[DRAFT – 2/22/16]

LEASE

BETWEEN

TRANSBAY JOINT POWERS AUTHORITY, AS LANDLORD

AND

\_\_\_\_\_\_\_\_\_\_\_\_\_, AS TENANT

TRANSBAY TRANSIT CENTER

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Attachments:

Index of Defined Terms

**Exhibit A** = Description of the Land

**Exhibit B** = Description of the Premises/Commercial Usage Area

**Exhibit B-1** = Description of Center

**Exhibit B-2** = Commercial Usage Areas

**Exhibit B-3** = Transit Agency Areas

**Exhibit B-4** = Park

**Exhibit B-5** = First and Second Floor Transit Lease Space

**Exhibit B-6** = Lower Concourse Support Space

**Exhibit B-7 =** Description of Existing Center Signage and Permitted Locations for Tenant Controlled Signage

**Exhibit B-8** = Under Ramp Park

**Exhibit C** = Core and Shell

**Exhibit D** = Fixed Rent

**Exhibit D-1** = Participation Rent

**Exhibit D-2** = Renewal Terms

**Exhibit D-3** = Key Performance Indicators

**Exhibit D-4** = Management Fee

**Exhibit D-5** = Landlord’s Areas of Responsibility Sharing Percentage

**Exhibit D-6** = Landlord’s Areas of Shared Responsibility Operating Sharing Percentage

**Exhibit D-7** = Landlord’s Areas of Shared Responsibility Capital Sharing Percentage

**Exhibit D-8** = Form of Reimbursement Application

**Exhibit E** = Form of Guaranty

**Exhibit F** = Initial Budget

**Exhibit G** = Notice Addresses (Including Required Copy Recipients)

**Exhibit H** = Form of Estoppel Certificate

**Exhibit I** = Special Purpose Entity Covenants

**Exhibit J** = Insurance and Indemnity Definitions

**Exhibit K** = Landlord's Forms of Required Certificates of Insurance

**Exhibit L** = Concept of Operations

**Exhibit L-1** = O & M Guidelines

**Exhibit M** = Design Guidelines

**Exhibit M-1** = Design Review Process

**Exhibit N** = List of Prohibited Uses and Users

**Exhibit O =** Digital Guidelines

**Exhibit O-1 =** Digital Content Development Guidelines   
**Exhibit P** = USDOT Requirements  
**Exhibit Q** = Card Check Policy

LEASE

**This** **LEASE** (this "Lease") is made and entered into as of the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, between Transbay Joint Powers Authority, a joint exercise of powers authority established pursuant to \_\_\_\_\_\_\_\_\_\_\_\_\_ (“TJPA” or "Landlord"), and \_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_("Tenant")[[1]](#footnote-1).

W I T N E S S E T H :

**WHEREAS**, on the Commencement Date, Landlord owns the following real property (collectively, the "Center") as more particularly described on **Exhibit B-1** attached hereto and made a part hereof: (a) all buildings, structures, and other improvements and appurtenances located on the Land or otherwise constituting part of the Center (the "Improvements"); and (b) all Center Equipment and Center FF&E, if any, attached or appurtenant to any of the foregoing;

**WHEREAS**, Landlord desires to lease to Tenant the portion of the Center identified as the Areas of Control in **Exhibit B** attached hereto and made a part hereof and to contract with Tenant for the maintenance, repair and replacement of the portion of the Center identified as the Areas of Responsibility and the Areas of Shared Reponsibility in **Exhibit B** attached hereto and made a part hereof (collectively, the "Premises"), all as more particularly shown on **Exhibit B** attached hereto and made a part hereof, to Tenant and Tenant desires to so lease and contract for the maintenance, repair and replacement of the Premises from Landlord;

**WHEREAS**, the parties desire to enter into this Lease to set forth their rights and obligations to each other relating to the Premises; and

**[IF APPLICABLE: WHEREAS**, on the Commencement Date, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_ (the "Guarantor,") is executing and delivering to Landlord the Guaranty.]

**NOW, THEREFORE,** for good and valuable consideration, Landlord so leases and demises to and contracts for the maintenance, repair and replacement of the Premises with Tenant, and Tenant so takes and hires from Landlord and contracts with Landlord for the maintenance, repair and replacement of the Premises, for the Term, upon the terms and conditions of this Lease.

1. *Definitions*

. The following definitions apply in this Lease. An index of all defined terms follows the signature page.

"AC Transit" means the Alameda-Contra Costa Transit District.

"Additional Rent" means all sums that this Lease requires Tenant to pay Landlord or a third party including, without limitation, Participation Rent, whether or not expressly called Additional Rent, but excepting Fixed Rent.

"Affiliate" of any specified Person means any other Person Controlling or Controlled by or under common Control with such specified Person.

"Affiliated" shall have the correlative meaning.

"Amtrak" means the National Railroad Passenger Corporation dba Amtrak.

"Application" means any agreement or application with respect to any Approvals.

"Approvals" means any and all licenses, permits (including building, demolition, alteration, use, and special permits), approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate as determined by Landlord, subject to the terms and conditions of Section 7.2 hereof, under any Law for the commencement, performance, or completion of any Construction, or the zoning, use, occupancy, maintenance, or operation of the Premises.

"Arbitration" means a form of binding alternative dispute resolution filed with JAMS.

"Architect" means an architect that is: (a) selected by Tenant or any Subtenant; (b) not Affiliated with any Principal; (c) licensed in the State; (d) reasonably qualified and experienced in overseeing projects similar to the Major Construction for which such architect is engaged; and (e) approved by Landlord.

"Architect's Certificate" means a sealed certificate of an Architect, so- called "self-certifying" to Landlord for any Major Construction, as to Costs and Development Criteria.

"Architectural Contract"*.* A contract, in assignable form, between Tenant, and/or any Subtenant, and their respective Architects, relating to such Architect's preparation of the Plans and Specifications in accordance with the Design Guidelines and any other development criteria promulgated by Landlord for the Center from time to time and supervision of Construction to the extent required by Law.

"Areas of Control" means the portion of the Center identified as the “Areas of Control” in **Exhibit B** attached hereto and made a part hereof, which shall include the Phase I Use Areas during Phase I but shall exclude such Phase I Use Areas from and after substantial completion of Phase II.

"Areas of Control Percentage Share" means [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].**]**

"Areas of Responsibility" means the portion of the Center identified as the “Areas of Responsibility” in **Exhibit B** attached hereto and made a part hereof, which shall include during Phase I only the portions of the Train Platform Level and Lower Concourse initially included as part of the “Areas of Responsibility” shown in **Exhibit B** but shall exclude such portions of the Train Platform Level and Lower Concourse from and after substantial completion of Phase II.

"Areas of Responsibility Capital Expenses" means all Capital Expenses incurred solely with respect to the Areas of Responsibility and a portion of any Capital Expenses relating to the Center as a whole and allocable to the Areas of Responsibility based on the Areas of Responsibility Percentage Share.

"Areas of Responsibility Operating Expenses" means all Operating Expenses incurred solely with respect to the Areas of Responsibility and a portion of any Operating Expenses relating to the Center as a whole and allocable to the Areas of Responsibility based on the Areas of Responsibility Percentage Share.

"Areas of Responsibility Percentage Share" means [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].

"Areas of Shared Responsibility" means those building systems and shared vertical circulation areas identified as the “Areas of Shared Responsibility” in **Exhibit B** attached hereto and made a part hereof.

"Areas of Shared Responsibility Capital Expenses" means all Capital Expenses incurred solely with respect to the Areas of Shared Responsibility.

"Areas of Shared Responsibility Operating Expenses" means all Operating Expenses incurred solely with respect to the Areas of Shared Responsibility.

"Areas of Shared Responsibility Percentage Share" means [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].

"Back of House Functions" means noncommercial functions supporting Center operations, maintenance and security, including, without limitation, janitorial and maintenance support facilities, mechanical, electrical and plumbing equipment rooms and storage, a security operations center and related administrative facilities.

"Bankruptcy Law" means Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

"Bankruptcy Proceeding" means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

"Bankruptcy Sale" means a sale of any property, or any interest in any property, under 11 U.S.C. §363 or otherwise in any bankruptcy, insolvency, or similar proceeding affecting the owner of such property.

"Bankruptcy Termination Option" means Tenant's right to treat this Lease as terminated under 11 U.S.C. §365(h)(1)(A)(i) or any comparable provision of law.

"BID" means any business improvement district or similar district or program, proposed or actual, that includes, may include, or affects any Premises.

"Business Day" means any weekday on which California State-chartered banks are open to conduct regular banking business with bank personnel.

"Budget" means each annual Operating Budget and updated Capital Budget for the operation, maintenance and repair of the Premises prepared and approved in accordance with Section 8.4 below.

"Capital Budget" means the initial budget or annual update to the prior Fiscal Year’s budget, as applicable, outlining projected Capital Expenses over the next succeeding ten (10) Fiscal Year period and included as part of the overall annual Budget for the operation, maintenance and repair of the Premises prepared and approved in accordance with Section 8.4 below.

"Capital Expenses" means the aggregate of all costs and expenses paid or incurred byor on behalf of Tenant in connection with replacement(s) and/or repair(s) of all, or any portion(s), of the Premises or Improvements of a capital nature, as defined in accordance with generally accepted accounting principles, other than Excluded Expenses.

"Casualty" means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all Improvements, whether or not insured or insurable.

"Casualty Termination" means a termination of this Lease because of a Substantial Casualty, when and as this Lease expressly allows such a termination.

"Center Equipment" means all systems, equipment and fixtures incorporated in the Center used, useful, or necessary to operate the Center including, without limitation, all systems, equipment and fixtures incorporated in the Premises (excluding the Retail Usage Area), all utility systems serving the Premises up to the point of connection thereto, public art installations, and security and surveillance items, but excluding any and all Tenant/Subtenant Equipment.

"Center Events" means ticketed or sponsored events at the Center arranged by Tenant in accordance with Section 6.9 below.

"Center FF&E" means all movable furniture, furnishings, equipment, and personal property of Landlord or anyone claiming through Landlord (excluding Center Equipment), including, without limitation, any equipment necessary or desirable for the maintenance and repair of the Center which is owned by Landlord.

"Center Signage" means all of (i) the Landlord or Transit Agency Controlled Signage and (ii) the Tenant Controlled Signage, whether now or hereinafter existing, any of which is located in the areas described on **Exhibit B-4** attached hereto and made a part hereof.[[2]](#footnote-2)

"Certificates of Occupancy". A copy of the temporary certificate of occupancy, or the equivalent, for such Construction, to the extent Law requires.

"Code Compliance" means that Tenant's Construction, and/or particular items or portions thereof, are in compliance with all building and fire codes applicable to same.

"Commencement Date" shall mean the date on which Landlord has substantially completed the Landlord’s Work and has delivered the Premises to Tenant in accordance with this Lease

"Commercial Usage Areas" shall mean those portions of the Premises used for retail, office and other commercial income generating uses, as more particularly shown on **Exhibit B-2** attached hereto and made a part hereof.

"Comparison Stores" shall mean those stores designated as comparison stores in the O & M Guidelines set forth in **Exhibit L-1** attached hereto and made a part hereof

"Compliance Review Process" means the process for determining Code Compliance required by Landlord as the governmental authority with respect thereto.

"Concept of Operations" means the manual outlining specifications for the security of the Premises, attached hereto as **Exhibit L** and made a part hereof.

"Condemnation" means: (a) any temporary or permanent taking of (or of the right to use or occupy) any portion of the Premises by condemnation, eminent domain, or any similar proceeding; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) any Premises but creating a right to compensation, such as a change in grade of any street upon which the Premises abut.

"Condemnation Award" means any award(s) paid or payable (whether or not in a separate award) to Landlord or Tenant after the Commencement Date because of, or as compensation for, any Condemnation, including: (1) any award made for any improvements that are the subject of the Condemnation; (2) the full amount paid or payable by the condemning authority for the estate that is the subject of the Condemnation, as determined in Condemnation; (3) any interest on such award; and (4) any other sums payable on account of such Condemnation.

"Condemnation Effective Date" means, for any Condemnation, the first date when the condemning authority has acquired title to or possession of any Premises subject to the Condemnation.

"Construction" means any alteration, construction, demolition, development, expansion, reconstruction, redevelopment, repair, Restoration, or other work affecting any Improvements, including new construction. Construction consists of Minor Construction and Major Construction.

"Construction Commencement Date" means the date on which, for any Construction, Tenant has satisfied the Construction conditions in Section 9.1 hereof.

"Construction Completion Date" for any Construction means the date when Tenant has given Landlord (a) a certificate from an Architect certifying that (i) such Major Construction has been substantially completed substantially in accordance with the Plans and Specifications and the Concept of Operations and (ii) Tenant has obtained, or caused to be obtained, all Approvals necessary for the opening and operation of the subject portion of the Premises, copies of which are attached to the certificate, and (b) Certificates of Occupancy.

"Construction Contract"*.* Contract(s), in assignable form, between Tenant, and/or Subtenant, as applicable, and such parties' general contractor and any and all subcontractors under Major Subcontracts, providing for performance of the Major Construction.

"Construction Documents" means, with respect to any Major Construction, any Architect’s Contract, Construction Contract, Major Subcontracts and Other Contracts and Permits, in each instance as Tenant and/or any Subtenant, as applicable, shall modify them from time to time but not in violation of this Lease, which such Construction Documents shall include an agreement from the respective Architect, contractor and any and all subcontractors, as applicable, to continue to perform for Landlord all of their respective obligations under the Construction Documents in the event that this Lease terminates or Landlord re-enters the Premises after an Event of Default hereunder, provided, that such Architect, contractor and subcontractors, as applicable, are paid for their services in accordance with such applicable Construction Documents.

“Contractor” means any person or entity entering into a contract directly with Landlord and, for the purposes of this Lease, shall mean Tenant.

"Control" means the possession, directly or indirectly, of: (a) at least fifty-one percent (51%) direct or indirect ownership of the Equity Interests of a Person; or (b) the power to direct or cause the direction of the management and policies of such Person, whether by ownership of Equity Interests, by contract, or otherwise.

"Core and Shell" means the Structure of the Premises and the Center Equipment together with all of Landlord's Work.

"Costs". The reasonably estimated cost of any Major Construction and of any related demolition.

"County" means the City and County of San Francisco.

"CPI" means the United States Department of Labor, Bureau of Labor Statistics "Consumer Price Index" for Urban Wage Earners and Clerical Workers (CPI-W) published for San Francisco-Oakland-San Jose, with a base of 1982-1984 = 100. If the CPI ceases to be published, with no successor index, then the parties shall reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

"CPI Adjustment Factor" means, as of any date, the greater of (a) 1.00 or (b) the CPI for such date divided by the CPI for the Commencement Date.

"Default" means Tenant's uncured default or breach under this Lease.

"Default Interest" means interest at an annual rate equal to the lesser of: (a) the Prime Rate plus Four (4%) percent per annum; or (b) the Usury Limit.

"Default Notice" means Landlord's notice of a Default under this Lease, describing the Default in reasonable detail.

"Design Guidelines" means those guidelines more particularly set forth on **Exhibit M** attached hereto and made a part hereof governing the prescribed use of the Retail Usage Area.

"Design Review Process" means the process for review of the Plans and Specifications prepared by Tenant and approved by Landlord in accordance with **Exhibit M-1** attached hereto and made a part hereof.

"Development Criteria"*.* That any Major Construction, if completed substantially in accordance with the Plans and Specifications, will comply with the Design Guidelines.

"Digital Content Development Guidelines" means the digital content development guidelines for the Center set forth in **Exhibit O-1** attached hereto and made a part hereof.

"Digital Guidelines" means the digital guidelines for the Center set forth in **Exhibit O** attached hereto and made a part hereof.

