminent domain or a change in grade materially affecting the Premises or any part thereof. A conveyance in lieu of or in anticipation of the exercise of any such right of condemnation or eminent domain shall be considered a Taking. Any such Taking shall be deemed to have occurred upon the earlier to occur of (a) the date on which the property, right, or interest so taken must be surrendered to the condemning authority, or (b) the date title vested in a condemning authority or other party pursuant to any Taking. If a Mortgage exists, the Mortgagees, to the extent permitted by law, shall be made parties to any Taking or Taking proceeding.

(tt) Taxes: All taxes including property taxes, assessments, water and sewer charges, charges for public utilities, excises, levies, license and permit fees and other charges that shall or may be assessed, levied, or imposed during the Term by any Governmental Authorities upon the Premises or any part thereof, including the buildings or improvements now or hereafter located thereon; provided, however, that the term "Taxes" shall not include any income tax, capital levy, estate, succession, inheritance, transfer, or similar taxes of Tenant, or any franchise tax imposed upon any owner of the fee of the Premises, or any income, profits, or revenue tax, assessment, or charge imposed upon the rent or other benefit received by Tenant under this Lease by any Governmental Authorities.

(uu) Tenant's Estate: Tenant's leasehold interest in the Premises acquired pursuant to this Lease.

(vv) Term: The period of time described in Section 2.3 hereof.

(ww) Title Commitment: The matters described in that title commitment that Tenant shall obtain from Old Republic Title Company that are deemed or determined to be "Permitted Exceptions" as described in Section 2.5(b).

(xx) Transfer: Any sale, assignment, transfer, conveyance, encumbrance, mortgage, or hypothecation, in any manner or form or any agreement to do any of the foregoing.

All terms not defined in this section shall be defined within the Lease.

Section 1.2 Exhibits. The Exhibits referred to in this Lease and attached hereto are expressly a part of this Lease as if fully set forth herein:

<u>Exhibit A:</u>	Premises
<u>Exhibit B:</u>	Memorandum of Lease
<u>Exhibit C:</u>	Map of Property
<u>Exhibit D:</u>	Milestone Schedule
<u>Exhibit E:</u>	Reservation Guidelines

ARTICLE 2.

LEASE OF THE PREMISES

Section 2.1 Premises. Subject to the terms hereof and in consideration of the covenants of payment and performance stipulated herein, as of the Effective Date, Landlord hereby leases, demises and lets to Tenant, and Tenant hereby leases and takes from Landlord, the Premises.

Section 2.2 Delivery of Possession and Acceptance. On the Commencement Date, if all conditions precedent have been satisfied or waived, Landlord will deliver to Tenant exclusive possession and occupancy of the Premises. If all conditions have not been satisfied or waived by the Outside Commencement Date, as such date may be extended for Force Majeure Delay, this Lease will automatically terminate and be of no further force and effect, and any rights Tenant may have to the Premises shall automatically terminate. In the event of termination of this Lease as a result of the failure of a condition precedent to be satisfied or waived, Tenant shall, at the request of Landlord execute a quitclaim deed or other document necessary to evidence the termination of Tenant's rights to the Premises. Tenant's failure to satisfy the conditions precedent shall, subject to the expiration of any applicable notice and cure periods, entitle Landlord to any and all rights it may have under this Lease, including termination. Prior to the Commencement Date, Landlord shall retain possession of the Premises and Tenant shall have no rights to the Premises, except as specifically set forth in this Lease or pursuant to the License. Landlord makes no covenants or warranties respecting any condition of the Premises or the Property. By entering on and accepting the Premises as of the Commencement Date, Tenant acknowledges that it has (a) completed its due diligence, (b) satisfied itself as to the condition of the Property and Premises, (c) satisfied itself regarding the zoning and the suitability of the Premises for Tenant's purpose and proposed use, and (d) accepts the Property and Premises AS IS with no representations and warranties as to condition or fitness for a particular purpose.

Section 2.3 Term. Unless sooner terminated pursuant to the provisions hereof, this Lease shall continue in full force and effect for a term ("Term"), commencing on the Commencement Date and expiring on the date that is thirty-three (33) years thereafter. Landlord shall provide Tenant with a notice of the Commencement Date and the expiration date of this Lease following the Commencement Date.

Section 2.4 Option to Extend Term. Tenant is granted the option to extend the term of this Lease for one (1) term of thirty-three (33) years, provided (A) Tenant is not in default at the time of exercise of the option or prior to the commencement of the Extension Term, and (B) Tenant gives notice of its exercise of the option no earlier than (18) months and no less than nine (9) months prior to the expiration of the original Term. The extension term shall be upon the same

terms, conditions and rentals, except (a) Tenant shall have no further right of extension after exercise of the Extension Term, and (b) the Annual Rent applicable during the extension term shall be two percent (2%) of Tenant's "Gross Revenue," as described in Tenant's annual CPA audited financial statements for the previously reported fiscal year ("Financial Statements") and which statements are consistent with Tenant's annual Form 990 submitted by Tenant to the United States Internal Revenue Service ("Form 990"), net of any income taxes actually paid by Tenant for such year, as evidenced by a copy of Tenant's tax return. If Tenant fails to timely exercise its option to extend the Term or is in default hereunder at the time of such exercise or at any time thereafter prior to the commencement of the Extension Term, then Tenant shall have no right to the Extension Term and its exercise of the option shall be null and void and of no force or effect. If Tenant elects to exercise the Extension Term, Tenant shall timely provide Landlord with the notice of exercise, audited Financial Statements for the then current fiscal year, a copy of its most recent Form 990 filing, and a copy of Tenant's annual tax returns for the relevant year.

Section 2.5 Conditions Precedent to Delivery and Possession.

(a) Inspection Period. During the Inspection Period, at no cost to Landlord, Tenant shall complete the inspection of the Premises that it commenced during the License term; upon execution of this Lease, the License automatically terminates. Tenant's investigation may include, a physical inspection of the Property and all improvements thereon, including soil, geological and other tests, engineering evaluations of the mechanical, electrical, HVAC and other systems in the improvements and review of the plans, if any; review of all governmental matters affecting the Property, including zoning, environmental and building permit and occupancy matters; review and verification of all financial and other information previously provided by Landlord relating to the operation of the Property, including the building, structural system and roof inspection; review of the condition of title to the Property, review of such other matters pertaining to an investment in the Property as Tenant deems advisable. Landlord shall provide such documents relevant to the due diligence as Landlord has in its reasonable control and possession, but due to the age of the building, in no way shall this include all documents which City has in its possession. The terms of the License are incorporated herein for purposes of inspection procedures, rights, and duties of the Parties (i.e., Sections 2 to 10 of the License), but this Lease shall otherwise govern the Parties' rights and responsibilities with regard to the Inspection Period.

(b) Title Commitment. During the Inspection Period, Tenant shall obtain (at its cost) from Old Republic Title Company and review a title report ("Title Report"), and no less than thirty (30) days prior to the expiration of the Inspection Period, give Landlord notice of any objections to the exceptions listed on such Title Report. If Landlord agrees to remove such exception (which removal or refusal to remove shall be indicated within ten (10) business days of the Tenant's objection), the remaining exceptions shall be considered the Permitted Exceptions. If Landlord does not respond, or cannot or refuses to remove such exception, Tenant may disapprove the Property and terminate this Lease, or accept such exception, in which case it becomes a Permitted Exception. On or before 5:00 p.m.PST of the expiration date of the Inspection Period, Tenant shall give notice of approval or disapproval of the Property to Landlord. Upon notice of disapproval, or if Tenant fails to approve or disapprove the Property in writing, this Lease shall terminate pursuant to Section 2.9. Upon Tenant's approval (and prior to

approval, at Tenant's sole option), Tenant shall proceed to perform its obligations under this Lease to satisfy the conditions precedent to the Commencement Date. In addition, the Parties shall document the final form of Title Commitment and the Legal Description set forth therein through execution of an Operating Memorandum to which such Title Commitment and Legal Description shall be attached. Upon execution of the Operating Memorandum, the Legal Description shall be deemed attached to and a part of this Lease as Exhibit A as if it were originally attached on the Effective Date.

(c) Conditions Precedent to the City's Obligation. The obligation of Landlord to deliver exclusive possession of the Premises to Tenant pursuant to this Lease shall be subject to the fulfillment on or before the Outside Commencement Date (as such date may be extended pursuant to this Lease) of the following conditions precedent, any or all of which may be waived by Landlord in its sole discretion:

(1) Tenant has completed its inspection and due diligence during the Inspection Period and given its written approval of the Property and Premises pursuant to Section 2.5(a);

(2) Tenant has obtained the Title Commitment, including the Legal Description, and the Parties have documented the form of Title Commitment and Legal Description in an Operating Memorandum;

(3) there are no uncured Tenant Events of Default;

(4) the Memorandum of Lease has been recorded against the Property;

(5) all the representations and warranties of Tenant contained in this Lease are true and correct in all material respects as of the Commencement Date;

(6) Tenant has timely submitted to the City and the City has reviewed and approved all of the submittals required under this Lease, including but not limited to, the approval of the Project Financing Plan, as defined in Section 3.1, and the Construction Contract pursuant to Section 4.4;

(7) Tenant shall have submitted to the City within the time set forth in the Milestone Schedule, evidence in the form reasonably satisfactory to Landlord, that any conditions to the release or expenditure of funds described in the Project Financing Plan have been met or will be met at the Commencement Date and that such funds will be available at the Commencement Date for the construction of the Improvements. Such satisfactory evidence may consist of letters from the funding sources identified in the approved Project Financing Plan stating that the applicable funds, in the amounts called for in the approved Project Financing Plan, will be available to Tenant for construction of the Improvements at the Commencement Date. Only upon delivery of such evidence, in form satisfactory to Landlord shall this condition be deemed met;

(8) Tenant has submitted all certificates of insurance, each in form reasonably satisfactory to the City's risk manager (or his or her designee), demonstrating compliance with the Insurance Requirements in Article 7;

(9) Tenant shall have obtained all Project Approvals required under Section 4.3, including the payment of the required grading, demolition and building permit fees; and,

(10) Tenant shall have obtained a business license through the City.

If one or more of the foregoing conditions precedent is not satisfied or waived in writing by the City prior to the Outside Commencement Date (as such date may be extended pursuant to this Lease), this Lease shall terminate in accordance with the provisions of Section 2.9.

(d) Conditions Precedent to Tenant's Obligation. The obligation of Tenant to consummate the transactions hereunder shall be subject to the fulfillment on or before the applicable Outside Commencement Date (as such date may be extended pursuant to this Lease) of the following applicable conditions, any or all of which may be waived by Tenant in its sole discretion:

(1) The Memorandum has been recorded against the Property;

(2) there is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that materially and adversely affects the Premises, the development of the Project or the obtaining of the Project Approvals; and,

(3) all of the representations and warranties of Landlord contained in this Lease shall be true and correct in all material respects as of the Commencement Date; and

(4) there are no uncured City events of default.

If one or more of the foregoing conditions precedent is not satisfied or waived in writing by Tenant prior to the applicable Outside Commencement Date (as the same may be extended pursuant to the terms of this Lease), this Lease shall terminate in accordance with the provisions of Section 2.9. As of the Commencement Date, Landlord shall deliver possession of the Premises to Tenant free of monetary encumbrances other than non-delinquent taxes or assessments, and otherwise subject only to the Permitted Encumbrances.

Section 2.6 Use. Tenant shall, throughout the Term, continuously use the Premises and the Improvements only for the construction and operation of a community space to promote education and ideas, and to provide space for public and private events and performances, with food and bar service, and such other uses as are reasonably and customarily attendant to such uses (the "Permitted Use"), subject to the Applicable CC&Rs and Easements and this Lease, including but not limited to the restrictions and requirements set forth in this Lease during the Term. Changes to Tenant's Permitted Use shall be approved by Landlord in writing in its sole discretion, and in addition, Tenant shall be required to obtain any other required governmental permits or approvals.

Section 2.7 Memorandum of Lease. Concurrent with the execution of this Lease, the Parties shall execute and acknowledge the Memorandum of Lease, in the form attached hereto as Exhibit B, which Tenant shall cause to be immediately recorded in the Official Records at Tenant's expense.

Section 2.8 Landlord's Use Rights. Landlord may use the Premises to host up to twelve (12) events per year on dates and times selected by Landlord (each a "City Event", together, the "City Events"), subject to the terms and conditions of the "Reservation Guidelines" set forth in Exhibit E.

Section 2.9 Lease Termination Prior to Commencement Date. This Lease may be terminated by either party after the Effective Date and prior to the Commencement Date pursuant to Sections 2.5 (a)-(c), 2.11, 3.2(a), 4.3, and 4.4. Failure by Tenant to perform or satisfy the obligations of any of these sections as required by such section, if such failure continues for a period of sixty (60) days after notice has been delivered by Landlord to Tenant, shall constitute an Event of Default and Landlord may terminate this Lease prior to the Commencement Date. Notwithstanding the forgoing, if any such failure cannot reasonably be cured within the sixty (60) day period, then Landlord shall not have the right to terminate this Lease or Tenant's right to possession hereunder, so long as Tenant promptly commences the curing of the failure and thereafter proceeds in good faith and with due diligence to remedy and correct such failure within a reasonable period of time. Upon a termination, the Parties shall have no further obligation to each other, except those obligations that expressly survive termination. No other sums shall be due from City to Tenant, or vice versa, except for any indemnity obligations or damage pursuant to the License or this Lease.

Section 2.10 Milestone Schedule. Tenant agrees that the Milestones set forth in the Milestone Schedule attached as Exhibit D are reasonable and represent an estimate of the time to accomplish the necessary tasks to develop the Project and cause it to be open for operation on the date described in the Milestone Schedule. Upon mutual written agreement of Landlord and Tenant, the Milestone Schedule may be revised to reflect changes to the anticipated timeline; except that the final Milestone described in the Milestone Schedule related to Tenant's commencement of operations in the Premises for the Permitted Use shall not be extended without City Council approval, as described in Section 2.14. During the Term, as such may be extended, Tenant shall demonstrate continued incremental progress towards the Project's stated goal of revitalizing the Property for the Permitted Use, and Landlord shall retain a right to terminate this Lease if Tenant's Milestone Schedule progress ceases or is materially delayed subject to notice and cure rights set forth in Section 2.11, as reasonably determined by Landlord, and to Force Majeure Delay. Except as otherwise stated in Section 2.14, the Milestone Schedule may be modified by an Operating Memorandum (as defined in Section 2.14) approved by Landlord and Tenant in accordance with Section 2.14. The Parties shall make commercially reasonable efforts to meet the Milestone Schedule and each particular Milestone but failure to meet a Milestone shall not be considered an Event of Default pursuant to Section 14.1 unless, as a result of such failure, it would be impossible for (a) a subsequent Milestone (as such date may be extended pursuant to this section) to be timely met, or (b) the final Milestone regarding commencement of operations to be met. If a Party fails to meet a Milestone, either Party can require the other Party to meet and confer regarding the impact to the Milestone Schedule of such failure with the goal of the Parties reaching mutual agreement on adjustments to the Milestones and Milestone Schedule, subject to approval of City Council of any extension of the final Milestone regarding commencement of operations at the Premises. Any Party receiving a request to meet and confer shall participate in the meet and confer within thirty (30) days of receipt of notice from the other Party. Within five (5) days following the date on which Tenant believes that a Milestone has been met, Tenant shall deliver to Landlord a Date Confirmation

Memo documenting the occurrence of such event, which Milestone shall be deemed satisfied on the date the memo is countersigned by Landlord and delivered to Tenant.