"Environmental Law" means any Law about the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, control, disposal, generation, storage, release, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances.

"Equipment Lien" means any security interest, financing lease, personal property lien, conditional sales agreement, chattel mortgage, security agreement, title retention arrangement or similar arrangement (including any related financing statement) for Tenant's, or any Subtenant's, acquisition or leasing of any Financed Tenant/Subtenant FF&E used in the Premises that is leased, purchased under conditional sale or installment sale arrangements, encumbered by a security interest, or used under a license, provided that each Equipment Lien encumbers or otherwise relates only to the Financed Tenant/Subtenant FF&E for which such secured party provides bona fide purchase-money financing or a bona fide equipment lease after the Commencement Date.

"Equity Interest" means, with respect to any Person, all or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any entity at any tier of ownership that directly or indirectly owns or holds any ownership or equity interest in such Person.

"Estoppel Certificate" means a statement, addressed to Landlord, or as Landlord directs, in substantially the form of **Exhibit H** attached hereto and made a part hereof, and containing such other assurances as Landlord may reasonably request.

"Excluded Expenses" mean (a) franchise, income or excess profit taxes or similar taxes imposed upon Tenant and/or Tenant's business; (b) principal, interest and other payments due from Tenant under any financing arrangement entered into by Tenant, (c) any charge for depreciation; (d) leasing commissions; (e) management fees; (f) wages, salaries, payroll taxes, fees and benefits paid to any persons above the grade of property manager or chief engineer (or employees with equivalent responsibilities regardless of job title) and their respective supervisors or to officers or partners of Tenant; (g) legal and accounting fees relating to disputes with Subtenants, prospective Subtenants or other occupants of the Premises, (h) costs in connection with any negotiations of leases, contracts of sale or mortgages, including, without limitation, legal expenses in negotiating and enforcing the terms of any Subtenant sublease and costs (including in connection therewith all attorneys’ fees and costs of settlement judgments and payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims litigation or arbitrations pertaining to Tenant; (i) costs in the nature of penalties or fines; (j) costs for services, supplies or repairs paid to any Affiliate of Tenant in excess of costs that would be payable for comparable services, supplies or repairs absent such relationship in first class office buildings; (k) costs associated with the operation of the business of the partnership or entity which constitutes the Tenant, as the same are distinguished from the costs of operation of the Premises; (l) Tenant's general corporate overhead and general and administrative expenses; (m) charitable or political contributions and cost of entertainment; (n) reserves; (o) costs which are reimbursed through Loss Proceeds or Condemnation Awards; (p) costs attributable to losses arising from the gross negligence, willful misconduct, fraud or breach of this Lease on the part of Tenant or Tenant’s employees, officers, directors, contractors and/or subcontractors; (q) fixed rent payments; and (r) any other expense which is not included in the Budget approved by Landlord for the applicable year.

"Expiration Date" means the date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Landlord's exercise of remedies for an Event of Default, or otherwise.

"Fee Estate" means Landlord's fee estate in the Premises, including Landlord's reversionary interest in the Premises after the Expiration Date.

"Financed Tenant/Subtenant FF&E" means any Tenant/Subtenant FF&E subject to an Equipment Lien in favor of a lessor or lender that: (a) is not an Affiliate of Tenant, or any Subtenant, and (b) actually provides bona fide financing or a bona fide equipment lease after the Commencement Date for Tenant's or any Subtenant's, acquisition or use of such Tenant/Subtenant FF&E. Tenant shall deliver, or cause to be delivered, to Landlord a copy of any document evidencing an Equipment Lien, upon request by Landlord.

"First and Second Floor Transit Lease Space" means a portion of the commercial space located on the ground floor of the Center consisting of approximately 600 rentable square feet and the portion of the second floor of the Center within the western end of the commercial space located therein consisting of approximately 6,800 rentable square feet, all as more particularly shown on **Exhibit B-5** attached hereto and made a part hereof.

"Fiscal Year" means each twelve (12) month period commencing July 1st through and including the following June 30th; provided, however, that the first Fiscal year shall be the period commencing on \_\_\_\_\_\_\_\_\_, 20\_\_ and ending on June 30, 20\_\_\_.

"Golden Gate Transit" means the Golden Gate Bridge Highway & Transportation District.

"Government" means each and every governmental agency, authority, bureau, department, quasi-governmental body, or such other entity or instrumentality acknowledged by Landlord to have jurisdiction over the Premises (or any activity this Lease allows), including the United States federal government, the State and County governments and their subdivisions and municipalities, and all other applicable governmental agencies, authorities, and subdivisions thereof.

"Greater Rincon Hill CBD" means the Greater Rincon Community Benefit District.

"Greyhound" means Greyhound Lines, Inc.

["Guaranty" means a Guaranty of Payment and Performance, executed by the Guarantor, in substantially the form of **Exhibit E** attached hereto and made a part hereof.]

"Hazardous Substances" includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (i) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended , or California Hazardous Substances Account Act, Health and Safety Code Sections 26300, et seq.; (ii) defined as a "hazardous waste" under Section 1004 of The Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended or the California Hazardous Waste Control Act, Health and Safety Code Sections 25100, et seq.; (iii) defined as a "hazardous substance" or "hazardous waste" under Section 101 of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. or any so-called "superfund" or "superlien" law, including the judicial interpretations thereof; (iv) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. § 9601(33); (v) defined as "hazardous waste" under 40 C.F.R. Part 260; (vi) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; (vii) subject to the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5, et seq., California Health and Safety Code Sections 25280, et seq. (Underground Storage of Hazardous Substances), the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1, et seq., the California Health and Safety Code Sections 25501. et seq. (Hazardous Materials Response Plans and Inventory), California Health and Safety Code Sections 25214.9 et seq. (Electronic Waste) or the Porter-Cologne Water Quality Control Act, California Water Code Sections 13000, et seq.; or (viii) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source.

"Hazardous Substances Discharge" means any deposit, discharge, generation, release, or spill of Hazardous Substances that occurs at or from the Premises, or into the Land, or that arises at any time from the use, occupancy, or operation of the Premises or any activities conducted therein or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the Land, whether or not caused by a party to this Lease and whether occurring before or after the Commencement Date.

"Immaterial Loss" means a Casualty or Condemnation that is not a Substantial Casualty or Substantial Condemnation, respectively.

"Impositions" means (i) all taxes, assessments including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term (including, without limitation, all interest and penalties thereon), water and sewer rents and charges, charges for public utilities, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges of every nature and kind whatsoever, and legal fees associated with any reduction proceedings relative to such taxes, not in excess of such reduction, in each case, whether general or special, (ii) business improvement district charges, special district charges, (iii) possessory interest taxes, and (iv) all other governmental, administrative and/or quasi-governmental levies, impositions or charges, ordinary, extraordinary, foreseen or unforeseen, of every type and nature whatsoever, in each case, which at any time during or in respect of the Term may be assessed, levied, charged, confirmed or imposed on Tenant, this Lease, any Subtenant or any Sublease, or in respect of, or be (a) a lien upon the Premises or any Sublet Premises, (b) any rent therefrom or any estate, right or interest therein, (c) any occupancy, use or possession of or activity conducted on the Premises or any part thereof including, without limitation, any Sublet Premises (including, without limitation, any taxes and/or assessments levied in lieu of, the foregoing due to a change in the method of taxation); and (d) all taxes and assessments that may, during the Term, be levied or assessed against any personal property located in, or upon the Premises, or any portion thereof including, without limitation, any Sublet Premises, and either owned by Tenant or any Subtenant or used by Tenant or any Subtenant in connection with the operation of the Premises or any portion thereof including, without limitation, any Sublet Premises, to the extent that such taxes and assessments, if unpaid, would result in a lien against the Premises or any portion thereof, including, without limitation, any Sublet Premises; provided, however, that, notwithstanding anything to the contrary contained in this Lease, in no event shall Impositions include any income taxes assessed against Landlord, franchise or transfer taxes of Landlord unless such taxes, or any one or more of them, shall hereafter be implemented by the taxing authority in lieu of, or in replacement or substitution of the foregoing.

"Indemnify" means, where this Lease states that Tenant shall "Indemnify" any Indemnitee from, against, or for a particular matter (the "Indemnified Risk"), that the Tenant shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Indemnified Risk; or (b) in enforcing the Tenant's indemnity. Tenant's counsel shall be subject to Indemnitee's approval, not to be unreasonably withheld. Any counsel satisfactory to Tenant's insurance carrier shall be automatically deemed satisfactory.

"Indemnitee" means Landlord and the Additional Insureds as defined on **Exhibit J** attached hereto and made a part hereof and any and all subsidiaries and Affiliates of any of the foregoing, their agents, servants, directors, officers, employees and any Equity Interest holders.

"Insubstantial Condemnation" means any Condemnation except a Substantial Condemnation or a Temporary Condemnation.

"Land" means the real property beneath the Premises and described on **Exhibit A** attached hereto and made a part hereof.

"Landlord" initially means the Landlord named in the opening paragraph of this Lease and any successor agency succeeding to such entity(ies'), assets, or functions.

"Landlord’s Areas of Responsibility Sharing Percentage" means, for each Fiscal Year, the applicable percentage for such Fiscal Year set forth on **Exhibit D-5** attached hereto and made a part hereof.

"Landlord’s Areas of Shared Responsibility Capital Sharing Percentage" means, for each Fiscal Year, the applicable percentage for such Fiscal Year set forth on **Exhibit D-7** attached hereto and made a part hereof.

"Landlord’s Areas of Shared Responsibility Operating Sharing Percentage" means, for each Fiscal Year, the applicable percentage for such Fiscal Year set forth on **Exhibit D-6** attached hereto and made a part hereof.

"Landlord's Code Compliance Officer" means a duly designated representative of Landlord or its subsidiaries or affiliates, responsible for monitoring and determining Code Compliance matters, from time to time during the Term.

"Landlord's Representative" means an agent of Landlord responsible for (i) determining whether Landlord's Work is substantially complete in accordance with **Exhibit C** attached hereto and made a part hereof, which agent, for purposes of this function may be an Architect, or third party commissioning agent, and (ii) monitoring the key performance indicators with respect to Tenant's compliance with the O & M Guidelines attached hereto and made a part hereof as **Exhibit L-1** and the Design Guidelines attached hereto and made a part hereof as **Exhibit M**.

"Landlord's Work" means the Construction of the work to be performed by Landlord, at Landlord's sole cost and expense, in order to prepare the Premises for delivery to Tenant in the condition set forth on **Exhibit C** attached hereto and made a part hereof.

"Laws" means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Premises, this Lease, or any Construction in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Premises, or relating to any Impositions, or otherwise relating to this Lease or any party's rights and remedies under this Lease, or any Transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

"Lease Impairment" means Tenant's: (a) canceling, modifying, restating, surrendering, or terminating this Lease, upon Loss or otherwise; (b) consenting, or failing to object, to a Bankruptcy Sale of any portion of the Premises; (c) determining that a Loss has occurred that would or could cause a termination of this Lease; (d) exercising any Bankruptcy Termination Option; (e) subordinating this Lease or the Leasehold Estate to any other estate or interest in the Premises other than the Fee Estate and any Transit Agency Leases; or (f) waiving any term(s) of this Lease.

"Lease Termination Notice" means a notice stating this Lease is being terminated by reason of any uncured Default, and describing such Default in reasonable detail.

"Lease Year" means: (a) the twelve calendar months starting on the first day of the first full calendar month after the Commencement Date; and (b) every subsequent period of twelve calendar months during the Term, or such shorter period if the Lease expires or terminates prior to the end of such full twelve month period.

"Leasehold Estate" means Tenant's leasehold estate, and all of Tenant's rights and privileges, under this Lease, upon and subject to all the terms and conditions of this Lease, and any direct or indirect interest in such leasehold estate.

"Legal Costs" of any Person means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs) including, without limitation, reasonable attorneys' fees, court costs, and expenses, and in or as a result of any Bankruptcy Proceeding.

"Loss" means any Casualty or Condemnation.

"Loss Proceeds" means Condemnation Award(s) and/or Property Insurance Proceeds.

"Lower Concourse" means the first subterranean level of the Center.

"Lower Concourse Support Space" means the portion of the Lower Concourse consisting of approximately 108,300 square feet as more particularly shown on **Exhibit B-6** attached hereto and made a part hereof

"Major Construction" means any Construction which has any effect on any glass surfaces (interior or exterior), internal transportation (elevator, escalator or stairways), or Structure of the Premises, or adversely (or potentially adversely) affects any utilities or systems of the Center or which constitutes a replacement and/or repair of a capital nature in accordance with generally accepted accounting principles.

"Major Construction Period" means with respect to any Major Construction, the period from the Construction Commencement Date for such Major Construction through the Construction Completion Date for such Major Construction.

"Major Subcontracts" means any subcontracts entered into, or to be entered into, by Tenant and/or any Subtenant for any Major Construction for an aggregate value in excess of $50,000.00, as such contracts may from time to time be modified, amended, waived, cancelled, terminated, substituted, or replaced in good faith.

"Material O&M Default" means Tenant's failure to comply with any of its material maintenance and repair obligations under this Lease within twenty-four (24) hours after Landlord provides Notice to Tenant of such failure. The determination of whether a maintenance and repair obligation is material shall be made by Landlord, in its reasonable discretion.

"Minor Construction" means any Construction that Tenant elects or permits in its discretion, or this Lease requires Tenant, to undertake from time to time, except Major Construction.

"Modification" means any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of such agreement, document, or terms.

"Modify" means agree to, cause, make, or permit any Modification.

"Monetary Default" means Tenant's failure to pay any Rent as and when this Lease requires.

"MTC" means the Metropolitan Transportation Commission.

"Nonmonetary Default" means Tenant's: (a) failure to comply with any affirmative or negative covenant or obligation in this Lease, except a Monetary Default; or (b) breach of any representation or warranty (as of the date made or deemed made).

"Notice" means any consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default. Notices shall be delivered, and shall become effective, only in accordance with the "Notices" Article of this Lease.

"Notice of Default" means any Notice claiming or giving Notice of a Default or alleged Default.

"Notify" or "Notifies" means the giving of a Notice.

"O & M Guidelines" means the manual outlining specifications for the maintenance, repair and operation of the Premises, attached hereto as **Exhibit L-1** and made a part hereof

"Operating Budget" means each annual budget outlining projected Operating Expenses for the succeeding Fiscal Year and included as part of the overall annual Budget for the operation, maintenance and repair of the Premises prepared and approved in accordance with Section 8.4 below.

"Operating Expenses" means the aggregate of all costs and expenses paid or incurred byor on behalf of Tenant in connection with the operation, repair and maintenance of the Premises, excluding any Capital Expenses and Excluded Expenses.

"Operating Hours" means those hours designated under the O & M Guidelines set forth in **Exhibit L-1** attached hereto and made a part hereof for the operation of the Commercial Usage Area.

"Park" means the approximately 5.4 acre roof top park comprising a portion of the Center all as more particularly described in **Exhibit B-4** attached hereto and made a part hereof.

"Participation Rent" means Participation Rent payable pursuant to Section 4.5 hereof.

"Percentage Share" means, as applicable, the Areas of Control Percentage Share, the Areas of Responsibility Percentage Share or the Areas of Shared Responsibility Percentage Share.

"Person" means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership (of any type), trust, unincorporated organization, or other entity of any kind.

"Phase I" means the first phase of the Construction of the Center which includes design and Construction of the ground floor, first and second floors and the Park, together with the construction of the Core and Shell of Lower Concourse Space and the Train Platform Level which will house future rail operations.

"Phase II" means the second phase of the Construction of the Center which will include a complete build-out of all rail facilities and ancillary uses in the Lower Concourse Space and on the Train Platform Level and additional Construction of infrastructure required to link the Center to the rail network within the City and County of San Francisco through the Downtown Rail Extension tunnel.

"Phase I Use Areas" means those portions of the Train Platform Level and the Lower Concourse which Tenant is permitted to use and required to maintain during Phase I pursuant to Sections 20.1 and 20.2 below.

"Plans and Specifications" means plans and specifications for Major Construction, prepared by an Architect, submitted in such machine-readable format as is then customary in the architectural profession, consisting of architectural plans; minimum estimated electrical capacity and distribution system; general type of plumbing system; facade, placement, and orientation; gross and rentable square foot analysis; and principal types of HVAC systems. Tenant may modify, or cause to be modified, the Plans and Specifications at any time or from time to time, so long as they comply with the Design Guidelines set forth on **Exhibit M** attached hereto and made a part hereof. The "Plans and Specifications" shall mean the original Plans and Specifications as so modified.

"Prime Rate" means the prime rate or equivalent "base" or "reference" rate for corporate loans that, at Landlord's election, by Notice to Tenant, is from time to time: (a) published in the Wall Street Journal; (b) announced by any large United States "money center" commercial bank Landlord designates; or (c) if such rate is no longer so published or announced, then a reasonably equivalent rate published by an authoritative third party that Landlord reasonably designates. Notwithstanding anything to the contrary in this paragraph, the Prime Rate shall never exceed the Usury Limit.

"Prohibited Lien" means any mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien that (a) arises from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to Tenant or any Subtenant (or anyone claiming through either) and (b) attaches (or may attach upon termination of this Lease) to the Center. An Equipment Lien on Tenant's or any Subtenant's personal property is not a Prohibited Lien.

"Prohibited Person" shall mean any Person if:

* + - 1. such Person or any of its Affiliates is in monetary default or in breach of any non-monetary obligation under any written agreement with the State (including without limitation Landlord) or the City and County of San Francisco after notice and beyond any applicable cure periods, unless, in each instance, such monetary default or breach either (i) has been waived in writing by the State or City and County of San Francisco, (ii) is being disputed in a court of law, administrative proceeding, arbitration or other similar forum, (iii) is cured within thirty (30) days after a determination and notice to Tenant from Landlord that such Person is a Prohibited Person as a result of such Default or breach, or (iv) is in connection with a payment Default under a mortgage loan that is either recourse or non-recourse to a single purpose entity borrower and issued by an agency or authority for the State or City and County of San Francisco other than the Landlord or its subsidiaries;
      2. such Person or any of its Affiliates has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude, is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or has had a contract terminated by any governmental agency for breach of contract or for any cause directly or indirectly related to an indictment or conviction. The determination as to whether any Person is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure for purposes of this paragraph (b) shall be within the sole discretion of Landlord, which discretion shall be exercised in good faith; provided, however, that such Person shall not be deemed a Prohibited Person if the State, having actual knowledge that such Person meets the criteria set forth in this paragraph (b), entered into a contract and is then doing business with such Person;
      3. such Person or any of its Affiliates is a terrorist or terrorist organization or is reputed to have substantial business or other affiliations with a terrorist or terrorist organization, including those Persons included on any relevant lists maintained by the United Nations, the North Atlantic Treaty Organization, the Organization for Economic Cooperation and Development, the Financial Action Task Force, or the Office of Foreign Assets Control, Securities and Exchange Commission, Federal Bureau of Investigation, Central Intelligence Agency or Internal Revenue Service of the United States, all as may be amended from time to time. The determination as to whether any Person is a terrorist or terrorist organization or is reputed to have substantial business or other affiliations with a terrorist or terrorist organization for purposes of this paragraph (c) shall be within the sole discretion of Landlord, which discretion shall be exercised in good faith; provided, however, that such Person shall not be deemed a Prohibited Person if the State, having actual knowledge that such Person meets the criteria set forth in this paragraph (c), entered into a contract and is then doing business with such Person;
      4. such Person is a government, or is directly or indirectly controlled (rather than only regulated) by a government, which is (i) finally determined, beyond right to appeal, by the Federal Government of the United States or any agency, branch or department thereof to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, as amended, or any successor statute, or the regulations issued pursuant thereto, or (ii) subject to the regulations or controls thereof. Such control shall not be deemed to exist in the absence of a determination to that effect by a Federal court or by the Federal Government of the United States or any agency, branch or department thereof; or
      5. such Person is a government, or is directly or indirectly controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended.

"Property Insurance" means any and all property insurance carried by Tenant in accordance with Section 16.2.1 hereof and any and all property insurance carried by Landlord in accordance with Section 16.1.1 hereof.

"Property Insurance Proceeds" means net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by Landlord or Tenant, excluding proceeds of Tenant's business interruption insurance in excess of Rent.

"Rail Operators" means Caltrain and the California High-Speed Rail Authority.

"Rent" means Fixed Rent, Participation Rent and Additional Rent, all of which will be payable as hereinafter provided.

"Restoration" means, after a Loss, each of Landlord's and Tenant's respective obligations as set forth in Article 17 hereof to alter, clear, rebuild, reconstruct, repair, replace, restore, and safeguard the damaged or remaining aspects of the Center, substantially consistent with their condition before the Loss, which shall be in conformity with this Lease, subject to any changes in Law that would limit the foregoing.

"Restoration Funds" means any Loss Proceeds to be applied to Restoration.

"Restore" means accomplish a Restoration.

"SamTrans" means the San Mateo County Transit District.

"Scheduled Expiration Date" means 11:59 p.m. on **[**\_\_\_\_\_\_\_\_, 20\_\_\_**]**[**TO BE A DATE NO SOONER THAN THE DATE THAT IS 10 YEARS NOR MORE THAN 25 YEARS FROM THE COMMENCEMENT DATE]**. To the extent that Tenant exercises any Renewal Option(s), the Scheduled Expiration Date means 11:59 p.m. on the last day of the corresponding Renewal Term.

**"**Security" means $\_\_\_\_\_\_\_\_\_\_\_\_\_ in the form required by Article 12 hereof.

"SFFD" means the City and County of San Francisco Fire Department.

"SFMTA" means the San Francisco Municipal Transportation Agency, as constituted from time to time.

"SFMTA Police Department" means the police department of the San Francisco Municipal Transportation Agency, as constituted from time to time.

"SFPD" means the City and County of San Francisco Police Department.

"State" means the State of California.

"Structure" of the Premises means only the concrete floors, footings, foundation, load-bearing walls, interior or exterior glass surfaces, undulating metal exterior façade, roof, roof support systems, escalators, elevators or stairs, and structural steel or other structural support systems of the Premises.

"Sublease" means, for the Areas of Control or any portion thereof, any: (a) sublease; (b) agreement or arrangement (including a concession, license, management, or occupancy agreement and/or any advertising license agreements, sponsorship agreements and the like) allowing any Person to occupy, use or possess or otherwise exploit; (c) subsublease or any further level of subletting; or (d) Modification or assignment of "(a)" through "(c)" between Tenant and a third party. (Any reference to Subleases does not diminish, impair, limit, or waive any limit on Subleases.)

"Sublet Premises" means any portion of the Premises sublet by Tenant to any Subtenant pursuant to any Sublease made and entered into in accordance with Article 10 of this Lease.

"Subrent" means (a) any and all money or other consideration due and payable to Tenant by Subtenants under Subleases, including, without limitation, any and all Participation Rent and any proceeds of business interruption insurance required to be carried by any Subtenants in accordance with Section 16.3 hereof, (b) any and all consideration payable by Subtenants or third parties to Tenant for the use of any Center Signage now or hereafter existing anywhere in the Center and (c) any and all money or other consideration payable to Tenant in connection with any Center Events.

"Subrent Payment Notice" means a notice from Landlord to any Subtenant, directing such Subtenant to pay its Subrent to Landlord and not to Tenant.

"Substantial Casualty" means a Casualty that: (a) renders 25% or more of the Commercial Usage Area of the Premises not capable of being used or occupied; (b) requires Restoration of the Premises whose cost Landlord reasonably estimates in writing would exceed $\_\_\_\_\_\_\_\_\_\_\_\_\_; (c) pursuant to Law, prevents the Premises from being Restored to the same use, as before the Casualty, or (d) requires Restoration of the Premises that is not capable of being Restored within two (2) years from the date of such Casualty, as reasonably estimated by an Architect pursuant to an Architect's Certificate.

"Substantial Condemnation" means any Condemnation that (a) takes the entire Premises; (b) in Tenant's reasonable determination renders the remaining Premises economically unviable; or (c) occurs less than two (2) years before the end of the Term.

"Subtenant" means any Person entitled to occupy, use, or possess any portion of the Retail Usage Area of the Premises or any of the Center Signage under a Sublease.

"Temporary Condemnation" means a Condemnation of the temporary right to use or occupy all or part of the Premises.

"Tenant Controlled Signage" means all of that certain signage now or hereafter existing in the Premises, and certain other portions of the Center whether installed by Landlord, Tenant, or any Subtenant, and utilized, maintained and repaired by Tenant and/or any Subtenant, any of which may be located in those portions of the Premises, designated on **Exhibit B-4** as permitting Tenant Controlled Signage, and which includes the wayfinding and schedule digital signage on which advertising content may be displayed.

"Tenant/Subtenant Equipment" means any and all fixtures or equipment incorporated in the Premises and installed by Tenant, or any Subtenant(s), at such Tenant's or Subtenant's expense, and used, useful, or necessary to operate the Premises, exclusive of Center Equipment, which shall become the property of Landlord upon the expiration, or earlier termination of this Lease.

"Tenant/Subtenant FF&E" means all movable furniture, furnishings, equipment, and personal property of Tenant or any Subtenant(s) (excluding Center Equipment and Tenant/Subtenant Equipment) that may be removed without material damage to the Premises and without adversely affecting: (a) the Structure of the Premises; (b) any electrical, plumbing, mechanical, or other system in the Premises; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Premises. Tenant/Subtenant FF&E includes, without limitation, items such as merchandise, signs, goods, trade fixtures, factory equipment, furniture, movable equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, computer systems and peripherals, and equipment purchased and used by Tenant to perform its obligations to maintain and repair the Center.

"Term" means the Initial Term, as extended from time to time by Tenant's valid exercise of Renewal Option(s) to include one or more Renewal Term(s).

"Train Platform Level" means the portion of the Center located on the second subterranean level of the Center.

"Transfer" of any property means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, mortgage, hypothecation, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, or of any legal, beneficial, or equitable interest or estate in such property or any part of it (including the grant of any mortgage, easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property by the holder of such Equity Interest(s); (c) any transaction described in "(b)" affecting any Equity Interest(s) or any other interest in such property or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses "(b)" through "(d)," shall be deemed a Transfer by Tenant or Guarantor, respectively, even though Tenant or Guarantor, respectively, is not technically the transferor. Notwithstanding the foregoing, the transfer of outstanding capital stock of any corporate Tenant or Subtenant, for purposes of this definition, shall not include a sale of such stock by persons effected through any "over the counter" market, or recognized stock exchange. For purposes hereof, the term "Property" shall be deemed to include a leasehold or subleasehold interest in such Property.

"Transit Agencies" means SFMTA, AC Transit, Amtrak, Golden Gate Transit, Greyhound, SamTrans, WestCAT and \_\_\_\_\_\_\_\_\_\_\_.

"Transit Agency Areas" means those areas of the Center that are being leased directly by Landlord to one or more Transit Agencies for their exclusive use and operation, all as more particularly shown on **Exhibit B-3** attached hereto and made a part hereof.

"Transit Agency Leases" means any lease, sublease, agreement or arrangement (including a concession, license, management, or occupancy agreement and/or any advertising license agreements, sponsorship agreements and the like) allowing any Transit Agency to occupy, use or possess or otherwise exploit any Transit Agency Areas, including, without limitation, any lease, sublease, agreement or arrangement between individual Transit Agencies for the use of any Transit Agency Areas.

"Transit Agency Lease Rent" means any and all money, or other consideration, due and payable by the Transit Agencies to Landlord or to another Transit Agency under Transit Agency Leases.

"Transit Agency Controlled Signage" means all of that certain signage, which is installed and utilized by any Transit Agency and which such Transit Agency is responsible for maintaining and repairing.

"Unavoidable Delay" means delay in performing any obligation under this Lease (except payment of money) arising from or on account of any cause whatsoever beyond the obligor's reasonable control, despite such obligor's reasonably diligent efforts including, without limitation, industry-wide strikes, labor troubles or other union activities (but only to the extent such actions affect similar premises at that time and do not result from an act or omission of the obligor), the obligor's inability to obtain required labor or materials after commercially reasonable efforts to do so, Loss, accidents, Laws, governmental preemption, war, or riots. Unavoidable Delay shall exclude delay caused by the obligor's financial condition, illiquidity, or insolvency. Any obligor claiming Unavoidable Delay shall Notify the obligee: (a) within thirty (30) days after such obligor knows of any such Unavoidable Delay; and (b) within ten (10) days after such Unavoidable Delay ceases to exist. To be effective, any such Notice must describe the Unavoidable Delay in reasonable detail. Where this Lease states that performance of any obligation is subject to Unavoidable Delay(s) or words of similar import, such Unavoidable Delay(s) shall extend the time for such performance only by the number of days by which such Unavoidable Delay(s) actually delayed such performance.

"Under Ramp Park" means the park to be constructed by Landlord as more particularly described in **Exhibit B-8** attached hereto and made a part hereof.

"Usury Limit" means the highest rate of interest, if any, that Law allows under the circumstances.

"WestCAT" means the Western Contra Costa County Transit.

1. *Term*.
   1. *Initial Term*

. The initial term of this Lease (the "Initial Term") shall: (a) commence on the Commencement Date; and (b) continue until the Scheduled Expiration Date, unless terminated sooner in accordance with the provisions of this Lease. If the Commencement Date is not the first (or the Expiration Date is not the last) day of a Lease Year, then from the Commencement Date through the day before the first Lease Year (or from the day after the last Lease Year through the Expiration Date), the parties shall have all the same rights and obligations under this Lease (including regarding Rent) that they do during the first (or the last, as applicable) full Lease Year, all prorated daily.

* 1. *Renewal Option(s)*

*.* Tenant shall have the right and option (each such right and option, a "Renewal Option") to extend and renew this Lease upon all the same terms and conditions (except for Rent and as this Lease otherwise expressly states), for one or more additional successive periods, as provided for below (each, a "Renewal Term") after the Initial Term expires. Notwithstanding the foregoing, Tenant’s right to extend and renew this Lease for each Renewal Term shall be conditioned upon Tenant having timely satisfied or exceeded all applicable key performance indicators set forth on **Exhibit D-3** attached hereto and made a part hereof. In the event that Tenant fails to timely satisfy any one or more of the key performance indicators set forth on **Exhibit D-3**, Landlord may, in its sole and absolute discretion, elect to either (a) treat Tenant’s Renewal Option as void and of no further force and effect in which case this Lease shall expire on the then-scheduled Expiration Date, or (b) waive the failure and permit Tenant to exercise its Renewal Option to extend and renew this Lease in accordance with the terms hereof, provided that Landlord’s waiver of such failure with respect to Tenant’s exercise of its Renewal Option for a particular Renewal Term will not be deemed a waiver of such failure by Landlord with respect to Tenant’s exercise of its Renewal Option for any subsequent Renewal Term. Tenant shall exercise each Renewal Option, if at all, by giving Landlord Notice of such exercise at most thirty-six (36) months, and at least twenty-four (24) months, before the first day of the corresponding Renewal Term. After the last Renewal Term, Tenant shall have no further right to renew or extend the Term. The Renewal Terms are as set forth on **Exhibit D-2** attached hereto and made a part hereof.