Section 2.11 Pre-Commencement Date Milestone Default. Failure by Tenant to perform or satisfy the obligations of any of the Milestones by the time required under Exhibit D, if such failure continues for a period of sixty (60) days after notice has been delivered by Landlord to Tenant, shall constitute an Event of Default. Notwithstanding the forgoing, if any such failure cannot reasonably be cured within the sixty (60) day period, then Landlord shall not have the right to terminate this Lease or Tenant's right to possession hereunder, so long as Tenant promptly commences the curing of the failure and thereafter proceeds in good faith and with due diligence to remedy and correct such failure within a reasonable period of time.

Section 2.12 Signage. Tenant shall be allowed to place identity signage on the Premises, subject to Landlord advance written approval, which will not be unreasonably withheld or delayed, and in compliance with all Legal Requirements. All signage will be provided by Tenant at its sole cost and expense.

Section 2.13 Community Use Guidelines. Beginning as of the date that is thirty-six (36) months after commencement of operations in the Premises for the Permitted Use (the "CB Benchmark Commencement Date") and continuing during the remaining Term of the Lease and any extensions thereof, Tenant shall be responsible for ensuring that certain benchmarks are met (the "Community Benefit Benchmarks"). Tenant must ensure that the following Community Benefit Benchmarks are met:

- A minimum of two-hundred (200) youth (under 18) per year will participate in recurring course offerings;
- A minimum of one-hundred (100) adults (18 and older) per year will participate in recurring course offerings;
- Tenant will hold at least ten (10) community events per year with discounts available to Alameda residents at each event;
- Tenant will hold at least one (1) open house per year (with free entry to learn about programs and events);
- Tenant will offer at least five (5) different courses for youth per year;
- Tenant's hours of operation in furtherance of the Community Benefit Benchmarks will be a minimum of thirty (30) hours/week over at least five (5) days/week;
- Tenant will offer a 10% discount on applicable fees for up to thirty-six (36) events per year for Alameda community-based organizations and public entities (e.g., AUSD); and
- Tenant will offer a 10% discount on applicable fees for Alameda residents.

Section 2.16 Reporting by Tenant. Beginning as of the date that Tenant commences operations at the Premises for the Permitted Use (as described in Milestone 13) and continuing during the remaining Term of the Lease and any extensions thereof:

(a) Tenant shall submit to Landlord monthly reports, the form and substance of which shall be acceptable to Landlord in its reasonable discretion, describing applications and requests Tenant has received during the month for discounted community use of the Premises, including the status and outcome of all requests for use.

(b) Tenant shall submit to Landlord an annual report, the form and substance of which shall be acceptable to Landlord in its reasonable discretion (the “Annual Report”), describing Tenant’s program activities and events for the prior year and providing a summary of Tenant’s annual financials, as well as other operating and financial performance data (substantially similar to a funders report). Prior to the CB Benchmark Commencement Date, the Annual Report shall include a description of the activities and events offered by Tenant that will in the future be relevant to Tenant’s compliance with the Community Benefit Benchmarks. Following the CB Benchmark Commencement Date, Tenant’s Annual Report shall also provide details of such community activities and events and shall evidence compliance of Tenant with the Community Benefit Benchmarks. Included with every Annual Report shall be a copy of Tenant’s course catalog for the prior year containing descriptions of the courses that were offered by Tenant. In addition, the Annual Report shall include Tenant’s calculation of the For-Profit Special Event Fee described in Section 5.4, and if Tenant determines that Landlord is due any For-Profit Special Event Fee, Tenant shall also deliver to Landlord with the Annual Report the amount determined due to Landlord.

(c) Twelve (12) months following the commencement of Tenant’s operations at the Premises for the Permitted Use, Tenant shall promptly and proactively coordinate a meeting with City at a mutually acceptable time, during which the Parties will review Tenant’s efforts to meet the Community Benefit Benchmarks (regardless of whether or not the CB Commencement Date has occurred or not) to determine if Tenant is likely to comply in the future or has complied with such requirement. To the extent Tenant has not met the Community Benefit Benchmarks for such year, the Parties shall work cooperatively to develop a strategy to correct such failure.

(d) Commencing the first (1st) day of the eleventh year of the Lease Term and for every fifth (5th) year thereafter, Tenant shall deliver to Landlord a five (5) year strategic plan summarizing Tenant’s program goals for the upcoming five (5) year period. To the extent determined necessary by the Parties, the Community Benefit Benchmarks may be adjusted to reflect changes to the organization's goals and mission. All material changes must be approved by City Council and Landlord’s staff will determine the materiality of any changes. Such changes would be memorialized in an Operating Memorandum.

Section 2.17 Operating Memoranda. The Parties acknowledge that the provisions of this Lease require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Lease. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Lease. If and when, from time to time during the term of this Lease, the Parties find that refinements or

adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an “Operating Memorandum”, and collectively, “Operating Memoranda”) approved by the Parties which, after execution, shall be attached to this Lease as addenda and become a part hereof, subject to the limitation described below. This Lease describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate. Operating Memoranda that implement the provisions of this Lease, that provide clarification to existing terms of this Lease or revise Milestones or Community Benefit Benchmarks may be executed on Landlord's behalf by the City Manager or his or her designee, without action or approval of the City Council, provided such Operating Memoranda do not change material terms of this Lease, including but not limited to Rent, Term or the date of commencement of operations at the Premises.

Section 2.18 Hours of Business/Covenant to Open and Continuously Operate. Subject to the provisions of Article 13, Tenant covenants (i) to open for operations to the public at the date set out in the Milestone Schedule with sufficient personnel and equipment required for operations and (ii) that it shall continuously during the entire Term, as such may be extended, conduct and carry on Tenant's business in the Premises and shall keep the Premises open for business and cause the community benefit and not-for-profit portion of Tenant's business (as referred to in Section 2.13) to be conducted therein not less than five (5) days each week and not less than thirty (30) hours each week. (“Minimum Community Hours of Operation”). Specifically, Tenant shall be required to be open to the public and operate its community benefit and not-for-profit programs in furtherance of the Community Benefit Benchmarks during the Minimum Community Hours of Operations, and to the extent Tenant conducts for-profit business in the Premises and/or holds other for-profit events, all such for-profit business operations shall be held in addition to or outside of the Minimum Community Hours of Operation. Notwithstanding the foregoing, this provision shall not apply if the Premises should be closed and the business of Tenant temporarily discontinued therein on account of (a) damage or destruction or similar causes beyond the reasonable control of Tenant pursuant to Article 13, or (b) nationally recognized holidays and/or staff vacation breaks, so long as such aggregate period does not continue longer than fourteen (14) calendar days per year. Tenant shall keep the Premises maintained adequately, and with sufficient personnel to conduct all business in accordance with sound business practice. In the event of breach by the Tenant of any of the covenants or conditions contained in this Paragraph 2.15, Landlord shall have, in addition to any and all remedies provided in law, the right, at Landlord's option, and after sixty (60) days’ notice to Tenant and Tenant’s failure to cure, to revoke the Abated Rent for each and every day that Tenant fails to conduct Tenant's business as herein provided, and/or to terminate the Lease. If Landlord revokes the Abated Rent, Tenant shall pay the Rent due to Landlord within ten (10) days of notice from Landlord.

ARTICLE 3. FINANCING PLAN

Section 3.1 Financing Plan. Tenant will submit to Landlord a financing plan for the Project (“Project Financing Plan”), which shall comply with the requirements of this Section 3.1.

(a) Within ninety (90) days of the Effective Date, Tenant shall submit to Landlord the Project Financing Plan containing the following documents and information described in items (1)-(6) for Landlord's review and approval pursuant to Section 3.2 on or prior to the applicable Milestone:

(1) A detailed development budget (including all direct, indirect, and financing costs) for developing and constructing the Improvements based on the approved Construction Contract as defined in Section 4.4 for such Improvements;

(2) A copy of all commitments obtained by Tenant for debt financing, such as construction loan financing or other financing from external debt financing sources to assist in financing construction of the Improvements, if any, certified by Tenant's accountant or CFO to be true and correct. Landlord shall cause such commitments to be reviewed under Section 3.2 to determine the validity of the commitments and the proposed amount, terms and timing of the debt financing to be provided under such commitments;

(3) A description of any joint ventures, partnerships or conveyances that Tenant proposes to enter into in order to provide equity funds for developing and constructing the Project, if any, including copies of any then executed joint venture, partnership and/or conveyance agreements. Such description and agreements shall be made available for Landlord's review at a meeting between Tenant, City staff and City's designated consultant. The City shall cause such description to be reviewed under Section 3.2 to determine the validity of the agreement and the proposed amount, terms and timing of the equity funding to be provided for the Project under such agreements;

(4) A financial statement certified by a managing partner or member of Tenant, a letter of verification from Tenant's corporate bank, or other evidence in form reasonably satisfactory to the City and Tenant's commitment letter demonstrating that Tenant has sufficient additional capital funds available and is committing such funds to cover the difference, if any, between costs of construction of the Project and Improvements and the amount available to Tenant from external sources, including any financing obtained by Tenant pursuant to Section 3.1(a)(2) above, to pay such anticipated, development and construction costs;

(5) A description, certified by a managing partner or member of Tenant setting forth the amount, nature and providers of any completion assurances to be provided by Tenant to equity investors and/or lenders to obtain the equity and debt financing described in Sections 3.1(a)(2) above; and,

(6) A summary schedule showing overall proforma expenditures, proforma revenues and expected timing of same.

Section 3.2 Review of Project Financing Plan By City. Upon receipt by the City of the Project Financing Plan, the City Manager shall either approve or disapprove the Project Financing Plan in writing within thirty (30) days. If the Project Financing Plan is not approved by the City Manager, then the City Manager shall notify Tenant in writing of the reasons for disapproval and the required revisions to the Project Financing Plan. Tenant shall thereafter submit a revised Project Financing Plan within thirty (30) days of the notification of disapproval.

Upon receipt by the City of the revised Project Financing Plan, the City Manager shall either approve or disapprove the revised Project Financing Plan in writing within thirty (30) days.

(a) If the City disapproves the revised proposed Project Financing Plan, this Lease may be terminated pursuant to Section 2.9, subject to a sixty (60) notice and cure right.

(b) Tenant shall submit any material revision to an approved Project Financing Plan to the City Manager for his review and approval. Any proposed revised Project Financing Plan shall be considered and approved or disapproved by Landlord in the same manner and according to the same timeframe set forth above for the initial plan or update. Until a revised plan or update is approved by Landlord, the previously approved Project Financing Plan shall govern the financing.

(c) Prior to Commencement Date, Tenant shall provide a plan which evidences the source of the total funds required to pay the CI Deposit (as defined in Section 5.2) and the Capital Improvement Costs. Such plan shall include at least \$1,000,000 in cash at the Commencement Date. In such plan, Tenant shall demonstrate proof of funds, or commitments to fund via external cash contributions or loans, to fund (i) the Construction Contract and the remainder of the Capital Improvement Costs, plus (ii) the first year of budgeted operating expenses for the Carnegie Innovation Hall.

ARTICLE 4. **THE IMPROVEMENTS**

Section 4.1 Construction. Tenant shall cause the commencement and completion of construction of the Improvements to occur on or before the applicable Milestones in the Milestone Schedule attached as Exhibit D. Tenant shall cause the Improvements to be constructed in substantial compliance with the Approved Construction Documents. The construction of the Improvements shall be conducted in a good and skillful and competent manner, in compliance with all requirements set forth in this Lease, all Project Approvals, the Construction Contract, all other construction documents, all Legal Requirements, this Lease, and all directions, rules and regulations of all applicable Governmental Authority now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of all Project Approvals, as required for all or any applicable portion of such work by any Governmental Authority having jurisdiction, and Tenant shall be responsible to Landlord for the procurement and maintenance thereof, as may be required of Tenant and all entities engaged in work on the Project. In designing and constructing the Project, Tenant shall comply with accessibility requirements and all Legal Requirements applicable thereto. Tenant shall take no action to effectuate any material amendments, modifications, or alterations to the plans and specifications unless Landlord has approved such, in writing and in advance.

Section 4.2 Construction Pursuant to Approved Construction Documents. From and after the Commencement Date, Tenant shall cause construction of the Improvements to occur in accordance with the Approved Construction Documents (or modifications thereto processed and approved by the City in accordance with applicable City ordinances, rules and regulations). Nothing in this section shall preclude or modify Tenant's obligation to obtain any required City approval of changes in the Approved Construction Documents in accordance with applicable

City ordinances, rules and regulations.

Section 4.3 Project Approvals, Permits, Licenses and Easements

(a) As a condition precedent to the Commencement Date, Tenant shall apply to the City and other applicable governmental entities for, and shall diligently pursue and procure all Project Approvals for the Premises, including, without limitation, design review. Tenant shall apply for the first Project Approval by no later than the date set forth in the Milestone Schedule and shall continue to submit applications and obtain additional Project Approvals as necessary by the dates set forth in the Milestone Schedule. The City shall cooperate with Tenant on obtaining any approvals from other governmental entities and public utilities, provided the City shall not be obligated to incur any costs associated with obtaining such permits and approvals. Within the time set forth in the Milestone Schedule, Tenant shall submit to Landlord evidence that all Project Approvals for the Premises have been obtained. Only upon delivery of such evidence in a form satisfactory to Landlord, shall the conditions of this Section 4.3 be deemed met. If such evidence is not delivered within the time specified in the Milestone Schedule, subject to any agreed upon extensions and to Force Majeure Delay, this Lease may be terminated pursuant to Section 2.9.