* 1. *Conditions to Exercise*

. If Tenant fails to validly and timely exercise any Renewal Option, then all subsequent Renewal Options shall terminate. Each Renewal Option shall remain effective notwithstanding any Default, unless and until all cure periods for such Default available to Tenant have expired without cure, and Landlord has terminated this Lease. No other conditions, express or implied, shall limit Tenant's right to exercise any Renewal Option(s), and provided, further, that, Tenant continues to use the Premises for the Permitted Use and in accordance with the Retail Standard during any and all Renewal Term(s).

* 1. *Landlord's Right to Extend the Term*

*.* Notwithstanding anything contained herein to the contrary, Landlord shall have the right, in its sole discretion, to extend either the Initial Term, or any Renewal Term, to the extent Tenant has not yet elected to exercise the Renewal Option as aforesaid, on terms and conditions mutually acceptable to the parties hereto, for a period not to exceed five (5) years, in order to reasonably accommodate Tenant in connection with Tenant's attracting good quality Subtenants for purposes of entering into Subleases as contemplated hereunder, which extension is, in Landlord's reasonable opinion, mutually beneficial to the parties hereto.

1. *Performance of Landlord's Work and Delivery Condition*.
   1. *Delivery Conditions*

*.* Upon substantial completion of Landlord's Work in accordance with **Exhibit C** attached hereto and made a part hereof, Landlord shall deliver to Tenant, and Tenant shall accept, the Premises, as hereinafter provided.

* 1. *Landlord's Work*

*.* Landlord shall construct the Core and Shell of the Center in accordance with **Exhibit C** attached hereto and made a part hereof. Tenant acknowledges and agrees that the Core and Shell may be modified by Landlord during the planning and construction of the Center, it being understood and agreed that Landlord shall have the right to modify the plans and specifications for the Center (including the Core and Shell) without Tenant’s consent provided that such modifications are consistent with the character of a first-class transit and retail center. Landlord shall Notify Tenant of any modification to the Core and Shell. Landlord shall diligently and in good faith pursue to substantial completion Landlord's Work. For purposes hereof, the term "substantial completion" or "substantially complete" shall mean the completion of Landlord's Work in the condition required by **Exhibit C** attached hereto and made a part hereof, but for certain minor punch list items, all of which shall be certified as such by Landlord's Representative. Landlord shall provide at least thirty (30) days prior Notice to Tenant as to the date of such substantial completion and Tenant shall have ten (10) days after the date of substantial completion to inspect the Premises to confirm the punch list items based on a joint inspection of the Premises. The punch list items shall have no material adverse effect upon Landlord's delivery of the Premises, and, in any event, shall be reasonably promptly completed by, or on behalf of, Landlord. If Tenant fails to timely inspect and Notify Landlord of any dispute as to the substantial completion of the Landlord's Work or the punch list items with respect to the Premises, then Tenant shall be deemed to have waived same, and substantial completion with respect to the Premises shall be on the date so designated by Landlord in Landlord's Notice to Tenant as to same. In the event of any dispute between Landlord and Tenant as to substantial completion of Landlord's Work or any punch list items in connection therewith, then same shall be resolved by Arbitration. Such Arbitration shall be the parties' sole and absolute remedy with respect to resolution of any disputes brought under this Section 3.2. The Arbitration shall be governed by all applicable expedited or fast track procedures, and a decision shall be rendered by the arbitrator within thirty (30) days after the Arbitration is complete. The parties shall be entitled to seek, and the arbitrator shall have the authority to grant or deny, emergency interim relief, including injunctive and other equitable relief. The Arbitration shall be overseen by one arbitrator who shall be jointly agreed upon by the parties. Judgment may be entered on the arbitrator's award in a court having jurisdiction, and the parties irrevocably consent to the jurisdiction of any court competent of the subject matter and sitting in the City and County of San Francisco, California (including federal courts) for that purpose.

* 1. *Following the Commencement Date and Landlord's Work*

*.* In order to accommodate certain functions of the Transit Agencies and Rail Operators and to facilitate the safety and security of the Center, Landlord reserves the right from time to time: (a) to install, use, maintain, repair, replace, remove and relocate shafts, pipes, ducts, conduits, wires, risers and other facilities and appurtenant fixtures in the Premises, the ceiling above the Premises, the walls adjacent to the Premises, and in other parts of the Center, and (b) to alter or relocate any facility, whether located in the Premises or in other parts of the Center; provided, that same does not materially interfere with any Permitted Use hereunder. In performing such work, Landlord shall exercise reasonable efforts to minimize interference with Tenant's use of the Premises. Landlord reserves the right from time to time to designate the days and hours during which any areas of the Center shall be open to the public; to close temporarily or permanently all or any portion of such areas for any purpose; to erect any gate, chain or other obstruction or to close off any portion of the Center to the public at any time to prevent injury to persons or property, or as may be required in connection with any Center operations, and, in connection therewith, to seal off all entrances to the Center, or any portion thereof.

* 1. *CASp Inspection*

*.* Pursuant to California Civil Code Section 1938, Tenant is hereby notified that the Center has not undergone an inspection by a Certified Access Specialist (a "CASp Inspection").  Tenant acknowledges that Landlord has made no representation regarding compliance of the Premises with accessibility standards.  Tenant shall not perform a CASp Inspection at the Center (and shall require that its Subtenants not perform a CASp Inspection at the Center) without Landlord’s prior written consent, which consent may be withheld in Landlord’s sole and absolute discretion.  Without limiting the foregoing, Tenant shall promptly notify Landlord of the completion of any CASp Inspection and, within ten (10) Business Days after written request by Landlord, furnish Landlord with copies of the results

1. *Rent and Management Fee*.
   1. *Fixed Rent*

*.* Tenant shall pay Landlord, without notice or demand, deduction or set-off (except as herein elsewhere specifically provided) in lawful money of the United States of America, a net annual rental (the "Fixed Rent") in accordance with **Exhibit D** attached hereto and made a part hereof, subject to Section 8.1 and 28.3 hereof.

* 1. *Renewal Term*

*.* If Tenant exercises any Renewal Option, then on the first day of the corresponding Renewal Term, Fixed Rent shall be as set forth on **Exhibit D-3**.

* 1. *Payment; Proration; Etc.*

Tenant shall pay Fixed Rent in equal monthly installments in advance on the first day of each month. Tenant shall pay all Rent payable to Landlord by wire transfer, pursuant, initially, to the following wire instructions:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Landlord shall have the right to change such wire instructions from time to time upon reasonable prior Notice to Tenant.

* 1. *Participation Rent*
     1. In addition to the Fixed Rent and all other rents and charges reserved hereunder and as part of the total Rent to be paid to Landlord under this Lease, Tenant agrees to pay to Landlord, as Additional Rent for each Lease Year, or portion thereof, during the Term, an amount ("Participation Rent") calculated in accordance with the formula set forth in **Exhibit D-1** attached hereto and made a part hereof. For the purposes of computing the amount of Participation Rent due, if any, each Lease Year shall be considered as an independent accounting period and no charge or credit may be taken in any subsequent Lease Year on account of any Subrent in any prior Lease Year. Tenant's obligation under this Section 4.4 shall survive the expiration or earlier termination of this Lease.
     2. Participation Rent shall be determined and paid, without any prior demand therefor, as follows:
        1. Not later than the fifteenth (15th) day of each month during the Term (including, without limitation, the fifteenth (15th) day of the month subsequent to the month during which this Lease shall have terminated or expired), Tenant shall deliver, or cause to be delivered, to Landlord a true, correct and complete statement (each such statement, a "Monthly Statement") in the form from time to time approved by Landlord, showing (i) the Subrent made (A) in the immediately preceding calendar month and (B) for the entire elapsed portion of the Lease Year, including the immediately preceding month, and including a detailed itemization of all permissible exclusions therefrom, (ii) all installments of Participation Rent theretofore made by Tenant in respect of such Lease Year and (iii) a calculation of the installment of Participation Rent then due. Simultaneously with the rendition of each such statement, Tenant shall pay to Landlord an installment of Participation Rent equal to the Participation Rent due for the entire elapsed portion of the current Lease Year, including the immediately preceding month, less the aggregate installments of Participation Rent previously paid by Tenant in respect of such current Lease Year, in each instance as calculated in accordance with **Exhibit D-1** attached hereto and made a part hereof.
        2. Not later than thirty (30) days after the close of each Lease Year (including, without limitation, any Lease Year ending upon the expiration or termination of this Lease), Tenant shall deliver, or cause to be delivered, to Landlord, a true, correct and complete statement (each such statement, an "Annual Statement") for such Lease Year setting forth (i) Subrent for such Lease Year, (ii) a computation of the Participation Rent for such Lease Year, (iii) the aggregate amount theretofore paid by Tenant in respect of Participation Rent for such Lease Year and (iv) the amount by which the aggregate amount paid by Tenant in respect of Participation Rent for such Lease Year exceeds or is less than, as the case may be, the amount of Participation Rent payable for such Lease Year as set forth on such statement, which statement shall be certified by an independent certified public accountant to be in accordance with the requirements of Section 4.4.3 below as having been prepared in accordance with a cash basis of accounting consistently applied. If the aggregate amount paid by Tenant with respect to Participation Rent for such Lease Year shall be less than the Participation Rent for such Lease Year, then simultaneously with the rendition of such statement, Tenant shall pay to Landlord the amount of such deficiency. If the aggregate amount paid by Tenant with respect to Participation Rent for such Lease Year shall be greater than the Participation Rent for such Lease Year, then, so long as no Event of Default shall exist and be continuing hereunder, Landlord shall credit against the next monthly installments of Rent due the amount of such overpayment. Any payment theretofore timely made by Tenant and any credit given by Landlord pursuant to this clause shall be without interest thereon. The acceptance by Landlord of payments of Participation Rent or reports of Subrent (including, without limitation, Monthly Statements and Annual Statements) shall be without prejudice to Landlord and shall in no event constitute a waiver of Landlord's right to claim a deficiency or to audit Tenant's books and records as provided herein.
     3. Tenant shall pay, prior to delinquency, any and all sales, use, payroll and other taxes, custom and import duties, assessments and public charges levied, assessed or imposed upon Tenant, its business in the Premises and/or upon Tenant's personal property, and within ten (10) days after request by Landlord, Tenant shall submit to Landlord photocopies of the federal, state and local sales, use, payroll and other similar tax returns filed by Tenant with the appropriate governmental authority.
     4. Tenant shall prepare, keep and maintain at the Premises or at Tenant's principal office within the City and County of San Francisco, for a period of not less than seven (7) years following the end of each Lease Year (including following the Expiration Date, as to which Tenant's obligations hereunder shall survive the Expiration Date (or any earlier termination of this Lease pursuant to any provision hereof or by law)), originals of complete and accurate books of account and records in accordance with generally accepted accounting principles (collectively, the "Subrent Records"), in form and substance reasonably satisfactory to Landlord, of any and all Subrent paid to Tenant. For purposes hereof, the definition of Subrent Records shall also include complete and accurate books of account and records, in form and substance reasonably satisfactory to Landlord, maintained by any Subtenant, in accordance with a cash basis of accounting consistently applied. The Subrent Records, whether manually or electronically maintained and operated, shall have controls in place that are satisfactory to Landlord, in its reasonable judgment, to prevent the alteration or manipulation of the recorded Subrent. Supplementing the foregoing, the Subrent Records for any particular period occurring during the Term (each, an "Subrent Audit Period") shall include all information recorded by Tenant that Landlord, in its sole discretion, deems pertinent to the determination of Subrent for such Subrent Audit Period. Tenant's obligations under this Section 4.4.4 shall survive the Expiration Date.
     5. Landlord (and its representatives) shall have the right, from time to time, to examine and/or cause a complete audit (and to make copies) of any or all statements of Subrent and Tenant's Subrent Records and Tenant's procedures for keeping the same. In connection with any such examination and/or audit, Landlord (or its representatives) shall have the right, from time to time, to request, in a written notice given to Tenant (each, a "Subrent Records Request"), that Tenant make, or cause to be made, available to Landlord (or its representatives), at a location in the City and County of San Francisco designated by Landlord, the Subrent Records relating to any Subrent Audit Period. Tenant, within thirty (30) days after Tenant's receipt of any Subrent Records Request (each such 30 day period, a "Subrent Submission Period"), shall make, or cause to be made, available to Landlord (or its representatives) the Subrent Records requested by Landlord in such Subrent Records Request, which Subrent Records shall be sufficient to permit an accurate determination of Subrent for the applicable Subrent Audit Period. If, with respect to any Subrent Records Request, either (x) Tenant fails to make, or cause to be made, available the Subrent Records requested by such Subrent Records Request at the location designated by Landlord within the applicable Subrent Submission Period or (y) the Subrent Records made available by Tenant in response to such Subrent Records Request are insufficient to permit an accurate determination of Subrent for the applicable Subrent Audit Period, then each such failure or insufficiency (each, a "Subrent Records Default") shall constitute a Default hereunder. In addition to, and not in limitation of, Landlord's other rights and remedies in respect of a Default under this Lease, at law or at equity, Tenant, with respect to the initial and any subsequent Subrent Records Default, shall pay, as Additional Rent to Landlord within five (5) days following rendition of a bill therefor, an amount equal to twenty-five percent (25%) of the Fixed Rent due with respect to the applicable Subrent Audit Period (i.e., the Subrent Audit Period with respect to which the Subrent Records Default in question occurs). This Additional Rent shall be in addition to any Rent due to Landlord under this Lease, and shall be deemed to be liquidated damages (and not a penalty) for the failure of Tenant to maintain and/or make available the Subrent Records necessary to permit an accurate determination of Subrent for the applicable Subrent Audit Period; it being agreed that Landlord's actual damages resulting from a failure by Tenant to maintain and/or make available such Subrent Records would be impossible to ascertain and the parties hereto agree that the foregoing amount is a reasonable estimate thereof. For purposes of this Section 4.4.5, the phrase "make available" or other words of similar import shall be deemed to require that Tenant make, or cause to be made, the Subrent Records requested by any Subrent Records Request available to Landlord (or its representatives) either at the Premises or at Tenant's principal office within the City and County of San Francisco.
     6. Tenant shall promptly pay any additional Participation Rent due Landlord as determined pursuant to any examination and/or audit of Tenant's statements of Subrent, Tenant's Subrent Records and/or Tenant's procedures for keeping the same (together with Default Interest from the date when payment should have been made), and, if (a) Tenant shall be in Default under one or more provisions of this Article 4 pertaining to Participation Rent or the availability of Subrent Records at any time while such audit shall be performed, (b) any such audit discloses that the actual amount of Subrent differs from the amount reported by more than three percent (3%), and/or (c) the person conducting such examination and/or audit determines that, in its opinion, Tenant's Subrent Records and procedures are insufficient to permit an accurate determination of Subrent for any period, Tenant shall also pay (in addition to any amounts Tenant is required to pay pursuant to the provisions of Section 4.4.5 above) the costs of such examination and/or audit as Additional Rent to Landlord within five (5) days following rendition of a bill therefor.
  2. *Impositions*

*.* Tenant shall pay, on or before the date same are due, any and all Impositions and shall deliver to Landlord a monthly statement itemizing such Impositions and payments made.

* 1. *Additional Rent*

*.* In addition to Fixed Rent and Participation Rent, Tenant shall pay Landlord (or the appropriate third party, as applicable) certain other charges, as herein elsewhere provided. Except where this Lease provides otherwise, Tenant shall pay all Additional Rent within ten (10) days after receipt of an invoice and reasonable supporting documentation.