(b) Tenant shall also be responsible for granting or cause to be granted all permits, licenses, easements, and other governmental authorizations that are necessary or helpful for electric, telephone, gas, cable television, water, sewer, drainage, access (including emergency access), and such other public or private utilities, facilities or other rights as may be reasonably necessary or desirable in connection with the construction or operation of the Improvements. Tenant covenants and agrees to comply with the terms and conditions of all Applicable CC&Rs & Easements.

Section 4.4 Construction Contract.

(a) As a condition precedent to the Commencement Date and within the time set forth in the Milestone Schedule, Tenant shall submit to Landlord the proposed construction contract with the general contractor ("Contractor") for the construction of the Improvements ("Construction Contract"). The Construction Contract shall:

(1) Specify a guaranteed maximum price or another type of construction contract in which the pricing mechanism provides assurance that the total construction cost under the Construction Contract will be an amount not exceeding the construction cost set forth in the approved Project Financing Plan including contingency amounts;

(2) Meet the requirements of Section 4.14 relating to prevailing wages; and

(3) Is otherwise in a form consistent with the terms of this Lease with respect to construction of the Improvements. Tenant shall to deliver a written verification from the executed Construction Contract complies with this Lease.

(b) Upon receipt by the City of the Construction Contract, Landlord shall either approve or disapprove the submitted Construction Contract within fifteen (15) business days. If the proposed Construction Contract is not approved by Landlord, then Landlord shall notify

Tenant in writing of the reasons for disapproval and the required revisions to the previously submitted Construction Contract. Tenant shall thereafter submit a revised Construction Contract within ten (10) business days of the notification of disapproval. Upon receipt by the City of the revised Construction Contract, Landlord shall either approve or disapprove the submitted revised Construction Contract within five (5) business days. Landlord shall approve an initial or revised Construction Contract if it meets the standards set forth in subsection (a) of this Section 4.4 and is with a licensed, qualified and experienced general contractor.

(c) If the Construction Contract is not approved by the time set forth in the Milestone Schedule, this Lease may be terminated pursuant to Section 2.9, subject to a sixty (60) day notice and cure right.

(d) Following Landlord's written approval of the Construction Contract, Tenant may, without Landlord approval, make non-material changes to the Construction Contract that are consistent with, and do not cause the Construction Contract to be noncompliant with this Lease; provided, however, that Tenant shall first provide Landlord with notice, clearly indicating the nature of the proposed changes, not less than ten (10) days before Tenant enters into an instrument effectuating such changes. Tenant shall not make any changes to the Construction Contract previously approved by Landlord that would cause the Construction Contract to be out of material compliance with this Lease without the prior written consent of the City.

Section 4.5 Tenant Responsibility for All Costs of the Project. Tenant shall be solely responsible for all pre-development costs and expenses and all development costs and expenses related to the development of the Project. In the event the costs of developing the Project exceed Tenant's estimates of such costs, Tenant shall nonetheless be responsible to complete, at its expense, the development of the Project in accordance with this Lease.

Section 4.6 Compliance with Applicable Law. Tenant shall cause all work performed in connection with construction of the Project to be performed in compliance with all Legal Requirements of Governmental Authorities now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any Governmental Authorities having jurisdiction, and Tenant shall be responsible for the procurement and maintenance thereof, as may be required of Tenant and all entities engaged in work on the Property.

Section 4.7 Entry by the City. Tenant shall permit the City, through its agents or employees, to enter the Property at all reasonable times to inspect the work of construction of the Project to determine that such work is in conformity with the Approved Construction Documents or to inspect the Property for compliance with this Lease. The City is under no obligation to: (a) supervise construction, (b) inspect the Property, or (c) inform Tenant of information obtained by the City during any inspection, except that the City shall inform Tenant of any information it obtains or discovers during inspection that could reasonably or foreseeably affect the rights or obligations of a Party under this Lease. Tenant shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this section are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority.

Section 4.8 Progress Reports. Until such time as the Project is entitled to issuance of

Certificate of Occupancy, Tenant shall provide the City with monthly progress reports, or more frequently as reasonably requested by the City, regarding the status of the construction of the Improvements.

Section 4.9 Necessary Safeguards. Tenant shall or shall cause its Contractor, subcontractors and suppliers to erect and properly maintain at all times, all reasonable and necessary safeguards for the protection of workers and the public during the course of the work.

Section 4.10 No Liens. (a) Tenant shall not have any right, authority, or power to bind Landlord, Landlord's Estate, or any other interest of Landlord in the Premises, for any claim for labor or material or for any other charge or expense, lien, or security interest incurred in connection with the construction or operation of the Improvements or any change, alteration, or addition thereto. Tenant shall not have any right to encumber Tenant's Estate without the written consent of Landlord, other than for Approved Financing pursuant to the terms of Article 9 and 10, and the regulatory agreements, utility easements and other customary easements or agreements necessary and incidental to the construction and operation of the Improvements. All easements are subject to the advance written approval of Landlord, which shall not be unreasonably withheld. Notwithstanding the foregoing, Landlord agrees to reasonably consider Tenant's requests of any such easement that encumbers Landlord's Estate and will remain in place following expiration or termination of this Lease. Tenant shall promptly pay and discharge all claims for work or labor done, supplies furnished, or services rendered at the request of Tenant and shall keep the Premises free and clear of all mechanics' and materialmen's liens in connection therewith. Notwithstanding the preceding sentence, Tenant shall have the right to contest any such claims provided Tenant provides Landlord adequate security during such contest, pending resolution thereof. If any claim of lien is filed against the Premises or a stop notice is served on Landlord or other third party in connection with the construction or operation of the Improvements or any change, alteration, or addition thereto, then Tenant shall, within thirty (30) days after such filing of service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to Landlord a surety bond in sufficient form and amount, or provide Landlord with other assurance reasonably satisfactory to Landlord that the claim of lien or stop notice will be paid or discharged, provided that Landlord provides notice of such claim of lien or stop notice to Tenant promptly upon receipt by Landlord.

(b) If Tenant fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, Landlord may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Tenant's expense, and Tenant shall pay to Landlord as Additional Rent (as defined in Section 5.3) any such amounts expended by Landlord within thirty (30) days after notice is received from Landlord of the amount expended. Alternatively, Landlord may require Tenant to immediately deposit with Landlord the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. Landlord may use such deposit to satisfy any claim or lien that is adversely determined against Tenant.

(c) Tenant shall file a valid notice of cessation or notice of completion upon cessation of construction on the Improvements for a continuous period of thirty (30) days or more, except in the event such cessation of construction is caused by adverse weather conditions, and shall take all other reasonable steps to forestall the assertion of claims of lien against the Premises.

Landlord shall have the right to post or keep posted on the Premises, or in the immediate vicinity thereof any notices of non-responsibility for any construction, alteration, or repair of the Premises by Tenant. Tenant authorizes, but does not obligate, Landlord to record any notices of completion or cessation of labor, or any other notice that Landlord deems necessary or desirable to protect its interest in the Premises.

Section 4.11 Title to Improvements.

(a) During the Term. Notwithstanding any provision in this Lease to the contrary, the Improvements and all alterations, additions, equipment, and fixtures built, made, or installed by Tenant in, on, under, or to the Premises or the Improvements shall be the sole property of Tenant in fee until the expiration of the Term or other termination of this Lease. Notwithstanding the foregoing, any furniture, fixtures or equipment provided by Landlord which is usable and is retained as a part of the operations of Tenant's business shall be owned by Landlord before, during and after the Lease Term and shall not be disposed of without Landlord's consent, especially those of historic significance. Tenant shall have a license during the Lease Term to use such items and shall take care to preserve and protect such items at its sole cost.

(b) After the Term. Upon the expiration of the Term or other termination of this Lease, the Improvements and all alterations, additions, equipment, and fixtures shall be deemed to be and shall automatically become the property of Landlord, without cost or charge to Landlord. Landlord agrees that Tenant, at any time prior to the expiration or other termination of this Lease, may remove from the Premises any and all equipment which Tenant has furnished for maintenance purposes or for the use of its management, provided that Tenant shall repair any physical damage to the Premises caused by the removal of such equipment and property. Tenant agrees to execute, at the request of Landlord at the end of the Term, a quitclaim deed to Landlord for the Improvements. The deed shall be recorded at Landlord's option and expense and Tenant shall provide any other documents that may be reasonably required by Landlord or Landlord's title company to provide Landlord title to the Premises and the Improvements free and clear of all monetary liens and monetary encumbrances not caused by or agreed to by Landlord.

Section 4.12 Benefits of Improvements During Term. Landlord acknowledges and agrees that any and all depreciation, amortization, and tax credits for federal or state tax purposes relating to the Improvements located on the Premises and any and all additions thereto, substitutions therefor, fixtures therein, and other property relating thereto shall be deducted or credited exclusively to Tenant as the sole owner of such Improvements during the Term and for the tax years during which the Term begins and ends.

Section 4.13 Equal Opportunity. Tenant, for itself and its successors and assigns, and transferees agrees that during the construction, operation and management of the Project, Tenant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, ancestry, disability medical condition, age, marital status, gender identity status, sex, sexual orientation, HIV status or Acquired Immune Deficiency Syndrome (AIDS) condition or perceived condition, or retaliation for having filed a discrimination complaint ("nondiscrimination factors"). Tenant will take affirmative action to ensure that applicants are considered for employment by Tenant without regard to the nondiscrimination factors, and that Tenant's employees are treated without regard to the nondiscrimination factors

during employment including, but not limited to, activities of: upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and, selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, available to its employees and applicants for employment, the applicable nondiscrimination clause set forth herein;

(a) Tenant will ensure that its solicitations or advertisements for employment are in compliance with the aforementioned nondiscrimination factors; and

(b) Tenant will cause the foregoing provisions to be inserted in all contracts for the construction, operation and management of the Project entered into after the date of this Lease; provided, however, that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw material.

Tenant shall use reasonable efforts to monitor and enforce, or shall cause its Contractor to monitor and enforce, the equal opportunity requirements imposed by this Lease.

Section 4.14 Prevailing Wages.

(a) Tenant shall and shall cause its Contractors and subcontractors to pay prevailing wages in the construction of the Project as those wages are determined pursuant to Labor Code sections 1720 et seq. and the implementing regulations of the Department of Industrial Relations (the “DIR”), to employ apprentices as required by Labor Code sections 1777.5 et seq., and the implementing regulations of the DIR; and comply with the other applicable provisions of Labor Code sections 1720 et seq., 1777.5 et seq., 1810-1815 and the implementing regulations of the DIR;

(b) All calls for bids, bidding materials and the Construction Contract documents for the Project must specify that:

(1) No contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Project unless registered with the DIR pursuant to Labor Code section 1725.5;

(2) The Project is subject to compliance monitoring and enforcement by the DIR;

(c) Tenant, as the “awarding body”, shall register the Project as required by Labor Code Section 1773.3 as set forth in the DIR’s online form PWC-100 within two (2) days after entering into the Construction Contract and provide evidence of such registration to Landlord within two (2) days of such registration and any additional registration reported to the DIR;

(d) In accordance with Labor Code sections 1725.5 and 1771.1, Tenant shall require that its Contractors and subcontractors be registered with the DIR, and maintain such registration as required by the DIR;

(e) Pursuant to Labor Code section 1771.4, the Project is subject to compliance monitoring and enforcement by the DIR. Tenant shall and shall require its Contractors and

subcontractors to submit payroll and other records electronically to the DIR pursuant to Labor Code sections 1771.4 and 1776 et seq., or in such other format as required by the DIR;

(f) Tenant shall and shall cause its Contractors and subcontractors to keep and retain such records as are necessary to determine if prevailing wages have been paid as required pursuant to Labor Code sections 1720 et seq., and that apprentices have been employed as required by Labor Code section 1777.5 et seq., and shall, from time to time provide to Landlord such records and other documentation reasonably requested by Landlord;

(g) Tenant shall and shall cause its Contractors and subcontractors to comply with all other applicable provisions of Labor Code, including without limitation, Labor Code sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815; and implementing regulations of the DIR in connection with construction of the Project or any other work undertaken in connection with the Premises;

(h) Copies of the currently applicable current per diem prevailing wages are available from the DIR website at www.dir.ca.gov. Tenant shall cause its Contractors to post the applicable prevailing rates of per diem wages or notice at the Project site in compliance with Title 8 of the California Code of Regulations section 16451(d) or as otherwise as required by the DIR;

(i) Tenant shall indemnify, hold harmless and defend (with counsel reasonably selected by the Landlord), the Indemnified Parties against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Tenant, its Contractors and subcontractors) to pay prevailing wages as determined pursuant to Labor Code sections 1720 et seq., to hire apprentices in accordance with Labor Code sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815, and the implementing regulations of the DIR in connection with the work performed pursuant to this Lease. The provisions of this Section shall survive the termination of this Lease.

Section 4.15 Landlord Review. Tenant shall be solely responsible for all aspects of Tenant's conduct in connection with the Improvements, including, but not limited to, the quality and suitability of the specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by Landlord with reference to the Improvements, in accordance with the terms of this Lease, is solely for the purpose of determining whether Tenant is properly discharging its obligations to Landlord, and should not be relied upon by Tenant or by any third parties as a warranty or representation by Landlord as to the quality of the design or performance of the Improvements.

Section 4.16 Accessibility Requirements. The design and the operation of the Project shall meet the program accessibility requirements of the Americans with Disabilities Act, and the Fair Housing Act and implementing regulations.

Section 4.17 Affirmative Covenant for Financial Statements and Reporting. During the Term, beginning on the first day of November after the Commencement Date and continuing

annually thereafter during the Term and any extension thereof, Tenant shall provide an annual operating budget for the Carnegie Innovation Hall and financial statement showing the balance sheet and income and expense statement for the most recent full year of operations and year to date financial statement through September 30 of each year. Such financial statements and operating budget shall demonstrate the ability to cover 100% of the operating expenses for the following calendar year. Tenant's continuing financial strength shall be an ongoing covenant of the Lease, and Tenant's failure to show same shall trigger a requirement to meet and confer with Landlord to discuss the plan to become financially self-sufficient.