* 1. *No Offsets*

*.* Tenant shall pay all Rent without notice, demand, offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

* 1. *Management Fee*

*.* In consideration for Tenant’s facilities management services with respect to the Areas of Responsibility and the Areas of Shared Responsibility, Tenant shall receive a monthly management fee (a “Management Fee") in the amounts shown on **Exhibit D-4** attached hereto and made a part hereof. The Management Fee shall be prorated for any partial month during the Term based on the actual number of days in such month. The Management Fee shall appear as a separate line item in each Operating Budget, shall be included by Tenant in the applicable Reimbursement Applications submitted by Tenant in accordance with Section 8.3 below and shall be paid in arrears in accordance with the general procedure for reimbursement of Operating Expenses and Capital Expenses set forth in Section 8.3 below. [ADD IF PERCENTAGE, NOT FIXED, FEE: In the event actual operating expenses for any Fiscal Year are less or more than the amounts set forth in the Operating Budget for such year, the Management Fee shall be adjusted to reflect actual expenditures and Landlord shall pay to Tenant the amount of any underpayment or Tenant shall reimburse Landlord for the amount of any overpayment for the immediately preceding Fiscal Year within forty-five (45) days following the end of the applicable Fiscal Year.]

1. *[Reserved].*
2. *Use*.
   1. *Permitted Use(s)*

*.*

* + 1. Tenant may use, or permit the use of, the Commercial Usage Area for any first class, high quality lawful commercial purpose with a preference toward retail or restaurant (selling food and beverages for on and/or off Premises consumption) purposes (the "Permitted Use") commensurate with the applicable standards for the same under the O & M Guidelines set forth on **Exhibit L-1** attached hereto and made a part hereof (the “Commercial Standard”). In no event shall Tenant permit the Commercial Usage Area, or any portion thereof, to be used by any Prohibited Person. Notwithstanding the foregoing, in any and all events, the use of the Commercial Usage Area by Tenant and any Subtenants shall at all times be a Permitted Use (i) in accordance with the Design Guidelines and the Commercial Standard, (ii) with the retail and restaurant uses equal or better in quality of product and operations to the Comparison Stores and (iii)restricted by the list of "Prohibited Uses and Users" attached hereto and made a part hereof as **Exhibit N,** except, as and to the extent Landlord may permit in its sole and absolute discretion.
    2. Tenant may use, or permit the use of, the Premises (other than the Commercial Usage Area) for Center Events in accordance with Section 6.9 below.
    3. Tenant may use, or permit the use of, the Tenant Controlled Signage within the Center as advertising space sold to third parties, subject to the provisions of Section 6.3 below.
    4. Subject to Section 6.8 below, Tenant may use the Premises to provide sponsorship opportunities.
  1. *Subordination*
     1. *.*
     2. This Lease is subject and subordinate to the following instruments: the Transit Agency Leases; the Rail Operator Agreements; [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]; [and (\_\_\_) **Exhibits Q** and **Q-1** attached hereto and made a part hereof]. Tenant shall execute, acknowledge and deliver any instrument requested by Landlord to evidence such subordination, but no such instrument shall be necessary to make such subordination effective.
     3. Landlord shall have the right (together with the Transit Agencies and Rail Operators) with respect to the Premises, to review and adjust passenger circulation flows and issues related thereto on an as needed basis throughout the Term. Landlord will designate escalator directions, from time to time during the Term, and will review potential placements of kiosk, or totems to insure that they do not conflict with or impede passenger flow and so as to enable Landlord (together with the Transit Agencies and Rail Operators) to adjust passenger flow as and when necessary during the Term.
  2. *Signage*

*.*

* + 1. Tenant shall be permitted, and shall be permitted to permit Subtenants, to utilize the Tenant Controlled Signage and Tenant shall repair and maintain Center Signage other than Transit Agency Controlled Signage, all in accordance with the provisions of, and subject to, **Exhibit L-1** and **Exhibit M** attached hereto and made a part hereof.
    2. In addition to any Tenant Controlled Signage, from and after the Commencement Date hereof, Tenant or any Subtenant so authorized by Tenant shall have the right to place additional sign(s) in or about the additional areas designated on **Exhibit B-7** attached hereto and made a part hereof and in any Sublet Premises, with Landlord's prior written consent, which consent shall not be unreasonably withheld provided, and on the condition, that such additional signage complies with the Design Guidelines set forth on **Exhibit M** attached hereto and made a part hereof. Any additional sign(s) installed by Tenant or any Subtenant authorized by Tenant in accordance with this Section 6.3.2 shall be installed, maintained and repaired in accordance with **Exhibit L-1** attached hereto and made a part hereof.
    3. Subject to Section 6.9 below, Tenant shall be responsible for the programming of content for and the sale of digital advertising on all digital signage included in the Tenant Controlled Signage and the Center Signage in accordance with the Digital Guidelines set forth in **Exhibit O** attached hereto and made a part hereof and the Digital Content Development Guidelines set forth in **Exhibit O-1** attached hereto and made a part hereof.
  1. *Storage Areas/Deliveries*

*.* During Phase I, Tenant and any Subtenants so authorized by Tenant shall have the right to use the Train Platform Level and the Lower Concourse for storage relating to Tenant’s or such Subtenants’ business activities at the Center in accordance with Article 20 below. Any property which is stored by Tenant or any of its Subtenants within or outside of the Premises is stored at Tenant's or any such Subtenant's sole risk and Landlord shall not be liable to Tenant or any Subtenant in any manner whatsoever for any loss, whether or not the result of Landlord's negligence or the negligence of any of its employees, servants, agents or workers. Notwithstanding the foregoing, in no event shall Tenant have the right to use the Transit Agency Areas reflected on **Exhibit B-3** attached hereto and made a part hereof, except for the provision of routine maintenance, repairs and replacements in accordance with this Lease, subleasing of any kiosks within the Transit Agency Areas in locations approved by the applicable Transit Agencies and as otherwise permitted or directed by Landlord, nor shall Tenant have the right to use the Areas of Responsibility or the Areas of Shared Responsibility except for the provision of routine maintenance, repairs and replacements in accordance with this Lease or as otherwise permitted under Article 20 below. Deliveries may be made to the Premises only through the loading facilities and Center entrances reasonably designated by Landlord from time to time for such purposes, and may be brought through the Center only through the service corridors designated by Landlord for such purposes. Tenant may use such reasonably designated loading facilities and Center entrances and corridors on a non- exclusive basis with Landlord, the Transit Agencies and any Subtenants. Without limiting the generality of Section 3.4 hereof or the foregoing provisions of this Section 6.3, Landlord reserves the right, in its sole discretion, to change and/or relocate the loading facilities and/or any Center entrances and corridor(s); provided Landlord provides reasonable alternate accommodations for Tenant and any Subtenants, to reasonably operate their applicable Permitted Use. All deliveries through any area of the Center shall be made only in accordance with **Exhibit L-1** attached hereto and made a part hereof.

* 1. *Trade Name*

*.* Tenant covenants to conduct business in the Premises only under the trade name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Any change in Tenant’s trade name shall be subject to Landlord’s prior approval in writing, which approval may be withheld by Landlord in its sole discretion. The foregoing covenant is a material inducement to Landlord to enter into this Lease, and a breach of such covenant shall be deemed a material Default hereunder.

* 1. *Operating Hours*

*.* Tenant agrees that the Commercial Usage Area shall be open to the public during the applicable Operating Hours designated in the O & M Guidelines set forth in **Exhibit L-1** attached hereto and made a part hereof. Tenant further agrees that any illuminated or so-called "active" signage within the Premises, shall be illuminated twenty-four (24) hours per day, seven (7) days per week. Landlord reserves the right in its sole discretion to change the hours during which the entire Center, or portions thereof, is open to the public.

* 1. *Tenant's Manner of Operation: No Unauthorized Use of Public Areas*

*.* Tenant shall furnish and install, or cause to be furnished and installed, all trade fixtures which may be necessary or desirable for carrying on Tenant's or any Subtenant's business, shall maintain, or cause to be maintained, adequately trained personnel for efficient service to customers, and shall light, or cause to be lit, the display window and signs of the Premises during hours designated in the O & M Guidelines attached hereto as **Exhibit L-1** and made a part hereof and shall operate the Areas of Control and Tenant's business, and shall cause the Subtenants to operate the respective Sublet Premises and their businesses, in a first-class manner commensurate with the Retail Standard. Tenant shall otherwise operate and maintain the Premises, or cause the Subtenants to operate and maintain their respective Sublet Premises as applicable in accordance with **Exhibit L-1** attached hereto and made a part hereof and otherwise as required by this Article 6. Neither Tenant nor any Subtenant shall use the public areas of the Center and/or the sidewalks adjacent thereto other than the sidewalk areas on Minna Street included within the Commercial Usage Areafor any purpose other than ingress to or egress from the Premises, nor, without limiting the generality of the foregoing, shall Tenant or any Subtenant place or conduct any advertising, marketing, promotion, distribution of samples, or storage of goods, materials or trash in, on, or about such areas, except as permitted by **Exhibits M** and **P** attached hereto and made a part hereof.

* 1. *Sponsorships*

Tenant shall have the right to seek sponsorships with respect to the Center, including, without limitation, naming rights to the Center or to portions of the Center and to enter into agreements in furtherance of any such opportunities which have been approved by Landlord ("Sponsorship Agreements"). All such Sponsorship Agreements shall comply with any requirements relating to time devoted to sponsor content on the digital signage included as part of the Center Signage and any restrictions on the type of digital advertising permitted on the digital signage included as part of the Center Signage. Landlord reserves the right to seek additional sponsorships and to enter into Sponsorship Agreements in its own name, to the extent not in conflict with any sponsorships generated by Tenant and previously approved by Landlord.

* 1. *Center Events*

*.* Tenant shall have the right to arrange for the use of the Center for Center Events, subject to Landlord’s prior approval of each such Center Event, which approval shall not be unreasonably withheld so long as such Center Event is in keeping with the character of the Center and the surrounding community, in Landlord’s reasonable judgment, and such Center Event does not interfere with the use of the Transit Agency Areas by the Transit Agencies or the use of the Lower Concourse and Train Platform Level by the Rail Operators. Without limiting the other provisions of this Lease, including without limitation Section 8.1 below, Tenant shall cooperate with any policies, protocols and procedures established by Landlord or Landlord’s Security Contractor in connection with any such Center Event, including without limitation the obligation to consult with the Greater Rincon Hill CBD concerning Center Events planned to take place on the Park.

1. *Compliance*.
   1. *Generally*

*.* Tenant shall not violate any express written order or notice of violation issued by any Government; cause an imminent risk to health or safety; take any action (or permit any inaction) which will, or may, result in any lien, charge, or other liability affecting Landlord or the Center or any portion thereof; or create a material risk of forfeiture or loss of the Center or any portion thereof. Subject to Section 8.2 hereof, Tenant shall during the Term, in all material respects: (a) comply with all Laws, and (b) procure and comply with all Approvals required by Law.

* 1. *Landlord as Government Agency*.
     1. Wherever in this Section 7.2 or in any other provision of this Lease, Tenant is directed and agrees to comply or cause to be complied, with any Laws or to obtain any Approvals as required by any Laws, or reference is made to any Government authorities "having jurisdiction", or language of like import is used, it is the intention of Landlord and Tenant that Tenant shall comply with such Laws and obtain such Approvals as if such Government authorities actually had jurisdiction with respect to the Premises, notwithstanding Landlord's status as a joint powers authority of the State. However, notwithstanding the foregoing or any other provision of this Lease (i) no provision of this Lease shall be deemed to constitute a waiver by Landlord of its immunity or exemption from any Laws, whether for the benefit of Tenant, Government authority or any other Person, and (ii) Landlord reserves the right to assert its immunity or exemption from any such Laws relating to the Premises, and to direct Tenant or any Subtenant(s) to refrain from complying with any such Laws, as Landlord, in its discretion, shall see fit from time to time, provided, that Landlord shall indemnify, hold harmless and defend Tenant or any Subtenant against any loss, cost or liability that Tenant or any Subtenant(s), might incur by reason of any such direction by Landlord.
     2. To the extent that Tenant or any Subtenant shall be required to comply with Laws that would not be applicable to the Premises but for the status of Landlord as a Governmental entity, it shall be Landlord's responsibility to apprise Tenant of the existence of such Laws, to provide Tenant with copies of such Laws for Tenant's reference, and to instruct Tenant as to how Landlord wishes Tenant to proceed with respect to any inconsistencies between such Laws and any Laws that would otherwise govern the Premises.
     3. If any Approvals, including, without limitation, any licenses required for Tenant's, or any Subtenant's, employees, shall be required for the proper and lawful conduct of Tenant's or any Subtenant's business in the Premises or any part thereof, Tenant, or any Subtenant, as applicable, at their respective expense, shall duly procure and thereafter maintain such Approvals and submit the same to Landlord for inspection. Tenant shall at all times comply, or cause to be complied, with the terms and conditions of each such Approval. To the extent required by law, Tenant and any Subtenant shall cause its employees and the employees of any Subtenant (including independent contractors hired by Tenant or any Subtenant) to maintain proper Approvals for all services performed by such employees at the Premises. Notwithstanding any other provision of this Lease, no exemptions from local laws, resolutions, ordinances, rules and regulations that are applicable to Landlord under Law shall be applicable to or inure to the benefit of Tenant, any Subtenant and/or Tenant's, or any Subtenant's, use of the Premises, except for those exemptions, if any, that are either (x) consented to in writing by Landlord, in its sole and absolute discretion, and, with such consent, are legally applicable to Tenant, any Subtenant and/or Tenant's, or any Subtenant's use of the Premises, or (y) not consented to by Landlord, but are nonetheless legally applicable to Tenant, Subtenant and/or Tenant's, or any Subtenant's, use of the Premises.
  2. *Copies of Notices*

*.* Landlord shall promptly give Tenant a copy of any notice of any kind regarding the Premises and any notice of nonrenewal or threatened nonrenewal of any Approval that Landlord receives from any Government, utility company, insurance carrier, or insurance rating bureau.

* 1. *Energy Disclosure Requirements*

*.* Tenant acknowledges that, pursuant to California Public Resources Code Section 25402.10 and the regulations adopted pursuant thereto (collectively, together with any future law or regulation regarding disclosure of energy efficiency data with respect to the Center, "Energy Disclosure Requirements"), Landlord may be required in the future to disclose information concerning energy usage at the Center to certain third parties, including, without limitation, prospective purchasers, lenders and tenants of the Building ("Tenant Energy Use Disclosure"). Tenant shall reasonably cooperate with Landlord, at no material cost or expense to Tenant, with respect to any Tenant Energy Use Disclosure so long as the same does not include any confidential or proprietary data. Without limiting the generality of the foregoing, Tenant shall, within ten (10) Business Days following request from Landlord, disclose to Landlord or provide Landlord with access to all information reasonably requested by Landlord in connection with such Tenant Energy Use Disclosure, including, but not limited to, the amount of power or other utilities consumed within the Premises, the number of employees working within the Premises, the operating hours for the Premises, and the type and number of equipment operated by Tenant in the Premises. Tenant acknowledges that this information shall be provided on a non-confidential basis and may be provided by Landlord to the applicable utility providers, the California Energy Commission (and other governmental entities having jurisdiction with respect to the Energy Disclosure Requirements), and any third parties to whom Landlord is obligated by applicable Laws to make any Tenant Energy Use Disclosure. Tenant hereby (A) consents to all such Tenant Energy Use Disclosures, and (B) acknowledges that Landlord shall not be required to notify Tenant of any Tenant Energy Use Disclosure. Tenant agrees that neither Landlord nor any Indemnitees shall be liable for, and Tenant hereby releases the Landlord and the Indemnitees from, any and all loss, cost, damage, expense and liability relating to, arising out of and/or resulting from any Tenant Energy Use Disclosure. The terms of this Section shall survive the expiration or earlier termination of this Lease.

* 1. *Coordination with Greater Rincon Hill CBD*

*.* In performing its obligations under Article 8 below for Construction, maintenance, repairs and services in and to the Park and in establishing the annual budget for maintenance and operation of the Park, Tenant shall coordinate with the Greater Rincon Hill CBD Board of Directors and the committee established by the Greater Rincon Hill CBD to provide guidance with respect to the operation of the Park.

1. *Security, Maintenance, Repairs and Services*.
   1. *Security*

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* + 1. *Center Security*
    2. *.* Landlord shall contract directly with a third party security provider (the "Security Contractor") selected by Landlord, in its sole discretion, to provide security service in the Center. The Security Contractor shall provide security, at locations and levels determined appropriate by Landlord in its sole discretion, as is incidental to the operation of the Center as a transit facility, and otherwise in accordance with the protocols included in the Concept of Operations for the Center set forth on **Exhibit L** attached hereto and made a part hereof. Tenant acknowledges that in order to maintain safety and security to the Center, Landlord retains the right to install safety and security systems and devices, and promulgate and enforce such procedures and regulations as to its tenants, their employees, contractors and agents, as may be deemed necessary or desirable by Landlord in its sole discretion; which may include the establishment of Center security procedures such as background checks and appropriate Government security clearance and the distribution to certain of Tenant's employees of photo identification cards and requiring the presentation of such photo identification cards in order to gain access to certain portions of the Center. Tenant shall comply, and cause to be complied, with any and all such safety and security protocols, procedures and requirements adopted by Landlord. Notwithstanding anything contained herein to the contrary, Tenant shall have no obligation to maintain, or repair, any non-Tenant and non-Subtenant installed security cameras and/or systems in the Center. Notwithstanding anything contained in **Exhibit L** to the contrary, Tenant shall cooperate with Landlord, its Security Contractor, any Transit Agency, SFPD and/or the SFMTA Police Department with respect to, and Tenant shall have no right to dispute, contest or challenge, any security protocols, procedures or requirements now or hereafter adopted by Landlord, its Security Contractor, any Transit Agency, SFPD and/or the SFMTA Police Department.
    3. *Security Program*
    4. *.* Tenant and any Subtenants shall have the right to employ their own security protocols for the Areas of Control and their Subleased Premises, respectively, subject to the provisions of this Section 8.1. Tenant acknowledges that SFPD, each of the Transit Agencies and Rail Operators, and Landlord, respectively, shall have the right to provide security and have access to the Premises as SFPD, such Transit Agencies and Rail Operators, and Landlord, respectively, may determine in their sole and absolute discretion at any time and for any reason. Tenant shall, and shall require any and all Subtenants to, cooperate with all security protocols, procedures and requirements of Landlord (including, without limitation, Landlord’s chief security officer and deputy chief security officer), the SFMTA Police Department, SFPD and the Transit Agencies and Rail Operators. Without limiting the foregoing, Tenant shall maintain sufficient staffing to efficiently coordinate with Landlord, its Security Contractor, each Transit Agency and Rail Operator, SFPD and/or the SFMTA Police Department with respect to security protocols, procedures or requirements for the Center. Tenant shall, and shall require any and all Subtenants to, alert appropriate law enforcement authorities including, without limitation, Landlord, Landlord’s Security Contractor, the SFMTA Police Department and SFPD, of any and all suspicious activities, or individuals in, or around the Premises.
  1. *Maintain, Repair and Service*

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* + 1. *General Obligations*
    2. *.* Except to the extent that this Lease otherwise expressly provides or allows, Tenant shall during the Term keep, repair and maintain, or cause to be kept, repaired and maintained, as part of Operating Expenses and/or Capital Expenses, as applicable, the Premises and all Center Signage other than Transit Agency Controlled Signage in good clean order and condition, in accordance with all applicable Laws, the O & M Guidelines set forth on **Exhibit L-1** attached hereto and made a part hereof, and otherwise in accordance with the Retail Standard and the Digital Guidelines, subject to Loss (governed by other provisions of this Lease), reasonable wear and tear, and any other conditions that this Lease does not require Tenant to repair or maintain. Except to the extent that the Lease otherwise expressly provides or allows, Tenant's obligation to repair and maintain the Premises includes, without limitation, an obligation to make, or cause to be made, all repairs that the Premises (including plumbing, heating, air conditioning, ventilating, electrical, lighting, fixtures, walls, Structure, building systems, ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, site improvements, curb cuts, parking lots, fences and signs located in, on or at the Premises, together with any sidewalks and streets adjacent to the Premises and the street islands located between the blocks of the Center) may require by Law or the O & M Guidelines from time to time during the Term, whether structural or nonstructural, foreseen or unforeseen. All such repair and maintenance obligation shall be fulfilled by Tenant specifically within the time frames provided for in the O & M Guidelines. Tenant shall remove, or cause to be removed, trash and debris from the Premises, the bus ramps and all of the adjoining sidewalks and the street islands located between the blocks of the Center, and maintain them, or cause them to be maintained, in a clean and passable condition, all in accordance with the O & M Guidelines and otherwise required by applicable Law.
    3. *Capital Replacement and/or Repair*

*.* With respect to replacement(s) and/or repair(s) of all, or any portion(s), of the Premises or Improvements of a capital nature, as defined in accordance with generally accepted accounting principles, Tenant shall be responsible for such capital replacement and/or repair which shall be made in accordance with the terms and conditions of this Lease including, without limitation, Section 8.1 above, as part of Capital Expenses, subject to Section 8.8 below. Notwithstanding anything to the contrary contained elsewhere herein, no capital replacement and/or repair shall be undertaken without the prior approval of Landlord, in advance and in each instance and in no event shall any capital replacement or repair, or any portion thereof, be performed by any Affiliate of Tenant.

* + 1. *Direct Payment of Operating Expenses and Capital Expenses by Tenant*

*.* Tenant shall arrange and pay for all repairs, maintenance, replacements and services to the Premises during the Term, as part of Operating Expenses or Capital Expenses, as applicable. Without limiting the foregoing, Tenant shall arrange and pay, as part of Operating Expenses, for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, and any and all other utility or other charges, and the expenses of installation, maintenance, use, and service in connection with the foregoing, for the Premises during the Term.

* 1. *Reimbursements and Cost Sharing of Operating Expenses and Capital Expenses*

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* + 1. *Reimbursements for Areas of Responsibility Operating Expenses and Areas of Responsibility Capital Expenses*

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* + - 1. Landlord shall reimburse Tenant for all Areas of Responsibility Operating Expenses incurred by Tenant during each Fiscal Year in accordance with the applicable Operating Budget for such Fiscal Year as provided in this paragraph. On or before the fifteenth (15th) calendar day of each calendar month, Tenant shall submit to Landlord an itemized invoice (each a “Reimbursement Application”) describing all Areas of Responsibility Operating Expenses incurred by Tenant during the immediately preceding calendar month in accordance with the applicable Budget. Each Reimbursement Application shall be in the form required by Landlord and, to the extent such Reimbursement Application includes amounts payable to third party contractors, shall include a certification by Tenant in the form attached hereto as **Exhibit** **D-8**. Provided that a Reimbursement Application is received by Landlord not later than the fifteenth (15th) calendar day of the applicable calendar month, Landlord shall reimburse Tenant for any undisputed Areas of Responsibility Operating Expenses set forth in such Reimbursement Application no later than the last day of the immediately following calendar month. If a Reimbursement Application is received by Landlord after the date fixed above, reimbursement shall be made by Landlord not later than forty-five (45) days after Landlord receives the Reimbursement Application. In the event that actual Areas of Responsibility Operating Expenses for any particular Fiscal Year exceed the estimated Areas of Responsibility Operating Expenses set forth in the applicable Operating Budget, plus any increases permitted pursuant to Section 8.4.1 for such Fiscal Year (the "Areas of Responsibility Operating Expense Overage"), Landlord shall reimburse Tenant for a portion of such Areas of Responsibility Operating Expense Overage equal to the product of such Areas of Responsibility Operating Expense Overage multiplied by the applicable Landlord’s Areas of Responsibility Sharing Percentage set forth in **Exhibit D-5** attached hereto and made a part hereof.
      2. Landlord shall reimburse Tenant for all Areas of Responsibility Capital Expenses incurred by Tenant during each Fiscal Year in accordance with the applicable Capital Budget comprising a part of the Budget for such Fiscal Year as provided in this paragraph. On or before the fifteenth (15th) calendar day of each calendar month, Tenant shall submit to Landlord a Reimbursement Application describing all Areas of Responsibility Capital Expenses incurred by Tenant during the immediately preceding calendar month in accordance with the applicable Budget and otherwise meeting the requirements for Reimbursement Applications generally set forth in Section 8.3.1(a) above. Provided that a Reimbursement Application is received by Landlord not later than the fifteenth (15th) calendar day of the applicable calendar month, Landlord shall reimburse Tenant for any undisputed Areas of Responsibility Capital Expenses set forth in such Reimbursement Application no later than the last day of the immediately following calendar month. If a Reimbursement Application is received by Landlord after the date fixed above, reimbursement shall be made by Landlord not later than forty-five (45) days after Landlord received the Reimbursement Application. [In the event Tenant incurs Areas of Responsibility Capital Expenses which are not approved or deemed approved pursuant to Section 8.4.1, Tenant shall be responsible for such unpermitted expenses.]
    1. *Cost Sharing of Operating Expenses and Capital Expenses Allocable to the Areas of Shared Responsibility*

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* + - 1. Landlord shall reimburse Tenant for Landlord’s Areas of Shared Responsibility Operating Sharing Percentage of all Areas of Shared Responsibility Operating Expenses incurred by Tenant during each Fiscal Year [in accordance with the applicable Operating Budget for such Fiscal Year] as provided in this paragraph. On or before the fifteenth (15th) calendar day of each calendar month, Tenant shall submit to Landlord a Reimbursement Application describing all Areas of Shared Responsibility Operating Expenses incurred by Tenant during the immediately preceding calendar month in accordance with the applicable Budget, plus any increases permitted pursuant to Section 8.4.1, and otherwise meeting the requirements for Reimbursement Applications generally set forth in Section 8.3.1(a) above. Provided that a Reimbursement Application is received by Landlord not later than the fifteenth (15th) calendar day of the applicable calendar month, Landlord shall reimburse Tenant for Landlord’s Areas of Shared Responsibility Operating Sharing Percentage of any undisputed Areas of Shared Responsibility Operating Expenses set forth in such Reimbursement Application no later than the last day of the immediately following calendar month. If a Reimbursement Application is received by Landlord after the date fixed above, reimbursement shall be made by Landlord not later than forty-five (45) days after Landlord received the Reimbursement Application. [In the event Tenant incurs Areas of Shared Responsibility Operating Expenses which are not approved or deemed approved pursuant to Section 8.4.1, Tenant shall be responsible for such unpermitted expenses.]
      2. Landlord shall reimburse Tenant for Landlord’s Areas of Shared Responsibility Capital Sharing Percentage of all Areas of Shared Responsibility Capital Expenses incurred by Tenant during each Fiscal Year [in accordance with the applicable Capital Budget comprising a part of the Budget for such Fiscal Year] as provided in this paragraph. On or before the fifteenth (15th) calendar day of each calendar month, Tenant shall submit to Landlord a Reimbursement Application describing all Areas of Shared Responsibility Capital Expenses incurred by Tenant during the immediately preceding calendar month in accordance with the applicable Budget, plus any increases permitted pursuant to Section 8.4.1, and otherwise meeting the requirements for Reimbursement Applications generally set forth in Section 8.3.1(a) above. Provided that a Reimbursement Application is received by Landlord not later than the fifteenth (15th) calendar day of the applicable calendar month, Landlord shall reimburse Tenant for Landlord’s Areas of Shared Responsibility Capital Sharing Percentage of any undisputed Areas of Shared Responsibility Capital Expenses set forth in such Reimbursement Application no later than the last day of the immediately following calendar month. If a Reimbursement Application is received by Landlord after the date fixed above, reimbursement shall be made by Landlord not later than forty-five (45) days after Landlord received the Reimbursement Application.[In the event Tenant incurs Areas of Shared Responsibility Capital Expenses which are not approved or deemed approved pursuant to Section 8.4.1, Tenant shall be responsible for such unpermitted expenses.]
  1. *Annual Operating and Capital Budgets and Reconciliations*