Section 4.18 Labor Peace. The Parties agree that it is in the best interest of the Project that the construction work proceed in a safe, orderly and expeditious manner and through the use of skilled workers to ensure that the work is done in a high quality manner. Prior to Tenant commencing construction of any Improvements at the Premises, Tenant shall meet with and endeavor in good faith to negotiate with the local trade representative(s) in an effort to come to a mutually acceptable written agreement with some or all trades such that labor peace can be ensured during construction of the Improvements. The City Manager or his or her designee may, if any party requests, participate in such negotiations. Tenant agrees that such good faith negotiation efforts by Tenant and Tenant's reaching a mutually acceptable written agreement consistent with this provision shall be a condition precedent to Tenant's commencement of construction of the Improvements. If Tenant is unable to reach an agreement consistent with this provision prior to commencement of construction, then Tenant shall meet and confer with the City Manager or his or her designee to consider alternatives to this labor peace condition, which alternative(s) shall be proposed to and finally approved by City Council. Tenant's use on the Project of pro bono skilled labor, where such tradespeople are being paid prevailing wage, may be considered by City Council as an alternative to the labor peace condition described above, subject to the approval of City Council in its sole and absolute discretion.

ARTICLE 5. **RENTS**

Section 5.1 Monthly Rent. For the period commencing upon the Commencement Date and ending on the Expiration Date, for each month of each Lease Year during the Term, Tenant shall pay to Landlord, monthly Rent in an amount equal to \$15,597.61 per month, except as described below. Landlord shall credit Tenant with its monthly Rent for the initial Term in consideration for Tenant's payment of the Capital Improvement Costs and other consideration (the "Abated Rent"), so long as Tenant performs all of its obligations under the Lease, including the payment of Additional Rent and all other monetary obligations. Tenant acknowledges that its right to receive the Abated Rent is absolutely conditioned upon Tenant's full, faithful, and punctual performance of its obligations under the Lease. Tenant's default under the Lease shall cause the Abated Rent to become due and payable as Rent.

Section 5.2 Capital Improvement Deposit. Tenant acknowledges and agrees that Landlord has a material interest in confirming that Tenant has the wherewithal to complete this Project and the Improvements. In that regard and as a showing of good faith, Tenant shall deliver to Landlord a deposit of \$500,000 (the "CI Deposit") within five (5) business days of the Commencement Date as security for Tenant's payment of the Capital Improvement Costs and as a condition precedent to Tenant commencing construction of any Improvements at the Premises.

Notwithstanding the forgoing, Landlord agrees that Tenant may draw down on the CI Deposit, so long as the CI Deposit is no less \$100,000 for the duration of the construction of the Improvements. The CI Deposit, or any balance thereof, shall be held by Landlord during the construction of the Improvements and refunded to Tenant upon completion of a satisfactory formal walk through by the City and issuance of the Certificate of Occupancy for the Project.

Section 5.3 Additional Rents. In addition to the Monthly Rent specified in Section 5.1, any and all of the payments that Tenant is required to make hereunder to or for the benefit of Landlord shall be deemed to be "Additional Rents." The Rent specified in Section 5.1 and Additional Rents payable hereunder shall be deemed "Rents" reserved by Landlord, and any remedies now or hereafter given to Landlord under the laws of the State of California for collection of the Rent shall exist in favor of Landlord, in addition to any and all other remedies specified in this Lease.

Section 5.4 For-Profit Special Event Fee. Commencing on the first day of the ninety-seventh (97th) month after the date on which operations are commenced at the Premises (i.e., Milestone 13), Tenant shall pay Landlord Additional Rent equal to 2% of Gross Revenue, as described in Tenant's Financial Statements, which statements are consistent with Tenant's Form 990, where such Gross Revenue is: (a) calculated only on Tenant's for-profit special events (i.e., excluding events in furtherance of the Community Benefit Benchmarks), and (b) in excess of the initial \$300,000 of Gross Revenue (the "For-Profit Special Event Fee"). In connection with the submittal to Landlord of the Annual Report, Tenant shall provide Landlord with its calculation of the For-Profit Special Event Fee and to the extent any is owed to Landlord, remit such sum with the Annual Report.

Section 5.5 Payments. All Rents or other sums, if any, due to Landlord hereunder shall be paid by Tenant to Landlord at the address of Landlord set forth in section 19.12 or to such other person and/or at such other address as Landlord may direct

Section 5.6 Net Lease and Assumption of Risk. This Lease is intended to be, and shall be, construed as an absolute net lease, whereby under all circumstances and conditions (whether now or hereafter existing or within the contemplation of the Parties), and the Rent provided for herein shall be absolutely net to Landlord over and above all costs, expenses, and charges of every kind or nature whatsoever related to the Premises, including, without limitation, taxes, utility costs, insurance premiums, operating expenses, costs of repairs, maintenance, restorations, and replacements of the Project, except as may otherwise be expressly set forth herein.

ARTICLE 6.

TAXES AND ASSESSMENTS, UTILITIES

Section 6.1 Personal Property Taxes. Tenant shall pay before delinquency all taxes, assessments, license fees and other charges that are levied and assessed against Tenant's personal property installed or located in or on the Premises which become payable during the Term. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments.

Section 6.2 Real Property Taxes. Tenant shall pay all real property taxes (including, if applicable, any possessory interest taxes and personal property taxes), general and special taxes and assessments (“Real Property Taxes”) levied and assessed against the Premises, the Improvements, and Tenant’s alterations to the Premises. Tenant shall pay the Real Property Taxes not later than the taxing authority’s delinquency date.

Section 6.3 Tenant’s Tax Liability Prorated. Tenant’s liability to pay Real Property Taxes and new assessments shall be prorated on the basis of a 365-day year to account for any fractional portion of a fiscal tax year included in the Lease Term at its inception and expiration or earlier termination in accordance with this Lease.

Section 6.4 Revenue & Taxation Code Section 107.6 Possessory Interest Tax. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxes and that, in the event that a possessory interest is created, Tenant shall be responsible for payment of any taxes levied against such possessory interest.

Section 6.5 Utilities. During the Term, Tenant shall install and pay for all utilities used, rendered, or supplied upon or in connection with the Improvements and the construction thereof, including, but not limited to, all charges for gas, electricity, light, heat, or power, all telephone and other communications services, all water rents and sewer service charges, and all sanitation fees or charges levied or charged against the Premises during the Term.

ARTICLE 7. **INSURANCE**

Section 7.1 Required Insurance Coverage. Commencing on the Effective Date (except as otherwise set out in this Article 7) and continuing throughout the Term, Tenant shall maintain or cause to be maintained and kept in force, at the sole cost and expense of Tenant or its Contractors, the insurance applicable to the Project and required under this Article 7.

Section 7.2 Comprehensive General Liability Insurance. As of the Effective Date and during the Term, Tenant shall maintain or cause to be maintained and kept in force, comprehensive general liability insurance in an amount not less than Two Million Dollars (\$2,000,000) with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including premises operations, underground and collapse, completed operations, contractual liability, independent contractor’s liability, broad form property damage and personal injury, and Two Million Dollars (\$2,000,000) general aggregate limit, which minimum amounts shall be increased by the CPI Increase every five (5) years on the anniversary of the Commencement Date and covering, without limitation, all liability to third parties arising out of or related to Tenant’s performance of its obligations under this Lease or other activities of Tenant at or about the Premises and the Project. Such insurance in excess of One Million Dollars (\$1,000,000) may be covered by a so-called “umbrella” or “excess coverage” policy.

Section 7.3 Vehicle Liability Insurance. If Tenant owns or leases any vehicles, as of the Effective Date and/or during the Term, Tenant shall maintain or cause to be maintained and kept

in force, vehicle liability insurance in an amount not less than One Million Dollars (\$1,000,000) (combined single limit) including any automobile or vehicle whether hired or owned by Tenant.

Section 7.4 Workers' Compensation Insurance. As of the Effective Date and during the Term, Tenant shall maintain or cause to be maintained and kept in force, workers' compensation insurance in an amount not less than the statutory limits in accordance with California Labor Code sections 3200 et seq.

Section 7.5 Property Insurance. As of the Effective Date and during the Term, Tenant shall maintain or cause to be maintained and kept in force, property insurance covering the Premises, the Improvements, and all personal (non-expendable) property (except for personal property otherwise typically covered by insurance maintained by tenants) located on the Premises, in a form appropriate for the nature of such property, covering all risks of loss, including earthquake (only if required by Tenant's lender and to the extent available at a commercially reasonable cost), for 100% of the replacement value, with deductible, if any, reasonably acceptable to the City's Risk Manager. Such policy shall include Builder's Risk policy of One Million Dollars (\$1,000,000) during the construction period or any period of Alterations as defined in Section 8.2 during the Term. Notwithstanding the foregoing, as of the Effective Date and during the Term, Landlord shall provide the insurance coverage for the exterior structure of the Premises in the amount and type at which Landlord currently insures the exterior structure under Landlord's standard insurance program, and Tenant shall reimburse Landlord for the cost of such coverage as Additional Rent. The forgoing obligation of Landlord shall not otherwise modify Tenants insurance obligations under this Lease.

Section 7.6 Alcoholic Beverage. As of the date Tenant commences operations at the Premises (as described in Milestone 13) and as a condition precedent to commencing operations at the Premises and opening for business to the public, Tenant shall also maintain alcoholic beverage or dram shop coverage in an amount not less than Two Million Dollars (\$2,000,000), and otherwise in form and substance reasonably acceptable to Landlord.

Section 7.7 Construction Contractor's Insurance. As of the Effective Date, Tenant shall cause any Contractor performing Improvements or work on the Premises to maintain insurance of the types and in at least the minimum amounts described in Sections 7.2, 7.3, and 7.4, and shall require that such insurance shall meet all of the general requirements of Sections 7.8 and 7.9. Except with respect to construction of tenant improvements, Tenant shall also cause its Contractor to obtain and maintain Contractor's Pollution Liability Insurance covering the Contractor and all subcontractors in an amount of not less than Two Million Dollars (\$2,000,000) with a maximum deductible of Ten Thousand Dollars (\$10,000).

Section 7.8 Additional Requirements. The insurance policies required pursuant to this Article 7 (other than Workers' Compensation insurance) shall be endorsed to name as additional insureds Landlord and its elected and appointed officials, board members, commissions, officers, employees, attorneys, agents and volunteers (the "Additional Insureds"). All insurance policies shall contain:

(a) an agreement by the insurer to give Landlord at least thirty (30) days' notice prior to cancellation and ten (10) days' notice for non-payment of premium) or any material change in said policies;

(b) an agreement by the insurer that such policies are primary and non-contributing with any insurance that may be carried by Landlord;

(c) a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained by the Additional Insureds up to applicable policy limits; and

(d) a waiver by the insurer of all rights of subrogation against the Additional Insureds in connection with any claim, loss or damage thereby insured against.

All insurance companies providing coverage pursuant to this Article 7, shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A. M. Best's rating of not less than "A:VIII".

Section 7.9 Certificates of Insurance. Upon Landlord's risk manager's request at any time from and after the Effective Date and during the Term of this Lease, Tenant shall provide certificates of insurance, in form and with insurers reasonably acceptable to Landlord's risk manager, and/or insurance policies including all endorsements, evidencing compliance with the requirements of this section, and shall provide complete copies of such insurance policies, including a separate endorsement naming the Additional Insureds as additional insureds.

Section 7.10 Alternative Insurance Compliance. During such time that a Mortgagee imposes insurance requirements that are inconsistent with the requirements set forth herein, Tenant may satisfy the insurance requirements of this Article 7, by meeting the requirements of such Mortgagee; provided that Tenant shall provide at least five (5) business days prior notice to Landlord specifying: (x) the nature of the inconsistency; (y) a statement that there is no commercially reasonable way for Tenant to comply with both Landlord's and Mortgagee's insurance requirement; and, (z) the alternative insurance requirement Tenant intends to comply with.

ARTICLE 8.

MAINTENANCE, ALTERATIONS, REPAIRS AND REPLACEMENTS

Section 8.1 Maintenance of Premises. During the Term at Tenant's sole cost and expense, Tenant shall keep and maintain the Premises, all Improvements, and all appurtenances thereunto belonging, in good and safe order, condition, and repair, and otherwise in a condition reasonably acceptable to Landlord.

Section 8.2 Alterations to Premises. Following construction of the Improvements, Tenant may make any additions, alterations, or changes (sometimes collectively referred to herein as "Alterations") in or to the Improvements subject, however, to the following conditions:

(a) No Alterations shall be made that are likely to materially impair the structural soundness of the Improvements;

(b) No Alterations of the Premises shall be undertaken which have a cost greater than Twenty Five Thousand Dollars (\$25,000.00) or that would materially affect the design of the Improvements, or demolition of any portion thereof, without first presenting to Landlord complete plans and specifications therefor and obtaining Landlord's written consent thereto;

(c) No Alterations shall be undertaken until Tenant has procured, to the extent the same may be required from time to time, all permits and authorizations of all applicable Governmental Authorities, all required consents of Mortgagee, and the consent of Landlord if required pursuant to subsection (b) above, if applicable. Landlord shall join in the application for such permits or authorizations whenever such action is necessary or helpful and requested by Tenant, and shall use Landlord's reasonable efforts to obtain such permits or authorizations; and,

(d) Any Alterations shall be performed in good and skillful and competent manner and in compliance with the Legal Requirements, regulatory requirements and all applicable Insurance Requirements.

Section 8.3 Indemnification.

(a) Notwithstanding any other provision of this Lease to the contrary, Tenant shall defend (with counsel reasonably selected by Landlord), indemnify and hold harmless the Indemnified Parties from all claims, actions, demands, costs, expenses and attorneys' fees to the extent arising out of, attributable to or otherwise occasioned, in whole or in part, by an act or omission of Tenant, its agent(s), contractor(s), servant(s), or employee(s) or arising out of this Lease. If any third party performing work for Tenant on the Premises asserts any claim against Landlord arising out of this Lease or caused by reason of the acts or omissions of Tenant, its agent(s), servant(s), employee(s), volunteers or contractor(s) (including, without limitation, its general contractor) ("Tenant Parties"), Tenant shall defend at its own expense with counsel reasonably selected by Landlord any suit based upon such claim; and if any judgment or claim against Landlord shall be allowed, Tenant shall pay or satisfy such judgment or claim and pay all reasonable costs and expenses in connection therewith, including reasonable attorneys' fees. In addition, if any contractor or subcontractor which performed preconstruction work or any construction work for Tenant or Tenant's affiliates on the Improvements shall assert any claim against Landlord on account of any damage alleged to have been caused by reason of acts of negligence of Tenant Parties, Tenant shall defend at its own expense and with counsel reasonably selected by Landlord any suit based upon such claim; and if any judgment or claim against Landlord shall be allowed, Tenant shall pay or cause to be paid or satisfied such judgment or claim and pay all costs and expenses in connection therewith.

(b) The obligations, indemnities, and liabilities of Tenant under this Section 8.3 shall not extend to any liability to the extent caused by the gross negligence or willful misconduct of Landlord, or its employee(s), contractor(s), or agent(s). Tenant's liability shall not be limited by any provisions or limits of insurance set forth in this Lease. This indemnity shall survive the termination of this Lease. The provisions of this Section shall not apply to matters arising out of or related to Hazardous Materials which are addressed in Section 11.3.

Section 8.4 Management. During the Term, Tenant shall, at all times, use its best efforts to keep the Premises fully operational and in good condition and repair. During the Term, Tenant shall: (a) carefully and efficiently operate and manage the Premises; (b) maintain separate books and records for the Premises; (c) timely collect all sums due in connection with usage of the Premises, and pay and discharge all costs, expenses, liabilities, and obligations of or relating to the Premises; (d) maintain such reserves as may be required by Landlord and for the Mortgagee; and (e) timely furnish Landlord with accounting documents and other information regarding the Project and the operation thereof as may be reasonably required by Landlord.

Section 8.5 Certain Limitation on Work. Tenant shall not do or knowingly permit any work which would adversely and materially affect the value, including the historic value of the Premises, and Tenant shall not, without the prior written consent of Landlord, demolish or remove, or cause, knowingly suffer, or knowingly permit the demolition or removal of, the Premises or any part other than such demolition and/or removal as may be permitted in connection with construction of the Improvements or following any event described in Articles 11 and 12 hereof.

Section 8.6 Alterations Required by Law. Without limitation on the other provisions of this Lease, if any work shall be required with respect to the Premises by any present or future laws, ordinances, or regulations, the work shall be performed by Tenant at Tenant's sole expense.

Section 8.7 Landlord Completion of Work. To the extent Tenant is required to complete work pursuant to any Legal Requirement and fails to do so, upon the expiration of sixty (60) days' notice from Landlord to Tenant, or such longer period as is reasonably necessary to complete such work given the circumstances, Landlord shall have the right to complete such work and Tenant shall reimburse Landlord for all expenses incurred in connection therewith.

ARTICLE 9.

MORTGAGE LOANS

Section 9.1 Loan Obligations. Nothing contained in this Lease shall relieve Tenant of its obligations and responsibilities under any Approved Financing or Approved Financing Documents to operate the Project as set forth therein.

Section 9.2 Liens and Encumbrances Against Tenant's Interest in the Leasehold Estate. During the Term, Tenant shall have the right to encumber Tenant's estate created by this Lease and the Improvements with liens and restrictive covenants related to the Approved Financing. Except as otherwise provided in this Lease, Tenant shall not engage in any financing or any other transaction creating any security interest or other encumbrance or lien upon the Property other than a lien for current taxes, whether by express agreement or operation of law, or allow any encumbrance or lien to be made on or attached to the Property or the Improvements, except with the prior written consent of Landlord, which approval shall not be unreasonably withheld, or conditioned, and as otherwise permitted under this Lease. Tenant shall notify Landlord in writing in advance of any financing secured by any deed of trust, mortgage, or other similar lien instrument that it proposes to enter into with respect to the Improvements, and of any encumbrance or lien that has been created on or attached to the Property whether by voluntary act of Tenant or otherwise.

Section 9.3 Cost of Loans to be Paid by Tenant. Tenant affirms that it shall bear all of the costs and expenses in connection with (i) the preparation and securing of the Approved Financing, (ii) the delivery of any instruments and documents and their filing and recording, if required, and (iii) all taxes and charges payable in connection with the Approved Financing.

Section 9.4 Proceeds of Loans. It is expressly understood and agreed that all Approved Financing proceeds shall be paid to and become the property of Tenant, and that Landlord shall have no right to receive any such Approved Financing proceeds.

Section 9.5 No Subordination of Fee Interest. Landlord will not approve any subordination of Landlord's Estate in the Property to the interests of any Mortgagee providing financing for the Project.

Section 9.6 Notice and Right to Cure Defaults Under Loans. Landlord may record in the Official Records a request for notice of any default under the Approved Financing Documents or other financing secured by the Project. In the event of default by Tenant under the Approved Financing Documents or other financing secured by the Project, Landlord shall have the right, but not the obligation, to cure the default within the cure periods available to Tenant and its partners. Any payments made by Landlord to cure a default shall be treated as Additional Rent due from Tenant and shall be paid to Landlord within thirty (30) days following the date on which the payment was made by Landlord.

ARTICLE 10.

PERMITTED MORTGAGES RIGHTS

Section 10.1 Notice to Mortgagee. During any period in which a Mortgage is in place, Landlord shall give any such Mortgagee of which Landlord has received notice from Tenant of a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Lease. All such duplicate copies of notices of default and other notices shall be distributed simultaneously to both Tenant and Mortgagee. No notice by Landlord to Tenant under this Lease shall be effective unless and until a copy of such notice has been delivered to each Mortgagee of which Landlord has received notice from Tenant. Additionally, Landlord shall give Mortgagee notice of any rejection of this Lease in bankruptcy proceedings. Landlord shall not serve a notice of cancellation or termination upon Tenant unless a copy of any prior notice of default has been given to Mortgagee and the time to cure the default pursuant to Section 10.2 has expired without cure. No such notice of default shall be effective as to such Mortgagee who does not receive actual notice. Landlord further agrees that it shall notify Mortgagee in writing of the failure or success of Tenant to cure a default within any applicable grace period under this Lease and Mortgagee shall have the additional cure periods pursuant to Section 10.2 below. The performance by Mortgagee of any condition or agreement on behalf of Tenant would be deemed to have been performed with the same force and effect as though performed by Tenant. The address of Mortgagee originally designated in a Mortgage may be changed upon notice delivered to Landlord in the manner specified in Section 19.12 herein. Landlord's failure to give any such notice to any such Mortgagee shall not constitute a default under Section 14.4.

Section 10.2 Right of Mortgagee to Cure. Notwithstanding any default by Tenant under this Lease, Landlord shall have no right to terminate or cancel this Lease unless Landlord shall have given each Mortgagee notice of such default pursuant to Section 10.1 of this Lease and such Mortgagee fails to remedy such default or acquire Tenant's Estate or enter into other appropriate proceedings as set forth in, and within the time specified by, this Section.

(a) Any Mortgagee which has an outstanding Mortgage shall have the right, but not the obligation, at any time to pay any or all of the rent due pursuant to the terms of this Lease, and do any other act or thing required of Tenant by the terms of this Lease, to prevent termination of this Lease. After receipt of notice from Landlord that Tenant has failed to cure such default within the period specified in this Lease, Mortgagee shall have ninety (90) days from the receipt of such notice to cure such default. All payments so made and all things so done shall be as effective to prevent a termination of this Lease as the same would have been if made and performed by Tenant instead of by Mortgagee.

(b) Prior to the expiration of the cure rights of Mortgagees, Landlord shall not effect or cause any purported termination of this Lease nor take any action to deny Tenant possession, occupancy, or quiet enjoyment of the Premises or any part thereof.

(c) Without limiting the rights of Mortgagees as stated above, and whether or not there shall be any notice of default hereunder, each Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease, to pay all of the rent due hereunder, with all due interest and late charges, to procure any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants, and conditions hereof to prevent termination of this Lease. Any Mortgagee and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been performed by Tenant.

(d) In addition to the cure period provided in this Section 10.2, if the default is such that possession of the Premises may be reasonably necessary to remedy the default, any Mortgagee shall have a reasonable time after the expiration of such ninety (90)-day period within which to remedy such default, provided that (i) such Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease within such ninety (90)-day period and shall continue to pay current any monetary obligations when the same are due and (ii) such Mortgagee has acquired Tenant's Estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same and such foreclosure is completed within a maximum of eighteen (18) months following the commencement of such proceedings.

(e) Any default under this Lease which by its nature cannot be remedied by any Mortgagee shall be deemed to be remedied if (i) within ninety (90) days after receiving notice from Landlord that Tenant has failed to cure such default within the period specified in this Lease, or prior thereto, any Mortgagee shall have acquired Tenant's Estate or commenced foreclosure or other appropriate proceedings or other remedies available to such Mortgagee

under the applicable Mortgage, (ii) Mortgagee shall diligently prosecute any such proceedings or remedies referenced in subsection (i) above to completion, and (iii) Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant hereunder which does not require possession of the Premises.

(f) If any Mortgagee is prohibited, stayed, or enjoined by any bankruptcy, insolvency, or other judicial proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that any Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Mortgagee shall not interfere with Landlord's efforts to seek compliance by Tenant with any non-monetary obligation under this Lease.

Section 10.3 Limitation on Liability of Mortgagee. No Mortgagee shall be or become liable to Landlord as an assignee of this Lease or otherwise unless it expressly assumes by written instrument executed by Landlord and Mortgagee such liability (in which event the Mortgagee's liability shall be limited to the period of time during which it is the owner of the leasehold estate created hereby) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Mortgage or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Lease.

Section 10.4 Estoppel Certificates. Landlord and Tenant agree that at any time and from time to time upon not less than twenty (20) days' prior notice by the other Party, or upon request from any Mortgagee or a Transferee, Landlord or Tenant will execute, acknowledge, and deliver to the other Party or to such Mortgagee a statement in writing certifying: (a) that this Lease is unmodified and in full force and effect or, if modified, an explanation of the terms and provisions of such modification; (b) the date through which the Rent have been paid; and (c) that, to the actual, present knowledge of the certifier (if such be the case), there is no default (or any conditions existing which, but for the passage of time or the giving of notice, would constitute a default), set off, defense, or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Lease. In addition to clauses (a) through (c) above, if a Mortgagee requires such a statement in writing from Landlord, Landlord, in its statement, shall (x) confirm that Landlord consents to the Mortgage in question; and (y) identify all of the relevant documents that evidence this Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Tenant, or any Mortgagee, as the case may be, in this Lease or by any prospective Mortgagee or permitted assignee of any Mortgage.

Section 10.5 Registration of Mortgages. Tenant shall, and from time to time upon written request by Landlord, provide notice to Landlord of the name and address of each Mortgagee under this Lease. All references to a Mortgage shall include any mortgages, deeds of trust, security agreements, or collateral assignments permitted by Landlord hereunder encumbering Tenant's leasehold interest in the Premises. Any Mortgagee or designee thereof that acquires

title to the leasehold estate or any part thereof, any person that acquires title to the leasehold estate through any judicial or non-judicial foreclosure sale, deed, or assignment in lieu thereof, or any sale or transfer made under any order of any court to satisfy wholly or in part obligations secured by any Mortgage, and the successors and assigns of any such Mortgagee, is referred to as a "Transferee." Each Mortgagee and Transferee is an intended beneficiary of the terms of this Lease.

Section 10.6 New Lease. Notwithstanding the provisions of Article 12, 13, and 14, in the event of the termination or cancellation of this Lease prior to the natural expiration of the Term of this Lease due to a default of Tenant or operation of law or otherwise (including, without limitation, the bankruptcy filing of Tenant or the commencement of an insolvency proceeding or similar proceeding, an act of condemnation or eminent domain against a portion of the Premises by a government agency or body, the destruction or damage of the Premises, or a change in the control or management of Tenant), Landlord shall also be obligated to give notice to Mortgagee simultaneously with such notice given to Tenant. No such notice to Tenant shall be effective with respect to termination or cancellation of this Lease unless Mortgagee has also been notified. Landlord, upon written request from any Mortgagee within sixty (60) days of receiving such notice of termination or cancellation, shall enter into a new lease with the Mortgagee having a lien with the most senior priority or its designee in accordance with and upon the same terms and conditions as set forth herein and with the same relative priority in time and in right as this Lease (to the extent possible) and having the benefit of and vesting in Mortgagee, or its designee, of all the rights, title, interest, powers, and privileges of Tenant hereunder ("New Lease"). In this regard, in the event of the filing of a petition in bankruptcy by Tenant, and Tenant rejects this Lease under the then applicable provisions of the United States Bankruptcy Code, U.S.C. Title 11, ("Bankruptcy Code"), Landlord shall, upon the request of a Mortgagee within the time period specified above, affirm this Lease, and Landlord will enter into a New Lease immediately upon Tenant's rejection of this Lease. In the event of the filing of a petition in bankruptcy by Landlord, and Landlord rejects this Lease and Tenant does not affirm it, a Mortgagee will have, within a reasonable amount of time, the authority to affirm this Lease on behalf of Tenant and to keep this Lease in full force and effect. Nothing in this Section or this Lease shall be construed to imply that this Lease may be terminated by reason of rejection in any bankruptcy proceeding of Tenant. The Parties intend, for the protection of Mortgagees, that any such rejection shall not cause a termination of this Lease. Notwithstanding anything to the contrary contained herein, no termination of this Lease shall become effective until, and the lien of each Leasehold Mortgage on the Premises shall remain effective until, either a New Lease has been made pursuant to this Section 10.6 of this Lease or no Mortgagee has timely accepted (or caused to be accepted) a New Lease, upon the expiration of the 30-day period as set forth above. Upon entering into a New Lease, such Mortgagee or its affiliated designee shall cure any monetary default by Tenant hereunder.

After cancellation and termination of this Lease and upon compliance with the provisions of this Section 10.6 by Mortgagee, or its designee, within such time, Landlord shall thereupon execute and deliver such New Lease to such Mortgagee or its designee, having the same relative priority in time and right as this Lease (to the extent possible) and having the benefit of all the right, title, interest, powers, and privileges of Tenant hereunder in and to the Premises and Landlord and the new Tenant shall execute and deliver any deed or other instrument and take

such other action as may be reasonably necessary to confirm or assure such right, title, interest, or obligations.

(a) Upon the execution and delivery of the New Lease, title to all Improvements on the Premises shall automatically vest in the Mortgagee or the designee until the expiration or earlier termination of the term of the New Lease.

(b) If Landlord shall, without termination of the Lease, evict Tenant, or if Tenant shall abandon the Premises, then any reletting thereof shall be subject to the liens and rights of Mortgagees, and in any event, Landlord shall not relet the Premises or any part thereof, without sixty (60) days' advance notice to all Mortgagees of the intended reletting and the terms thereof, and if any Mortgagee shall, within thirty (30) days of receipt of such notice, give notice to Landlord of such Mortgagee's intent to pursue proceedings to foreclose on the Premises or otherwise cause the transfer thereof, then so long as the Mortgagee shall diligently pursue such proceedings, Landlord shall not proceed with such reletting without the written consent of such Mortgagee.