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* + 1. The initial annual Operating Budget and initial Capital Budget (collectively, the “Initial Budget”) attached hereto as **Exhibit F** for the operation, maintenance and repair of the Premises for the balance of the Fiscal Year ending June 30, 20\_\_\_, is hereby approved by Landlord and Tenant. Following the expiration of the Initial Budget, an Operating Budget for the ensuing Fiscal Year and an updated Capital Budget for the ensuing ten (10) Fiscal Year Period shall be prepared on an annual basis by Tenant in similar form to **Exhibit F** and submitted annually by the Tenant to Landlord for review and approval no later than September 1st of the calendar year immediately preceding the commencement of the applicable Fiscal Year, starting with September 1, 20\_\_. Without limiting the foregoing, each Operating Budget and Capital Budget shall include separate breakdowns of estimated Areas of Responsibility Operating Expenses, Areas of Responsibility Capital Expenses, Areas of Shared Responsibility Operating Expenses and Areas of Shared Responsibility Capital Expenses. In preparing each Operating Budget and updated Capital Budget, Tenant shall consult with the Greater Rincon Hill CBD to the extent required in connection with the portion of the Budgets relating to the Park. In additional to Landlord’s approval, each Budget shall be subject to the approval of AC Transit and any other Transit Agency and Rail Operator whose approval is required pursuant to the terms of their respective Transit Agency Lease or Rail Operator Agreement (as hereinafter defined), as applicable. The Initial Budget and any subsequent Budget approved pursuant to the terms hereof, may be amended or modified, with the prior approval of Landlord, and AC Transit and any other Transit Agency and Rail Operator whose approval is required pursuant to the terms of their respective Transit Agency Lease or Rail Operator Agreement. Landlord shall be responsible for seeking the approval of AC Transit and any other Transit Agencies and Rail Operators whose approval is required pursuant to the terms of their respective Transit Agency Lease or Rail Operator Agreement with respect to any Budget and any subsequent amendments and modifications thereto. Without limiting the foregoing, Landlord shall promptly, following receipt thereof, submit each Capital Budget to AC Transit and any other Transit Agencies and Rail Operators whose approval is required pursuant to the terms of their respective Transit Agency Lease or Rail Operator Agreement for review and approval. All communications with AC Transit and any other Transit Agencies and Rail Operators whose approval is required pursuant to the terms of their respective Transit Agency Lease or Rail Operator Agreement with respect to an annual Budget or any subsequent amendments to any approved Budget shall be made by Landlord. Tenant shall, at Landlord’s request, cooperate with Landlord in connection with Landlord’s efforts to obtain the approval of AC Transit and such other Transit Agencies and Rail Operators, including without limitation attending meetings with such parties and preparing such back-up materials and quarterly estimates of Expenses as Landlord may reasonably request. Tenant shall utilize commercially reasonable good faith efforts to operate the Premises within the parameters of the Initial Budget and subsequent approved Budgets. Without limiting the foregoing, Tenant shall not make expenditures for the operation and maintenance or improvement of the Premises in any Fiscal Year that would result in a cumulative increase of ten percent (10%) or more under the corresponding line item in the applicable Budget or an aggregate increase of ten percent (10%) or more in the overall Operating Budget or Capital Budget, as applicable, for such Fiscal Year without obtaining Landlord’s prior written consent. Notwithstanding the foregoing, Tenant’s failure to operate the Premises within the Initial Budget or any subsequent Budget parameters shall not be deemed a default by Tenant hereunder, except if such failure was the result of Tenant’s failure to act in good faith or Tenant’s failure to obtain Landlord’s consent to any expenditures or overages as required hereunder.
    2. No later than [ninety (90)] calendar days following the end of each applicable Fiscal Year during the Term, Tenant shall deliver to Landlord a reasonably detailed written statement (each an “Annual Reconciliation”) setting forth (i) Tenant’s final determination of the actual Operating Expenses and Capital Expenses incurred with respect to the operation, maintenance and repair of the Premises for the immediately preceding Fiscal Year, which shall include separate breakdowns of all Areas of Responsibility Operating Expenses, Areas of Responsibility Capital Expenses, Areas of Shared Responsibility Operating Expenses and Areas of Shared Responsibility Capital Expenses actually incurred for the immediately preceding Fiscal Year. In the event that an Annual Reconciliation reveals any underpayment by Landlord of any reimbursements owed by Landlord to Tenant pursuant to Section 8.3 above, Landlord shall, within thirty (30) days of receipt of such Annual Reconciliation, pay such amount to Tenant. In the event that an Annual Reconciliation reveals any overpayment by Landlord of any reimbursements owed by Landlord to Tenant pursuant to Section 8.3 above, Tenant shall, within thirty (30) days of receipt of such Annual Reconciliation, refund such amount to Landlord.
    3. Tenant shall prepare, keep and maintain at the Premises or at Tenant's principal office within the City and County of San Francisco, for a period of not less than seven (7) years following the end of each Fiscal Year (including following the Expiration Date, as to which Tenant's obligations hereunder shall survive the Expiration Date (or any earlier termination of this Lease pursuant to any provision hereof or by law)), originals of complete and accurate books of account and records in accordance with generally accepted accounting principles (collectively, the "Books and Records"), in form and substance reasonably satisfactory to Landlord, of all Operating Expenses and Capital Expenses with respect to the Premises. For purposes hereof, the definition of Books and Records shall also include complete and accurate Subrent Records maintained in accordance with Section 4.4.4 above. The Books and Records, whether manually or electronically maintained and operated, shall have controls in place that are satisfactory to Landlord, in its reasonable judgment, to prevent the alteration or manipulation of the recorded Operating Expenses and Capital Expenses. Supplementing the foregoing, the Books and Records for any particular period occurring during the Term (each, an "Audit Period") shall include all information recorded by Tenant that Landlord, in its sole discretion, deems pertinent to the determination of Operating Expenses and/or Capital Expenses for such Audit Period. Tenant's obligations under this Section 8.4.3 shall survive the Expiration Date.
    4. Landlord (and its representatives) shall have the right, from time to time, to examine and/or cause a complete audit (and to make copies) of any or all Annual Reconciliations and Tenant's Books and Records and Tenant's procedures for keeping the same. In connection with any such examination and/or audit, Landlord (or its representatives) shall have the right, from time to time, to request, in a written notice given to Tenant (each, a "Records Request"), that Tenant make, or cause to be made, available to Landlord (or its representatives), at a location in the City and County of San Francisco designated by Landlord, the Books and Records relating to any Audit Period. Tenant, within thirty (30) days after Tenant's receipt of any Records Request (each such 30 day period, a "Submission Period"), shall make, or cause to be made, available to Landlord (or its representatives) the Books and Records requested by Landlord in such Records Request, which Books and Records shall be sufficient to permit an accurate determination of Operating Expenses and Capital Expenses for the applicable Audit Period. If, with respect to any Records Request, either (x) Tenant fails to make, or cause to be made, available the Books and Records requested by such Records Request at the location designated by Landlord within the applicable Submission Period or (y) the Books and Records made available by Tenant in response to such Records Request are insufficient to permit an accurate determination of Operating Expenses and/or Capital Expenses for the applicable Audit Period, then each such failure or insufficiency (each, a "Records Default") shall constitute a Default hereunder. In addition to, and not in limitation of, Landlord's other rights and remedies in respect of a Default under this Lease, at law or at equity, Tenant, with respect to the initial and any subsequent Records Default, shall pay, as Additional Rent to Landlord within five (5) days following rendition of a bill therefor, an amount equal to twenty-five percent (25%) of the Fixed Rent due with respect to the applicable Audit Period (i.e., the Audit Period with respect to which the Records Default in question occurs). This Additional Rent shall be in addition to any Rent due to Landlord under this Lease, and shall be deemed to be liquidated damages (and not a penalty) for the failure of Tenant to maintain and/or make available the Books and Records necessary to permit an accurate determination of Operating Expenses, Capital Expenses and Participation Rent for the applicable Audit Period; it being agreed that Landlord's actual damages resulting from a failure by Tenant to maintain and/or make available such Books and Records would be impossible to ascertain and the parties hereto agree that the foregoing amount is a reasonable estimate thereof. For purposes of this Section 8.4.4, the phrase "make available" or other words of similar import shall be deemed to require that Tenant make, or cause to be made, the Books and Records requested by any Records Request available to Landlord (or its representatives) either at the Premises or at Tenant's principal office within the City and County of San Francisco.
  1. *Service Contracts*

*.* Landlord has previously entered into maintenance contracts for the vertical transportations systems within the Center to be installed as part of Phase I and for landscape maintenance of portions of the Park (collectively, "Existing Service Contracts"). On or prior to the Commencement Date, Landlord shall assign to Tenant, without warranty, and Tenant shall assume, such Existing Service Contracts.

* 1. *No Other Services*

*.* Except as otherwise expressly provided in this Article 8, Landlord shall not be required to furnish or make available any other services to the Premises. Tenant hereby waives and releases its right to make repairs at Landlord’s expense under Sections 1941 and 1942 of the California Civil Code; or under any similar law, statute, or ordinance now or hereafter in effect.

1. *Construction*.
   1. *Construction*

*.* During the Term, Tenant shall have the right to commence and complete, or cause to be commenced and completed, Construction in the Premises upon Landlord's prior written consent in each and any instance, which consent shall not be unreasonably withheld, conditioned or delayed (except to the extent same is within the Areas of Responsibility and/or the Areas of Shared Responsibility or constitutes Major Construction in which case Landlord shall have the right to approve or disapprove the same in its sole and absolute discretion). In connection with any Construction, Tenant shall comply with the following requirements:

* + - 1. From and after the commencement of any Construction through and including the completion of same, Tenant shall carry, or cause to be carried, the insurance required pursuant to Section 16.2 hereof.
      2. Tenant shall deliver, or cause to be delivered, to Landlord or the designated Landlord's Representative:
         1. in connection with any Major Construction, a copy of all Construction Documents with respect thereto;
         2. in connection with any and all Construction, a copy of any and all Approvals as required by Law and Landlord's Code Compliance Officer necessary to enable Tenant and/or any Subtenant, as applicable, to commence and complete its proposed Construction;
         3. in connection with any and all Construction, Plans and Specifications prepared in accordance with the Design Review Process set forth in **Exhibit M-1** attached hereto and made a part hereof;
         4. in connection with any and all Construction, an Architect's Certificate;
         5. security for any Construction, to the extent required pursuant to Section 9.4.1 hereof; and
         6. any other materials required under the Design Review Process set forth in **Exhibit M-1** attached hereto and made a part hereof.
      3. Tenant shall adhere to the Design Review Process set forth in **Exhibit M-1** attached hereto and made a part hereof and the Design Guidelines, set forth on **Exhibit M** attached hereto and made a part hereof, and all Landlord required Code Compliance in connection with any Construction. To the extent that Tenant, or any Subtenant, commences any Construction, Tenant shall complete, or cause to be completed, such Construction with reasonable diligence and within a reasonable period of time. Tenant shall pay, or cause to be paid, for all Construction when and as required by the parties that perform such Construction. All Improvements that Tenant, or any Subtenant, constructs in the Premises shall become part of the Center and shall be and remain the property of Landlord.
      4. Notwithstanding anything to the contrary contained elsewhere herein, in no event shall Tenant permit any Construction in the Premises to disturb in any manner whatsoever any Transit Agency or Rail Operator facilities and operations, Transit Agency or Rail Operator installed equipment, or Transit Agency Controlled Signage including, without limitation, any safety equipment such as cameras; and each Transit Agency and Rail Operators, as applicable, shall have unrestricted access to any such facilities and operations, Transit Agency Controlled Signage and Transit Agency or Rail Operator installed equipment, including, without limitation, cameras for the repair and maintenance of same (including, without limitation, within and/or adjacent to any vertical transportation equipment (elevators and escalators)), all in accordance with **Exhibit L-1** attached hereto and made a part hereof.
      5. Insofar as any Construction adjoins, or would otherwise affect in any way any Transit Agency or Rail Operator facilities and operations, Tenant shall be required to comply with the rules, regulations and procedures promulgated from time to time during the Term by the applicable Transit Agency or Rail Operator. If any Construction by Tenant affects any Transit Agency or Rail Operator facilities or operations, Tenant shall reimburse the applicable Transit Agency or Rail Operator, as applicable, for its standard charges in effect from time to time imposed by such Transit Agency or Rail Operator, as applicable, in connection with their inspection and supervision of any such Tenant Construction.
      6. Tenant shall pay to Landlord, as Additional Rent, within ten (10) days after receipt of an invoice therefor, for Landlord's costs and expenses in connection with Landlord's review and inspection of any Construction including, without limitation, costs and expenses in connection with Code Compliance review of Construction by Landlord or any agent, employee, or contractor retained by Landlord for such purposes. Landlord agrees that any and all such amounts relating solely to Code Compliance review will be reasonably comparable to what Tenant would have incurred had the Construction been in a privately owned property, as opposed to at the Center.
      7. Upon completion of any Construction, Tenant shall (i) cause a Notice of Completion to be recorded in the office of the Recorder of the City and County of San Francisco in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, (ii) deliver to Landlord or the designated Landlord's Representative a reproducible copy of the “as built” drawings of the Construction, and (iii) deliver to Landlord evidence of payment, contractors’ affidavits and full and final waivers of all liens for labor, services or materials.
  1. *Design Review; Code Compliance.*
     + 1. Plans and Specifications (including working plans and specifications and "as-built" plans and specifications and surveys, as and to the extent required) for any Construction, shall be prepared by the Architect and promptly submitted to Landlord or the designated Landlord's Representative in accordance with the Design Review Process set forth in **Exhibit M-1** attached hereto and made a part hereof.
       2. Tenant shall be responsible to complete any and all Construction in compliance with the applicable building and fire codes specified from time to time by Landlord's Code Compliance Officer. Landlord, in its capacity as a governmental authority in determining Code Compliance and not as a party to this Lease, will not act in an arbitrary, or capricious manner in connection therewith (such review process in Landlord's capacity as such a governmental authority being sometimes referred to herein as the "Compliance Review Process"). Tenant acknowledges that (x) the Compliance Review Process is separate from, and in addition to, the Design Review Process and (y) the Compliance Review Process and Design Review Process may be conducted by different individuals any one of whom may be deemed to be Landlord's Code Compliance Officer in processing any required approvals, permits and certificates of compliance and occupancy in conformity with Code Compliance. In reviewing Tenant's Plans and Specifications in connection with any Construction in its capacity as a governmental authority, pursuant to the Compliance Review Process, Landlord and Landlord's Code Compliance Officer shall not be bound by any of the restrictions on scope of review, standards of reasonableness, or any other limitations, or restrictions imposed by this Lease, if any; provided, however, Landlord shall endeavor to perform any Compliance Review Process simultaneously (given any constraints with the relative scope of such review) with the corresponding time frame to review the applicable submittal and/or approval request in its capacity as Landlord including, without limitation, the Design Review Process.
  2. *[Reserved]*

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* 1. *Security for Tenant's Work*.
     1. Before proceeding with any Construction, which will cost in the aggregate more than Two Hundred Fifty Thousand and 00/100 ($250,000.00) Dollars (each, a ("Required Bond Improvement", as estimated by a reputable contractor designated by Tenant and reasonably acceptable to Landlord, Tenant shall post, or cause to be posted, a bond or other form of undertaking "Undertaking" acceptable to Landlord and issued by a corporate surety licensed to do business in the State and reasonably satisfactory to Landlord, guaranteeing prompt payment of moneys due to all contractors, all subcontractors and all other persons furnishing labor or materials in the prosecution of such Required Bond Improvement. Prior to the commencement of any Required Bond Improvement, Tenant shall submit for review by the Landlord a copy of the relevant Undertaking evidencing Tenant's compliance with the requirements of this Article and such Required Bond Improvement shall not be commenced without the Landlord's prior written approval of such Undertaking.
     2. Upon (i) the completion of such Construction in accordance with the terms of this Article and (ii) the submission to Landlord of proof evidencing the payment in full for such Construction, the security deposited with Landlord (or the balance of the proceeds thereof, if Tenant has furnished cash or a letter or credit and if Landlord has drawn on the same) shall be returned to Tenant.
     3. In the event that Tenant shall fail to properly perform, complete and fully pay for such Construction, as determined by Landlord, Landlord shall be entitled to draw on the security deposited under this Article to the extent that Landlord deems necessary in connection with such Construction, the restoration and/or protection of any affected portion of the Premises and/or the Center, the payment or satisfaction of any costs, damages or expenses in connection with the foregoing and/or Tenant's obligations under this Article.
  2. *Labor Harmony*

*.* Tenant shall not, and Tenant shall cause any Subtenant to not, at any time prior to or during the Term, either directly or indirectly, use any contractors, laborers or materials the use of which would create any conflicts with other contractors and/or laborers employed by Landlord in the construction, maintenance or operation of the Center or would cause any jurisdictional or other labor disputes thereat.

1. *Subleasing*.
   1. *Sublease(s)*

*.* Subject to the Retail Standard or the Digital Guidelines, as applicable, Tenant may, subject to Landlord's consent, enter into, or Modify, any Sublease, or evict any Subtenant, and grant any consent under any Sublease and, provided that, Tenant complies with and meets the conditions set forth in Section 10.4 hereof, then Landlord shall consent to same. No Sublease shall affect any obligations of Tenant, or rights of Landlord, under this Lease, all of which shall continue in full force and effect notwithstanding any Sublease. Any Sublease shall expire no later than one day before the Scheduled Expiration Date. The fact that any Subtenant causes any Default shall not relieve Tenant of Tenant's obligation to cure it. Tenant shall take all steps reasonable and necessary to prevent any such Default.

* 1. *Recognition of Subtenants*

*.* Notwithstanding anything contained herein to the contrary, Landlord shall provide a subordination, non-disturbance and attornment agreement only to those Subtenants as Landlord, in its sole and absolute discretion, may determine, or require.

* 1. *Assignment of Subrents*

*.* To secure Tenant's performance hereunder, Tenant hereby assigns, transfers, and sets over to Landlord, subject to the conditions in this paragraph, Tenant's right, title, and interest in and to all Subleases and Subrent. Tenant grants to Landlord, and its agents and representatives, a right to enter, and sufficient possession of, the Premises to permit and assure Landlord's collection of Subrent. Landlord's exercise of such rights shall not constitute an eviction of Tenant. Unless and until this Lease has terminated, Tenant shall have a license to exercise its right, title, and interest in and to all Subleases and Subrent including, without limitation, any security deposits required thereunder. Landlord may revoke such license, at its option, if and only if this Lease has terminated. Upon any such revocation, Landlord may collect Subrent directly from Subtenants, and apply the net amount collected to the Rent and Tenant shall immediately assign to Landlord all security deposits then held by Tenant pursuant to any such Subleases. No such collection shall be, or be deemed to be, Landlord's waiver of any terms of this Lease, acceptance of any Subtenant as Tenant, or release of Tenant from any obligations under this Lease. Any sums Landlord collects in excess of the net amount Landlord applies against Rent shall (so long as this Lease has not been terminated) belong to Tenant and be promptly refunded to Tenant.