(c) If a Mortgagee elects to demand a New Lease under this Section and only in the event that such Mortgagee is not recognized as a proper plaintiff, Landlord agrees, at the request of, on behalf of, and at the expense of the Mortgagee, to institute and pursue diligently to conclusion any appropriate legal remedy or remedies to oust or remove the original Tenant from the Premises, and those subtenants actually occupying the Premises, or any part thereof, as designated by the Mortgagee. Mortgagees shall cooperate with Landlord in connection with any such actions.

(d) Nothing herein contained shall require any Mortgagee to accept a New Lease.

(e) No Mortgagee shall be liable to Landlord unless it expressly assumes such liability in writing. In the event any Mortgagee or other transferee becomes the "Tenant" under this Lease or under any New Lease obtained pursuant to this Article, Mortgagee or other transferee shall not be liable for the obligations of Tenant under this Lease that do not accrue during the period of time that the Mortgagee or such other transferee, as the case may be, remains the actual Tenant under this Lease or the New Lease, holding record title to the leasehold interest thereunder, other than the requirement that the Mortgagee cure any monetary defaults by Tenant upon entering into a New Lease. Any liability of any Mortgagee or other transferee shall be limited to its interests in the leasehold and the Premises, and shall be enforceable solely against those interests.

ARTICLE 11.

REPRESENTATIONS, WARRANTIES AND COVENANTS

(a) **Representations, Warranties and Covenants of Tenant.** As an inducement to Landlord to enter into and to proceed under this Lease, Tenant warrants and represents to Landlord as follows: that the warranties, representations, and covenants are true and correct as of the Effective Date of this Lease and shall be true and correct as of the Commencement Date. Tenant has the right, power, and authority to enter into this Lease and the right, power, and authority to comply with the terms, obligations, provisions, and conditions contained in this

Lease. Tenant has taken all necessary or appropriate actions, any steps to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Lease;

(b) This Lease is a legal, valid and binding obligation of Tenant, enforceable against it in accordance with its terms. The representations and warranties of Tenant in the preceding sentence of this Section 11.1 are subject to and qualified by the effect of: (i) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (ii) the fact that equitable remedies, including rights of specific performance and injunction, may only be granted in the discretion of a court;

(c) The entry by Tenant into this Lease and the performance of all of the terms, provisions, and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreements to which Tenant is a party or by which it is bound;

(d) Tenant (i) shall not cause or permit any Hazardous Materials to be placed, held, located, or released or disposed of on, under, or at the Premises or any part thereof, except in commercially reasonable amounts used in the construction and operation of the Improvements and in accordance with Legal Requirements, and (ii) shall not cause or permit any Hazardous Materials to contaminate the Premises or any part thereof; and

(e) At all times during the Term, Tenant or its authorized representative shall use, maintain and operate the Premises and the Improvements thereon in accordance with all Legal Requirements.

Section 11.1 Representations, Warranties and Covenants of Landlord. As an inducement to Tenant to enter into and to proceed under this Lease, Landlord warrants and represents to Tenant as follows, that the warranties, representations, and covenants are true and correct as of the Effective Date of this Lease and as of the Commencement Date. Landlord has all requisite right, power and authority to enter into this Lease and the documents and transactions contemplated herein and to carry out the obligations of this Lease and the documents and transactions contemplated herein. Landlord has taken all necessary or appropriate actions, any steps to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Lease. This Lease is a legal, valid and binding obligation of Landlord, enforceable against it in accordance with its terms. The representations and warranties of Landlord in the preceding sentence of this Section 11.2 are subject to and qualified by the effect of: (a) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (b) the fact that equitable remedies, including rights of specific performance and injunction, may only be granted in the discretion of a court. To Landlord's actual, present knowledge and except as disclosed herein, Landlord has received no written notice from any Government Authority regarding a violation of any Legal Requirement, whether or not appearing in any public records, with respect to the Premises, which violations remain uncured as of the date hereof or on the Commencement Date, or releases of Hazardous Materials that have occurred during Landlord's possession of the Property, excluding Incidental Migration. Landlord has not assumed by contract or law any liability,

including any obligation for corrective action or to conduct remedial actions, of any other Person relating to Hazardous Materials.

Section 11.2 Hazardous Materials Releases.

(a) Effective as of the Commencement Date with respect to releases of Hazardous Material at the Premises caused by Tenant, which releases first occur after the Commencement Date, ("Releases"), Tenant shall keep and maintain the Premises in compliance with, and shall not cause or permit the Premises to be in violation of, any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions in, on, under or emanating from the Premises including, but not limited to, soil and ground water conditions. Tenant shall not use, generate, manufacture, store or dispose of in, on, or under any portion of the Premises, or transport to or from such Premises or the Property any Hazardous Materials, except such of the foregoing as may be customarily kept and used in and about the construction and operation of public space or in accordance with law or this Lease.

(b) Tenant shall promptly notify and advise Landlord in writing if at any time it receives notice of: (1) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Tenant, the Premises, the Project or the Property pursuant to any Hazardous Materials Law; (2) all claims made or threatened by any third party against Tenant, the Premises, the Project or the Property relating to damage, injunctive relief, declaratory relief, violations, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (1) and (2) above are referred to as "Hazardous Materials Claims"); and (3) Tenant's discovery of any occurrence or condition on any real property adjoining or in the vicinity of, the Premises, the Project or the Property that could cause part or all of the Premises, the Project or the Property to be subject to any restrictions regarding ownership, occupancy, transferability or use of the Premises or the Property under any Hazardous Materials Law. At its sole costs and expense, Landlord shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims.

(c) Without limiting the indemnification set forth in Section 8.3, Tenant shall indemnify, defend (with counsel reasonably chosen by Landlord), and hold harmless the Landlord Indemnitees from and against all third party suits, actions, claims, causes of action, costs, demands, judgments, liens, damage, cost, expense or liability the Indemnified Parties may incur to the extent directly or indirectly arising out of or attributable to any Release, including without limitation: (1) the costs of any required or necessary repair, cleanup or detoxification of the Premises or the Property, and the preparation and implementation of any closure, remedial or other required plans and (2) all reasonable costs and expenses incurred by the Indemnified Parties in connection with clauses (1), including but not limited to, reasonable attorneys' fees. The defense, hold harmless and indemnity obligations contained in this Section 11.3(c) shall not extend to any claim to the extent arising from Landlord's gross negligence or willful misconduct. Tenant's obligation to indemnify, defend and hold harmless under this Section 11.3(c) shall survive termination of this Lease, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

(d) Effective as of the Commencement Date, Tenant, on behalf of itself and anyone claiming by, through or under Tenant (including, without limitation, any successor tenant) hereby waives its right to recover from, and fully and irrevocably releases, Landlord, its elected and appointed officials, board members, council members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns (the “Landlord Released Parties”) from any and all actions, causes of action, claims, costs, damages, demands, judgments, liability, losses, orders, requirements, responsibility and expenses of any type or kind (collectively “Claims”) that Tenant may have or hereafter acquire against any of Landlord Released Parties arising from or related to: (A) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Premises, or its suitability for any purpose whatsoever; (B) any presence of Hazardous Materials that were existing at, on, or under the Premises as of the Commencement Date; and (C) any information furnished by Landlord Released Parties related to the Premises or the Property in connection with this Lease.

(e) withstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge Landlord Released Parties in any way from, or be deemed a waiver of any Claims by Tenant (or anyone claiming by, through or under Tenant, including, without limitation, any successor tenant or owner of the Premises or the Property) with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of Landlord Released Parties, and (ii) any premises liability or bodily injury claims accruing prior to the Commencement Date to the extent such claims are not based on the acts of Tenant, its partners or any of their respective agents, employees, contractors, consultants, officers, directors, affiliates, members, shareholders, partners or other representatives (the “Excluded Tenant Claims”).

(f) The release set forth in this subsection includes Claims of which Tenant is presently unaware of, or which Tenant does not presently suspect to exist which, if known by Tenant, would materially affect Tenant’s release of Landlord Released Parties. Tenant specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, Tenant agrees, represents and warrants that Tenant realizes and acknowledges that factual matters now unknown to Tenant may have given or may hereafter give rise to Claims which are presently unknown, unanticipated and unsuspected, and Tenant further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Tenant nevertheless hereby intends to release, discharge and acquit Landlord Released Parties from any such unknown Claims. Accordingly, Tenant, on behalf of itself and anyone claiming by, through or under Tenant, hereby assumes the above-mentioned risks and hereby expressly waives any right Tenant and anyone claiming by, through or under Tenant, may have under Section 1542 of the California Civil Code, which reads as follows:

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

Tenant's Initials: _____

(g) Tenant hereby acknowledges and agrees that Tenant's duties, obligations, and liabilities under this Lease, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information Landlord may have concerning the Premises and/or the presence on the Premises of any Hazardous Materials, whether Landlord obtained such information from Tenant or from its own investigations, except as provided herein.

Section 11.3 As-Is Conveyance. Except for the representations and warranties and covenants of Landlord contained in this Lease, Tenant specifically acknowledges and agrees that Landlord is leasing to Tenant and Tenant is leasing from Landlord, the Premises on an "as is with all faults" basis, and that Tenant is not relying on any representations or warranties of any kind whatsoever, express or implied, from Landlord as to any matters concerning the Premises, including without limitation: (1) the quality, nature, adequacy and physical condition of the Premises (including, without limitation, topography, climate, air, water rights, water, gas, electricity, utility services, grading, drainage, sewers, access to public roads and related conditions); (2) the quality, nature, adequacy, and physical condition of soils, geology and groundwater; (3) the existence, quality, nature, adequacy and physical condition of utilities and other infrastructure serving the Premises; (4) the development potential of the Premises, and the Premises' use, habitability, merchantability, or fitness, suitability, value or adequacy of the Premises for any particular purpose; (5) the zoning or other legal status of the Premises or any other public or private restrictions on the use of the Premises; (6) the compliance of the Premises or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (7) the presence or absence of Hazardous Materials on, under or about the Premises or the adjoining or neighboring property; and (8) the condition of title to the Premises.

ARTICLE 12. **EMINENT DOMAIN**

Section 12.1 Termination of Lease. Landlord and Tenant agree that, in the event of a Taking such that Tenant reasonably determines that the Premises cannot continue to be operated, at reasonable cost, for its then current use, then subject to the rights of and prior consent of all Mortgagees, this Lease shall, at Tenant's sole option, terminate as of the date of the Taking.

Section 12.2 Continuation of Lease and Presumption of Restoration. Landlord and Tenant agree that, in the event of a Taking that does not result in the termination of this Lease pursuant to Section 12.1 above, this Lease shall continue in effect as to the remainder of the Premises, and the Net Condemnation Award subject to the rights and with the prior consent of all Mortgagees will be disbursed in accordance with Section 12.4 below to Tenant or to Mortgagee and shall be used so as to make the remainder of the Premises a complete, unified, and efficient operating unit as nearly as reasonably possible to the condition existing prior to the Taking, subject to any applicable requirements of Mortgagee.

Section 12.3 Temporary Taking. If there shall be a temporary Taking of a year or less with respect to all or any part of the Premises or of Tenant's Estate, then the Term shall not be reduced and Tenant shall continue to pay all Rents, Taxes, and other charges required herein,

without reduction or abatement thereof at the times herein specified; provided, however, that Tenant shall not be required to perform such obligations that Tenant is prevented from performing by reason of such temporary Taking.

Section 12.4 Award. Subject to the rights of Mortgagees, if there is a Taking, whether whole or partial, Landlord and Tenant shall be entitled to receive all awards for the Premises and the Improvements, subject to the rights of the Mortgagees. If the Premises shall be restored as is contemplated in Section 12.2 above, Tenant shall be entitled to recover the costs and expenses incurred in such restoration out of any Net Condemnation Award, subject to the Mortgagees' right to elect to have such Net Condemnation Award paid directly to such Mortgagees, as set forth in the applicable Approved Financing Documents.

Section 12.5 Joinder. If a Mortgage exists, the Mortgagees, to the extent permitted by law, shall be made a party to any Takings proceeding.

ARTICLE 13. **DAMAGE OR DESTRUCTION**

Section 13.1 Damage or Destruction to Premises. Tenant shall give prompt notice to Landlord after the occurrence of any fire, earthquake, act of God, or other casualty to or in connection with the Premises, the Improvements, or any portion thereof (hereinafter sometimes referred to as a "Casualty"). Subject to Section 13.2 below and the rights of any Mortgagees, if during the Term the Improvements shall be damaged or destroyed by Casualty, Tenant shall repair or restore the Improvements, so long as Tenant determines, in its sole discretion, that it is feasible to do so and in such event Tenant provides or causes to be provided sufficient additional funds which, when added to such insurance proceeds, will fully effect such repair or restoration. Upon the occurrence of any such Casualty, Tenant, promptly and with all due diligence, shall apply for and collect all applicable insurance proceeds recoverable with respect to such Casualty. In the event that Tenant shall determine, subject to the rights of and with the consent of Mortgagee, by notice to Landlord given within thirty (30) days after receipt by Tenant of any such insurance proceeds, that it is not economically practical to restore the Improvements and/or the Premises to substantially the same condition in which they existed prior to the occurrence of such Casualty, Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. If Tenant terminates this Lease pursuant to this Section 13.1, Tenant shall surrender possession of the Premises to Landlord immediately.

Section 13.2 Damage or Destruction near End of Term. If, during the last seven (7) years of the Term, the Improvements shall be damaged by Casualty, then Tenant shall have the option, to be exercised within one hundred twenty (120) days after such Casualty:

- (a) to repair or restore the Improvements as hereinabove provided in this Article 13;
or
- (b) subject to the rights of Mortgagees, to terminate this Lease by notice to Landlord, which termination shall be deemed to be effective as of the date of the Casualty. If Tenant terminates this Lease pursuant to this Section 13.2, Tenant shall surrender possession of the Premises to Landlord immediately and assign to Landlord (or, if same has already been received

by Tenant, pay to Landlord) all of its right, title, and interest in and to the proceeds from Tenant's insurance upon the Premises, subject to the prior rights of any Mortgagee therein, as referenced in Section 13.3 below.

Section 13.3 Distribution of Insurance Proceeds. In the event that insurance proceeds are not applied to restoration of the Premises, the Improvements, or any portion thereof and this Lease is terminated pursuant to Sections 13.1 or 13.2 hereof, the insurance proceeds received as the result of such Casualty shall be distributed to the First Mortgagee in accordance with the First Mortgage Loan Mortgage for the repayment of the First Mortgage Loan if such Casualty occurs while the First Mortgage Loan Mortgage is in effect and otherwise in accordance with Section 13.1 hereof; provided, however, that Tenant may retain the following amount of insurance proceeds: (i) any reasonable costs, fees or expenses incurred by Tenant in connection with the adjustment of the loss or collection of the proceeds; (ii) any reasonable costs incurred by Tenant in connection with the Premises after the Casualty, which costs are eligible for reimbursement from such insurance proceeds; and (iii) the proceeds of any rental loss or business interruption insurance applicable prior to the date of surrender of the Premises to Landlord.

ARTICLE 14. EVENTS OF DEFAULT

(a) **Events of Default.** Each of the following shall be an "Event of Default" by Tenant hereunder: failure by Tenant to pay any Rent when due or to pay or cause to be paid any Taxes, insurance premiums, or other liquidated sums of money herein stipulated to be paid by Tenant, if such failure shall continue for a period of five (5) business days after notice thereof has been given by Landlord to Tenant;

(b) failure by Tenant to perform or observe any of the provisions of this Lease stipulated in this Lease to be observed and performed by Tenant, if such failure shall continue for a period of sixty (60) days after notice thereof has been given by Landlord to Tenant; provided, however, that if any such failure cannot reasonably be cured within such sixty (60)-day period, then Landlord shall not have the right to terminate this Lease or Tenant's right to possession hereunder so long as Tenant promptly commences the curing of any such failure and thereafter proceeds in good faith and with due diligence to remedy and correct such failure within a reasonable period of time;

(c) the failure of Tenant to cure, within the prescribed time period, (i) any declaration of default by the holder of a Mortgage on Tenant's Estate, (ii) any breach or violation of Applicable CC&Rs and Easements with which Tenant is obligated to comply, following the expiration of any applicable notice and cure periods, or (iii) any breach or violation of any Approved Financing Document, following the expiration of any applicable notice and cure period;

(d) the subjection of any right or interest of Tenant in this Lease to attachment, execution, or other levy, or to seizure under legal process, if not released within one hundred twenty (120) days; provided that the foreclosure of any Mortgage shall not be construed as an Event of Default within the meaning of this subsection;

(e) the appointment of a receiver, not including receivership pursuant to any Mortgage, to take possession of Tenant's Estate or of Tenant's operations on the Premises for any reason, if such receivership is not terminated, dismissed, or vacated within one hundred twenty (120) days after the appointment of the receiver;

(f) the filing by Tenant of a petition for voluntary bankruptcy under the Bankruptcy Code or any similar law, state or federal, now or hereafter in effect;

(g) the filing against Tenant of any involuntary proceedings under such Bankruptcy Code or similar law, if such proceedings have not been vacated or stayed within ninety (90) days of the date of filing;

(h) the appointment of a trustee or receiver for Tenant for all or major parts of Tenant's property or the Premises, in any involuntary proceeding, not including pursuant to any Mortgage, or the taking of jurisdiction of any court over all or the major parts of Tenant's property or Premises in any involuntary proceeding for the reorganization, dissolution, liquidation, or winding up of Tenant, if such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within ninety (90) days;

(i) a general assignment by Tenant for the benefit of creditors or Tenant's admittance in writing of its insolvency or inability to pay its debts generally as they become due or Tenant's consent to the appointment of a receiver, trustee, or liquidator for Tenant, for all or the major parts of its property, or the Premises.

(j) the material breach of any Tenant representations and warranties given in this Lease or the submission of materially incorrect financial information or Financial Statements at any time from and after the Effective Date.

(k) failure by Tenant to meet the Community Benefit Benchmarks, if such failure shall continue for a period of two (2) years after notice thereof has been given by Landlord to Tenant.

To the extent cure is permitted hereunder, a member of Tenant shall have the right to cure any default or breach of this Lease by Tenant, and Landlord agrees to accept a timely cure tendered by a member.

Section 14.2 Rights and Remedies.

(a) At any time after the occurrence of an Event of Default hereunder, Landlord, subject in all respects to the provisions of this Lease with respect to Landlord's rights to cure defaults by Tenant and with respect to the rights of any Mortgagees, and subject further to the provisions of Section 14.3 of this Lease, may terminate this Lease by giving Tenant notice thereof (with a copy of such notice to the Mortgagees), setting forth in such notice an effective date for termination which is not less than thirty (30) days after the date of such notice, in which event this Lease and Tenant's Estate created hereby and all interest of Tenant and all parties claiming by, through, or under Tenant shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if

the effective date of such notice had been the date originally fixed in Article 2 hereof for the expiration of the Term. In such event, Landlord, its agents, or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Premises (including all buildings and other Improvements comprising any part thereof) at any time from and after the effective termination date without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or existing breaches of covenants; provided that Landlord shall not be entitled to disturb possession of any tenants or others in possession pursuant to leases with Tenant so long as such tenants or others are not in default thereunder and attorn to Landlord as their Landlord.

(b) Upon the exercise of Landlord's remedies pursuant to this Section 14.2, Tenant shall execute such releases, deeds, and other instruments in recordable form as Landlord shall reasonably request in order to accurately set forth of record the then current status of Tenant's Estate and Tenant's rights hereunder.

Section 14.3 Default by Landlord.

(a) Landlord shall be in default of this Lease if it fails to perform any provision of this Lease that it is obligated to perform or if any of Landlord's representations or warranties is untrue or becomes untrue in any material respect, and if the failure to perform or the failure of such representation or warranty is not cured within thirty (30) days after notice of the default has been given to Landlord. If the default cannot reasonably be cured within thirty (30) days, Landlord shall not be in default of this Lease if Landlord commences to cure the default within such thirty (30)-day period and diligently and in good faith continues to cure the default until completion, but in no event longer than one hundred twenty (120) days from the date of notice of default.

(b) Subject to Section 14.5 below, if Landlord fails to cure a default by Landlord after expiration of the applicable time for cure of a particular default, Tenant, at its election, but without obligation therefor (i) may seek specific performance of any obligation of Landlord, after which Tenant shall retain, and may exercise and enforce, any and all rights that Tenant may have against Landlord as a result of such default; (ii) from time to time without releasing Landlord in whole or in part from the obligations to be performed by Landlord hereunder, may cure the default at Landlord's cost; (iii) may terminate this Lease, and/or (iv) may exercise any other remedy given hereunder or now or hereafter existing at law or in equity. Any reasonable costs incurred by Tenant in order to cure such a default by Landlord shall be due immediately from Landlord, together with interest, and may be offset against any amounts due from Tenant to Landlord.

Section 14.4 Notices. Notices given by Landlord under Section 14.1 or by Tenant under Section 14.4 shall specify the alleged default and the applicable Lease provisions, and shall demand that Tenant or Landlord, as applicable, perform the appropriate provisions of this Lease within the applicable period of time for cure. No such notice shall be deemed a forfeiture or termination of this Lease unless expressly set forth in such notice.

Section 14.5 Bankruptcy of Landlord. If this Lease is rejected by Landlord or Landlord's trustee in bankruptcy following the bankruptcy of Landlord under the Bankruptcy Code, as now

or hereafter in effect, Tenant shall not have the right to treat this Lease as terminated except with the prior written consent of all Mortgagees, and the right to treat this Lease as terminated in such event shall be deemed assigned to each and every Mortgagee whether or not specifically set forth in any such Mortgage, so that the concurrence in writing of Tenant and each Mortgagee shall be required as a condition to treating this Lease as terminated in connection with any such bankruptcy proceeding.

ARTICLE 15.

QUIET ENJOYMENT AND POSSESSION; INSPECTIONS

Section 15.1 Quiet Enjoyment. Landlord covenants and warrants that Tenant, upon payment of all sums herein provided and upon performance and observance of all of its covenants herein contained, shall peaceably and quietly have, hold, occupy, use, and enjoy, and shall have the full, exclusive, and unrestricted use and enjoyment of, all of the Premises during the Term, subject only to the provisions of this Lease, the Applicable CC&Rs and Easements, the Regulatory Agreements, and all applicable Legal Requirements.

Section 15.2 Landlord's Right of Inspection. Notwithstanding Section 15.1 above, Landlord, in person or through its agents, upon reasonable prior notice to Tenant, shall have the right, subject to the rights of tenants, to enter upon the Premises for purposes of reasonable inspections performed during reasonable business hours in order to ensure Tenant complies with its obligations under this Lease. In addition to the aforementioned inspection rights, Tenant grants a right of access to Landlord, or any of its authorized representatives, upon reasonable prior notice to Tenant, with respect to any books, documents, papers, or other records related to this Lease in order to make audits, examinations, excerpts, and transcripts. Such audit right shall apply to, among other things, the information contained in Tenant's Annual Report.

ARTICLE 16.

VACATION OF PREMISES

Tenant covenants that upon any termination of this Lease, whether by lapse of time or because of any of the conditions or provisions contained herein, Tenant will peaceably and quietly yield and surrender possession of the Premises to Landlord. An action of forcible detainer shall lie if Tenant holds over after a demand for possession is made by Landlord. Notwithstanding anything to the contrary herein, Tenant shall not voluntarily vacate or surrender and Landlord shall not accept any voluntary vacating or surrendering of the Premises by Tenant while a Mortgage remains outstanding.

ARTICLE 17.

NON-MERGER

For so long as any debt secured by a Mortgage upon the leasehold created by this Lease shall remain outstanding and unpaid, unless Mortgagee shall otherwise consent in writing, there shall be no merger of either this Lease or Tenant's Estate created hereunder with the fee estate of the Premises or any part thereof by reason of the fact that the same person may acquire, own, or hold, directly or indirectly, (a) this Lease, Tenant's Estate created hereunder, or any interest in this Lease or Tenant's Estate (including the Improvements), and (b) the fee estate in the Premises

or any part thereof or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of Landlord, having an interest in (i) this Lease or Tenant's Estate created hereunder, and (ii) the fee estate in the Premises or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same, and shall have obtained the prior written consent of Mortgagee.

ARTICLE 18.

ASSIGNMENTS AND TRANSFERS; FORECLOSURE

Section 18.1 Consent Required. As of the Effective Date, no Transfer shall be made without Landlord's prior written approval. All Transfers desired to be made prior to the Commencement Date require the approval of Landlord, in its sole and absolute discretion. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and Tenant. Any attempted transfer without such required consents shall be null and void. Any person to whom any Transfer is attempted without such consent shall have no claim, right, or remedy whatsoever hereunder against Landlord, and Landlord shall have no duty to recognize any person claiming under or through the same.

Section 18.2 Subsequent Assignment. In cases where Landlord's consent is required, Landlord's consent to one assignment will not waive the requirement that Landlord consent to any subsequent assignment.

Section 18.3 Request for Consent. If Tenant requests Landlord's consent to a specific assignment, Tenant shall provide to Landlord such information as may reasonably be required by Landlord.

Section 18.4 Consent of Landlord Not Required. The foreclosure of a Mortgage or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in any Mortgage, or any conveyance of Tenant's Estate to any Mortgagee or its affiliate through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not breach any provision of or constitute an Event of Default under this Lease, and upon such foreclosure, sale, or conveyance, Landlord shall recognize any Mortgagee or such affiliate or designee of any Mortgagee, or any purchaser at any such foreclosure sale, as Tenant hereunder.

Section 18.5 Transfer After Foreclosure. This Lease may be transferred, without the consent of Landlord, to any Mortgagee or an affiliate thereof, pursuant to foreclosure or similar proceedings, or pursuant to a Transfer of this Lease to such Mortgagee (or its affiliate) in lieu thereof, and may be thereafter transferred by such Mortgagee (or its affiliate), and any Mortgagee (or its affiliate) shall be liable to perform the obligations herein imposed on Tenant only for and during the period it is in possession or ownership of the leasehold estate created hereby.

ARTICLE 19.

MISCELLANEOUS PROVISIONS

Section 19.1 Entire Agreement: Modifications. This Lease supersedes all prior discussions and agreements between the Parties with respect to the leasing of the Premises. This Lease contains the sole and entire understanding between the Parties with respect to the leasing of the

Premises pursuant to this Lease, and all promises, inducements, offers, solicitations, agreements, representations, and warranties heretofore made between the Parties, if any, are merged into this Lease.

Section 19.2 Amendments. Landlord shall not unreasonably withhold its consent to any amendments to this Lease that are reasonably requested by a Mortgagee; provided, however, Landlord may, in its sole and absolute discretion, refuse to consent to any proposed amendments to the description of the Premises, the Term, Rent, or any other amendments which would materially change the rights and/or obligations of Landlord under this Lease. Landlord and Tenant each agree not to enter into any amendment or modification of the Lease without the prior written consent of each Mortgagee.

Section 19.3 Governing Law. This Lease, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the substantive laws of the State of California.

Section 19.4 Binding Effect. This Lease shall inure to the benefit of and be binding upon the Parties hereto, their heirs, successors, administrators, executors, and permitted assigns.

Section 19.5 Severability. In the event any provision or portion of this Lease is held by any court of competent jurisdiction to be invalid or unenforceable, such holdings shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof, except to the extent the rights and obligations of the Parties have been materially altered by such unenforceability.

Section 19.6 Further Assurances. From and after the date of this Lease, Landlord and Tenant, at the request of the other Party, shall make, execute, and deliver or obtain and deliver all such affidavits, deeds, certificates, resolutions, and other instruments and documents, and shall do or cause to be done all such other things that either Party may reasonably require in order to effectuate the provisions and the intention of this Lease.

Section 19.7 Captions. All captions, headings, paragraphs, subparagraphs, letters, and other reference captions are solely for the purpose of facilitating convenient reference to this Lease, shall not supplement, limit, or otherwise vary the text of this Lease in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions hereof. All references to particular articles, sections, subsections, paragraphs, and subparagraphs by number refer to the text of such items as so numbered in this Lease.

Section 19.8 Gender. Words of any gender used in this Lease shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

Section 19.9 Exhibits. Each and every exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is and shall be construed to be made a part of this Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and otherwise mentioned.

Section 19.10 References. All references to paragraphs or subparagraphs shall be deemed to refer to the appropriate paragraph or subparagraph of this Lease. Unless otherwise specified in this Lease, the terms “herein,” “hereof,” “hereinafter,” “hereunder” and other terms of like or similar import, shall be deemed to refer to this Lease as a whole, and not to any particular paragraph or subparagraph hereof.

Section 19.11 Rights Cumulative. Except as expressly limited by the terms of this Lease, all rights, powers, and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

Section 19.12 Notices. All notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by Federal Express or UPS, or by hand delivery by a recognized, reputable courier or by electronic mail, to each party at the addresses set forth below. Any such notice, request, demand, or other communication shall be considered given or delivered, as the case may be, on the date of receipt, except that any electronic mail notice received after 5:00 p.m. on a business day shall be deemed received on the next business day. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand, or other communication. By giving prior notice thereof, any Party, from time to time, may change its address for notices hereunder. Legal counsel for the respective Parties may send to the other Party any notices, requests, demands, or other communications required or permitted to be given hereunder by such Party. Any notice, request, demand, direction or other communication sent by electronic mail must be confirmed by letter mailed or delivered within two (2) business days in accordance with one of the other delivery methods permitted above.

To Landlord: City of Alameda
City Hall
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager
Telephone: 510-747-4700
Facsimile: 510-865-1498
Email: elevitt@alamedaca.gov

With a copy to: City of Alameda
Alameda City Hall, Rm 280
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney
Telephone: 510-747-4763
Facsimile: 510-865-4028
Email: lmaxwell@alamedacityattorney.org

Carnegie Innovation Hall
1429 Oak Street
Alameda, CA 94501

Attn: Michael Sturtz
Telephone: 510-409-4400
Email: ms@cihall.org

Lubin Olson & Niewiadomski LLP
600 Montgomery Street, 14th Floor
San Francisco, CA 94111
Attn: Charles R. Olson, Esq.
Telephone: (415) 981-0550
Facsimile: (415) 981-4343
Email: colson@lubinolson.com

Section 19.13 Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same agreement.

Section 19.14 Time of Essence. Time is and shall be of the essence in this Lease.

Section 19.15 Relationship of Parties. No relationship exists between Landlord and Tenant other than landlord and tenant. The Parties hereto expressly declare that, in connection with the activities and operations contemplated by this Lease, they are neither partners nor joint venturers, nor does a debtor-creditor, principal-agent, or any other relationship except as aforesaid, exist between them.

Section 19.16 Multiple Leasehold Mortgages. If at any time there shall be more than one Mortgage, the First Mortgagee shall be prior in lien and shall be vested with all of the rights of Mortgagee under this Lease (other than the provisions for receipt of notices) to the exclusion of any junior Mortgage and junior Mortgagee; provided, however, that: (a) if the First Loan Mortgagee fails to or refuses to exercise its rights set forth under this Lease, each holder of a junior Mortgage in the order of priority of their respective liens shall have the right to exercise such rights; and (b) with respect to the right of a Mortgagee under Section 10.6 (right to request a New Lease), such right may, notwithstanding the limitation of time set forth in Section 10.6, if any, be exercised by the holder of any junior Mortgage, in the event the holder of a senior Mortgage shall not have exercised such right within a reasonable amount of time.

Section 19.17 Conflicts with Mortgage. In the event of a default under a Mortgage, such Mortgagee may exercise with respect to the Premises any right, power, or remedy under the Mortgage which is not in conflict with the provisions of this Lease. In the event of a conflict or inconsistency between any requirement contained in this Lease and any requirement contained in any document referred to in this Lease, including any Mortgage, the terms of this Lease shall in all instances be controlling.

Section 19.18 Attorneys' Fees. In the event of litigation between the Parties arising out of this Lease, each Party shall bear its own costs and expenses, including attorneys' fees, and any judgment or decree rendered in such a proceeding shall not include an award thereof.

Section 19.19 Non-Liability of Governmental Officials and Employees; Conflicts of Interest. No member, official, employee, commissioner, agent, consultant, or contractor of Landlord shall be personally liable to Tenant or any successor or assign of Tenant in the event of any default or breach by Landlord hereunder, or for any amount which may become due to Tenant or any successor or assign of Tenant as a result of such default or breach, or for any of Landlord's obligations under this Lease; provided, however, that the foregoing shall not void or diminish the obligations of Landlord under this Lease.

Tenant represents and warrants that to the best of Tenant's knowledge, no member, official, employee, commissioner, agent, consultant, or contractor of Landlord has any direct or indirect personal interest in this Lease or participation in any decision relating to this Lease which affects his or her personal interests or the interests of any corporation, partnership, or other entity in which he or she is, directly or indirectly, interested. Tenant further represents and warrants to Landlord that it has not paid or given, and will not pay or give, to any third party (other than as specifically set forth in this Lease) any money or other consideration for obtaining this Lease.

Except as may be expressly set forth herein, no present or future partner, shareholder, participant, employee, agent, officer, or partner of or in Tenant shall have any personal liability, directly or indirectly, under or in connection with this Lease; provided, however, that the foregoing shall not void or diminish the obligations of Tenant under this Lease.

Section 19.20 Consent; Reasonableness. Except as otherwise specified herein, in the event that Tenant or Landlord shall require the consent or approval of the other Party in fulfilling any agreement, covenant, provision, or condition contained in this Lease, such consent or approval shall not be unreasonably withheld or delayed by the Party from whom such consent or approval is sought, and shall be given or disapproved within the times set forth herein, or, if no time is given, within ten (10) business days of the request. Except as may be otherwise expressly set forth herein, approvals and disapprovals on the part of Landlord may be given by designated officer and must be in writing to be effective.

Section 19.21 Non-Waiver of Governmental Rights. Nothing in this Lease shall be construed to in any way to obligate Landlord or any other Governmental Authority to take any discretionary action relating to the construction, development, or operation of the Project, including, but not limited to, condemnation, rezoning, variances, subdivision, environmental clearances, or any other governmental approvals which are or may be required pursuant to the Legal Requirements. Nothing in this Lease shall be construed to restrict or impair in any manner whatsoever any Legal Requirement or the exercise by Landlord of any governmental powers or rights thereunder.

Section 19.22 Approval by the Alameda City Council. This Lease shall be subject to approval by the Alameda City Council. The Lease shall not be effective until the appeals period has expired from the date of the approval of the ordinance approving this Lease.

ARTICLE 20.
PARTICULAR COVENANT

Section 20.1 Non-Discrimination. Tenant shall not discriminate against, or segregate any person or group of persons on the grounds of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry, or disability in the lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Premises nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of vendees of the Premises. The foregoing covenant shall run with the land. Landlord shall be entitled to invoke any remedies available at law or in equity to redress any breach of this subsection or to compel compliance therewith by Tenant.

IN WITNESS WHEREOF, this Lease is made and entered into as of the Effective Date.

LANDLORD

CITY OF ALAMEDA, a
municipal corporation

By: _____
Eric J. Levitt,
City Manager

Date: _____

Attest:

Recommended for Approval

Laura Weisiger, City Clerk

Debbie Potter, Community Development Director

Approved as to Form:

Lisa Nelson Maxwell, Assistant City Attorney

Authorized by City Council Ordinance No. _____

TENANT:

CARNEGIE INNOVATION HALL,
a California nonprofit public benefit corporation

By: _____

Name: Michael Sturtz

Its: Executive Director

By: _____

Name: Robert Dubow

Its: Treasurer

EXHIBIT A

Premises

The land referred to is situated in the County of Alameda, City of Alameda, State of California, and is described as follows:

[TO BE ATTACHED]

EXHIBIT B

Memorandum of Lease

RECORDING REQUESTED BY:

City of Alameda

WHEN RECORDED MAIL TO:

2263 Santa Clara Avenue, Room 280, Alameda, CA 94501

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383

MEMORANDUM OF GROUND LEASE (CARNEGIE BUILDING)

THIS MEMORANDUM OF GROUND LEASE (this "Memorandum") is made as of _____, 20__, by and among the City of Alameda, a municipal corporation ("Landlord"), and Carnegie Innovation Hall, a California nonprofit public benefit corporation ("**Tenant**"), with respect to that certain Ground Lease Agreement dated as of _____, 2019 (the "Lease"), between Landlord and Tenant.

Pursuant to the Lease, Landlord hereby leases to Tenant and Tenant leases from Landlord that certain real property, more particularly described in Exhibit A, attached hereto and incorporated herein, (the "Property"), and Landlord grants to Tenant all the improvements existing or to be constructed on the Property for the term of the Lease. The Lease commenced as of _____, 201__ and shall continue from such date for 33 years.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend, or supplement the Lease, of which this is a Memorandum.

[signature pages follow]

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

LANDLORD

CITY OF ALAMEDA,
a municipal corporation

By: _____
Eric J. Levitt,
City Manager

Date: _____

Recommended for Approval

Debbie Potter, Community Development Director

Approved as to Form:

Lisa Nelson Maxwell, Assistant City Attorney

Authorized by City Council Ordinance No. _____

TENANT

CARNEGIE INNOVATION HALL,
a California nonprofit public benefit corporation

By: _____

Name: Michael Sturtz

Its: Executive Director

By: _____

Name: Robert Dubow

Its: Treasurer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF ALAMEDA

On this ____ day of _____, 20__ before me, _____,
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF ALAMEDA

On this ____ day of _____, 20__ before me, _____,
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

EXHIBIT A

PROPERTY DESCRIPTION

The land referred to is situated in the County of Alameda, City of Alameda, State of California, and is described as follows:

EXHIBIT C
MAP OF PROPERTY

EXHIBIT D
Milestone Schedule
Development Milestone Schedule

Action/Milestone	Date
1. <u>Effective Date</u> : The date the Lease is effective and legally enforceable by and between the Parties.	[Estimated to be December 6, 2019]
2. <u>Project Financing Plan</u> : The date Tenant shall submit to Landlord a complete Project Financing Plan, as described in Section 3.1 of the Lease.	[90 days from Effective Date]
3. <u>Inspection Period</u> : The one hundred twenty (120) day period, as described in Section 2.5(a) of the Lease, commencing on the Effective Date of the Lease.	[4 months from Effective Date]
4. <u>Application for Design Review</u> : The date by which Tenant shall apply for design review approval for the Project.	[6 months from Effective Date]
5. <u>Receipt of Design Review</u> : The date by which Tenant shall obtain design review approval for the Project.	[12 months from Effective Date]
6. <u>Application for Project Approvals</u> : The date by which Tenant shall apply for all Project Approvals, including a use permit, Building Permits for the Capital Improvements and other improvements, to include all improvements required for occupancy, including electrical, HVAC, plumbing, ADA requirements, sprinkler system, lighting, and all other requirements specified by the Planning and Building departments.	[16 months from Effective Date]
7. <u>Delivery of Capital Improvement Deposit</u> : The date by which Tenant shall deliver the Capital Improvement Deposit to Landlord, which shall be a condition precedent to Tenant commencing construction of any Improvements.	[18 months from Effective Date]

8. Receipt of Project Approvals: The date by which Tenant shall obtain all Project Approvals, including a use permit and Building Permits for the Capital Improvements and all other improvements, to include all improvements required for occupancy, including electrical, HVAC, plumbing, ADA requirements, sprinkler system, lighting, and all other requirements specified by the Planning and Building departments, which shall be a condition precedent to Tenant commencing construction of any Improvements. [18 months from Effective Date]
9. Commencement Date of Lease: The date that all conditions precedent to Landlord's obligation to deliver exclusive possession of the Premises to Tenant are satisfied by Tenant or waived by Landlord, which shall be a condition precedent to Tenant commencing construction of any Improvements. [18 months from Effective Date]
10. Outside Commencement Date: The last date by which the Commencement Date must occur. [24 months from Effective Date]
11. Completion of Construction: The date by which Tenant shall complete construction of the Capital Improvements, as well as other improvement required for occupancy by Tenant, including electrical, HVAC, plumbing, ADA requirements, sprinkler system, lighting, and all other requirements specified by the Planning and Building departments. [24 months from Effective Date, subject to extension based on the actual Commencement Date]
12. Final Inspection and Approval of Project Approvals: The date on which Tenant shall obtain (a) final approval on all Project Approvals and Building Permits issued for the Project, and (b) a Certificate of Occupancy. [26 months from Effective Date, subject to extension based on the actual Commencement Date]
13. Commencement of Operations: The date by which Tenant shall commence operations in Premises consistent with the Permitted Use described in the Lease and this Milestone Schedule. [28 months from Effective Date, subject to extension based on the actual Commencement Date]

As described in the Lease, each Milestone shall be deemed satisfied upon the date a Date Confirmation Memo is signed by both Tenant and Landlord.

EXHIBIT E

RESERVATION GUIDELINES

The Carnegie Innovation Hall, located at 2264 Santa Clara Avenue, may be used by the City of Alameda (“City”) for 12 events per year (“Maximum Events”) in adherence with the following guidelines.

General Guidelines

- City use must be for events presented by the City of Alameda, or City sponsored events in partnership with existing not-for-profit organizations, or local government agencies in the City of Alameda and serving the Alameda Community.
- City use must be for events that serve the community, educational, and cultural interests of the Alameda community.
- City use must be for events that are free to the general public or for fundraising events for causes that serve the community.
- City Events may use either the main event hall or the basement event space, plus associated support areas and entrances.

Date Selection, Reservation and Cancellation

- The City may reserve and set dates for its events up to two (2) years in advance of each event, but no less than ninety (90) days prior to the event.
- The City may reserve for a maximum of two (2) events in one (1) month.
- If a date requested by the City is not available, then the Carnegie Innovation Hall shall provide at least two (2) alternative dates, each of which shall be within twenty (20) days of the original proposed date. There is no guarantee that a Friday or Saturday night will be granted.
- Reservations can be no longer than 6 consecutive hours (including set up and clean up time).
- Once reserved, the Carnegie Innovation Hall may not schedule another event on the same date without the City’s written consent if the event would interfere with the City Event.
- If the City cancels a previously booked event with less than sixty (60) days’ notice, such event shall be counted toward the City’s Maximum Events.

Event Costs and Staffing

- The City will pay no rent and Tenant shall receive no rent credit for City Events.
- The City shall pay no overhead costs for City Events.
- The City will pay all “Direct Expenses” (defined below) associated with City Events, excluding overhead costs of the Premises associated with operation of the Premises. Direct Expenses include, but are not limited to: parking control, equipment rental, event insurance, sound equipment, security, maintenance set up/clean-up, janitorial, supplies, house manager, box office, registration, or other required event staff, fire control, event media/advertising and other costs reasonably agreed to by the City and Tenant.
 - The City shall manage and staff all City Events; however if additional Carnegie Innovation Hall staff is required to be present at the time of the City Event, the

cost associated with the additional Carnegie Innovation Hall staff will be considered a Direct Expense.

- If a City Event requires Carnegie Innovation Hall staff, each such specified cost shall be metered or separated by the Carnegie Innovation Hall for allocation to the City Event.
- If the cost would be incurred whether or not the City Event occurs, such cost shall not be considered a Direct Expense and shall be considered an indirect expense not allocated to a City Event.
- Direct expenses for City Events shall be paid by the City within sixty (60) days after the accounting invoice is presented for payment.