* 1. *Required Provisions*

*.* Each Sublease shall contain provisions in form and substance substantially as set forth below in this Section and Tenant shall notify Landlord at least thirty (30) days in advance of any such Sublease, which such notification shall include, without limitation, a fully executed original counterpart of any such Sublease, together with such information and documentation as shall be reasonably necessary for Landlord to confirm Tenant's compliance with the terms and conditions of this Article 10. By executing its Sublease, each Subtenant shall be deemed to have agreed to these provisions, which reflect the definitions in this Lease. All such defined terms may be modified in the Sublease as appropriate to reflect the definitions in the Sublease.

"All terms, covenants, and provisions of this Sublease and all rights, remedies, and options of Subtenant under this Sublease are and shall at all times remain fully subject and subordinate in all respects to the Lease. If the Lease terminates, then this Sublease shall terminate. In that event, Subtenant, only at the option and request of Landlord (except as Landlord has agreed otherwise in writing), shall attorn to Landlord and recognize Landlord as Subtenant's direct landlord under this Sublease. Subtenant shall execute and deliver, at any time and from time to time, upon the request of Tenant or Landlord, any instrument necessary or appropriate to evidence such attornment. Subtenant hereby appoints each of the foregoing as Subtenant's attorney-in-fact, irrevocably, with full power of substitution, to execute and deliver any such instrument. This appointment is coupled with an interest and is irrevocable. Subtenant waives any Law that may allow Subtenant to terminate this Sublease or surrender possession of the demised subpremises if the Lease terminates."

No Sublease shall be effective or have any validity unless and until such Sublease otherwise substantially complies with this Lease and Landlord has received: (a) Notice of the Subtenant and (b) an executed counterpart of the Sublease complying with this Lease. Notwithstanding the foregoing, and in order for Landlord to determine whether any Subtenant meets the Retail Standard, at least thirty (30) days prior to entering into any Sublease, Tenant shall provide to Landlord the following information: (1) the name and address of the proposed Subtenant; (2) a memorandum of the essential terms of the proposed Sublease and all other instruments or agreements pertaining thereto including, without limitation, a statement of all sums or other consideration paid or to be paid to Tenant by or for the account of the Subtenant for, or in connection with, such Sublease including, without limitation, sums paid or to be paid for the sale or rental of Tenant's fixtures, leasehold improvements, equipment, furniture, furnishings or other personal property; (3) such information as to the nature, character and history of the business of the proposed Subtenant and as to the nature of its proposed use of the space, as Landlord reasonably may request; and (4) such other information as Landlord may reasonably request. In the event Landlord objects to any Subtenant due to (i) such Subtenant's failure to meet the Retail Standard, or (ii) Tenant's failure to comply with this Article 10, and Tenant disputes same, then the parties shall submit to Arbitration in order to resolve such dispute, which Arbitration shall be binding on the parties and shall be Tenant's sole and absolute remedy. The Arbitration shall be governed by all applicable expedited or fast track procedures, and a decision shall be rendered by the arbitrator within thirty days after the arbitration is complete. The parties shall be entitled to seek, and the arbitrator shall have the authority to grant or deny, emergency interim relief, including injunctive and other equitable relief. The Arbitration shall be overseen by one arbitrator who shall be jointly agreed upon by the parties. Judgment may be entered on the arbitrator's award in a court having jurisdiction, and the parties irrevocably consent to the jurisdiction of any court competent of the subject matter and sitting in the City and County of San Francisco, California (including federal courts) for that purpose.

* 1. *Transit Agency Ticketing and Waiting Room Leases and Required Subleases*

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* + 1. Landlord shall negotiate and enter into one or more direct leases with Amtrak and Greyhound (collectively, the "Transit Agency Ticketing and Waiting Room Leases") for the use of the portion of the First and Second Floor Transit Lease Space located on the second floor as ticketing and waiting room spaces during Phase I and with Greyhound for use of the portion of the First and Second Floor Transit Lease Space located on the ground floor for package services provided by Greyhound. Such Transit Agency Ticketing and Waiting Room Leases shall be on such reasonable terms as are agreed upon by Landlord and Greyhound or Amtrak, as applicable. Without limiting the foregoing, Landlord shall negotiate a base tenant improvement package under each Transit Agency Ticketing and Waiting Room Lease (“Base Improvements”). The initial budgeted cost of construction of the Base Improvements under both Transit Agency Ticketing and Waiting Room Leases shall not exceed Five Hundred Thousand Dollars ($500,000.00) in the aggregate (the "Maximum Contribution"). Following mutual execution thereof, the Transit Agency Ticketing and Waiting Room Leases, and all of the rights and obligations of Landlord, as landlord, thereunder other than the obligation of Landlord to make the Maximum Contribution shall be assigned to Tenant. Without limiting the foregoing, Tenant shall assume the obligations of Landlord under the Transit Agency Ticketing and Waiting Room Leases to construct the Base Improvements provided thereunder, subject to reimbursement by Landlord for cost to construct the Base Improvements, not to exceed the Maximum Contribution. Following such assignment, Tenant shall have the right to negotiate with Amtrak and Greyhound for the making of tenant improvements to the First and Second Floor Transit Lease Space in addition to the Base Improvements and/or changes to the Base Improvements (collectively, “Additional Improvements or Modifications”); provided, however, Landlord shall not be responsible for the cost of any such Additional Improvements or Modifications nor shall Landlord be required to reimburse Tenant for any costs to construct the Base Improvements in excess of the Maximum Contribution. Any costs incurred by Tenant to construct such Additional Improvements or Modifications which exceed the Maximum Contribution shall be the sole responsibility of Tenant.
    2. At Landlord’s request, Tenant shall sublease a portion of the Lower Concourse Support Space back to Landlord, at no cost to Landlord and otherwise on terms and conditions required by Landlord, for use by Landlord or its Security Contractor for Center security and operations purposes.

1. *Role of Responsibilities and Protocols*

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* 1. *Responsibility for Relationship with Transit Agencies and Rail Operators*

*.* Landlord shall retain a primary relationship with all Transit Agencies and Rail Operators at the Center. Without limiting the foregoing, Landlord, not Tenant, shall be responsible for (i) preparing and providing to the Transit Agencies and Rail Operators all reports and projections required under the Transit Agency Leases and Rail Operator Agreements, (ii) collecting all contributions from the Transit Agencies and Rail Operators toward Operating Expenses and Capital Expenses of the Center in accordance with the terms of the Transit Agency Leases and Rail Operator Agreements, as applicable, (iii) maintaining all reserves required under the Transit Agency Lease with AC Transit and any other Transit Agency Lease or Rail Operator Agreement (collectively, “Transit and Rail Reserves”) and (iv) making all disbursements from such Transit and Rail Reserves in accordance with any applicable requirements under the Transit Agency Leases and Rail Operator Agreements. Tenant shall cooperate with Landlord, at Landlord’s request, in connection with Landlord’s efforts regarding the foregoing, including, without limitation, assisting Landlord with the preparation of any reports and projections to be provided to any of the Transit Agencies or Rail Operators, creating presentation materials, and explaining any individual Budget items or calculations.

* 1. *Communication Protocols*

*.* Tenant agrees that for purposes of communications with Landlord hereunder, as well as with any designees of Landlord and/or appropriate Government agencies or authorities, it will refer at all times and comply with the protocols set forth on the communications protocols as set forth on **Exhibits L** and **L-1** attached hereto and made a part hereof, as same may be amended from time to time upon Notice to Tenant (the "Communications Protocols"). The Communications Protocols shall set forth which specific agencies or individuals within those agencies shall be designated as contacts with respect to particular responsibilities including, without limitation, the granting of consents hereunder, guidance in connection with contract compliance and compliance with the other Exhibits of this Lease, general communication and communication and procedures in the event of emergencies affecting the Center. Tenant shall address all inquiries and communications to those entities or individuals set forth on the Communications Protocols set forth on **Exhibits L** and **L-1** attached hereto and made a part hereof.

1. *Security*.

[**IF LETTER OF CREDIT REQUIRED:**

* 1. *Delivery and Use of Security*

*.* On the Commencement Date, Tenant has deposited with Landlord the Security in the form of a Letter of Credit (as hereinafter defined), receipt of which Landlord acknowledges, to secure Tenant's performance and observance of Tenant's obligations under this Lease. Landlord may deduct from the Security, by notifying the Issuing Bank (as hereinafter defined) and thereupon receive all of the monies represented by the said Letter of Credit and use, apply, or retain the whole or any part of such proceeds, or both, as the case may be, to the extent required for the payment of any amount equal to: (a) any Rent that Tenant fails to pay; (b) all reasonable sums that Landlord expends as the result of an Event of Default; and (c) an amount equal to Landlord's reasonable costs of recovering possession, reletting the Premises, and any and all other damages legally recoverable by Landlord, together with reasonable out-of-pocket costs and expenses incurred by Landlord, upon the occurrence of an Event of Default. In the event that Landlord applies or retains any portion or all of such Letter of Credit, the amount not so used, applied or retained shall continue to be treated as Tenant's Security, and Tenant shall restore the amount so applied or retained by delivering to Landlord a substitute Letter of Credit within three (3) days after Landlord's demand therefor, so that, at all times, the amount held by Landlord shall be the full amount of the Security. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, that portion, if any, of the Letter of Credit not used, applied or retained shall be returned to Tenant no later than one hundred twenty (120) days after the later of (x) Expiration Date (or such earlier date upon which the Lease may terminate) and (y) delivery of possession of the Demised Premises to Landlord, in accordance with, and subject to, the applicable provisions of this Lease.

* 1. *Criteria for Letter of Credit*.
     1. *Terms; Replacement and Extension*

. (i) The Letter of Credit (the "Letter of Credit") to be delivered as the Security under this Article shall be a clean, irrevocable and unconditional letter of credit issued by and drawn upon a commercial bank (hereinafter referred to as the "Issuing Bank") with offices for banking purposes in the City and County of San Francisco having assets of not less than One Billion Dollars ($1,000,000,000.00), which Letter of Credit shall have a term of not less than one year, be automatically renewable, be in a form approved by Landlord, be for the account of Landlord and be in the amount of the Security. The Letter of Credit shall provide that:

* + - 1. The Issuing Bank shall pay to Landlord an amount up to the face amount of the Letter of Credit upon presentation of: (1) the Letter of Credit and a sight draft in the amount to be drawn and (2) a written statement certifying that the Landlord, by the terms of this Lease, is entitled to draw on said Letter of Credit;
      2. The Letter of Credit shall be deemed to be automatically renewed, without amendment, for consecutive periods of one (1) year each during the Term, unless the Issuing Bank sends written notice (hereinafter called the "Non-Renewal Notice") to Landlord by certified or registered mail, return receipt requested, not less than ninety (90) days prior to the then expiration date of the Letter of Credit with an ultimate expiration no earlier than one hundred twenty (120) days after the Expiration Date of the Lease, that it elects not to have such Letter of Credit renewed; and
      3. The Letter of Credit shall be transferable by the beneficiary thereof, without charge, and any failure of Tenant, or any of its successors or assigns as permitted under this Lease, to pay the transfer charges shall not affect the beneficiary's ability to transfer the Letter of Credit; the Letter of Credit may be transferred as aforesaid from time to time, by the then beneficiary under the Letter of Credit; to effectuate a transfer under the Letter of Credit, the beneficiary must notify the Issuing Bank in writing signed by an authorized signatory of beneficiary, of the name and address of the transferee and of the effective date of the transfer; and upon the Issuing Bank's receipt of such writing, the Issuing Bank will issue an amendment to the Letter of Credit that changes the name and address of the beneficiary hereof and shall deliver the original of such amendment to the new beneficiary/transferee and a copy thereof to the prior beneficiary/transferor.
      4. In the event that the Issuing Bank sends a Non-Renewal Notice, Tenant shall have three (3) business days from the date of issuance thereof to provide Landlord with a substitute Letter of Credit which meets the requirements of this Article. In the event that Tenant fails within such period to provide Landlord with a substitute Letter of Credit, Landlord shall have the right, exercisable in accordance with this Article and without any notice to Tenant or the Guarantor, to draw down on the Letter of Credit, which moneys shall be held by Landlord as a cash deposit subject to Landlord's right to use such cash funds, at Landlord's sole option, for purposes of having issued, on Tenant's behalf, a substitute Letter of Credit.
  1. *Landlord's Right to Transfer*

. In the event of a sale or transfer of the Center or the then Landlord's interest therein or a leasing by the then Landlord of any of same, Landlord shall have the right, at no cost or expense to Landlord, to transfer or assign such Letter of Credit to the vendee, transferee or lessee, and Landlord shall notify Tenant, by certified mail, return receipt requested, of such sale, transfer or lease, together with the name and address of such vendee, transferee or lessee, and Landlord shall thereupon be released by Tenant from all liability for the return of such Letter of Credit. In such event, and subject to the satisfaction of the foregoing requirements, Tenant agrees to look solely to the new landlord for the return of said Letter of Credit. In connection with the foregoing, Tenant shall reasonably cooperate with Landlord and such vendee, transferee or lessee in connection with the transfer or assignment of such Security including, without limitation, executing and delivering, within five (5) days after demand therefor, any and all instruments, certificates, agreements or other documents that Landlord, such vendee, transferee or lessee the Issuing Bank may reasonably require.

* 1. *No Assignment by Tenant*

*.* Tenant covenants that it will not assign or encumber, or attempt to assign or encumber, the Security, and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment, or attempted encumbrance, except in connection with an assignment of this Lease in compliance with the applicable terms and conditions hereof.

* 1. *Bankruptcy of Issuing Bank*

. In the event that at any time during the Term, the Issuing Bank files for protection under any chapter of the United States Bankruptcy Code or the bankruptcy code of the state or county of its formation or is seized by the appropriate regulatory authorities of the State of California, the United States or the state or nation of its formation and as a result thereof is incapable of or unable to, or prohibited from honoring the then existing Letter of Credit (hereinafter referred to as the "Existing L/C") then, upon the happening of the foregoing, Landlord may send written notice to Tenant requiring Tenant within thirty (30) days to replace the Existing L/C with a new letter of credit (hereinafter referred to as the "Replacement L/C") from an Issuing Bank meeting the qualifications described in this Article. Upon receipt of a Replacement L/C meeting the qualifications of this Article, Landlord shall simultaneously return the Existing L/C to Tenant. In the event that a Replacement L/C meeting the qualifications of this Article is not received by Landlord within the time specified, the Existing L/C may be presented for payment by Landlord and the proceeds thereof shall be held by Landlord in accordance with this Article.

* 1. *Minimum Rating Requirement for Issuing Bank*

. In the event that the Issuing Bank's credit rating is reduced below P-2 (or equivalent) by Moody's Investors Service, Inc. or below A-2 (or equivalent) by Standard Poor's Corporation (the "Minimum Rating Requirement"), then Landlord shall have the right to require that Tenant obtain from a different issuer a Replacement L/C that complies in all respects with the requirements of this Article 12, and Tenant's failure to obtain such a Replacement L/C within thirty (30) days following Landlord's written demand therefor (with no other notice or cure or grace period being applicable thereto, notwithstanding anything in this Lease to the contrary) shall entitle Landlord to immediately draw upon the then existing Letter of Credit in whole or in part, without notice to Tenant. In the event the issuer of any Letter of Credit held by Landlord is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation ("FDIC") or any successor or similar entity, then, effective as of the date such receivership or conservatorship occurs, said Letter of Credit shall be deemed to not meet the requirements of this Article, and, within fifteen (15) days thereof, Tenant shall replace such Letter of Credit with other collateral acceptable to Landlord in its sole and absolute discretion (and Tenant's failure to do so shall, notwithstanding anything in this Lease to the contrary, constitute an Event of Default hereunder for which there shall be no notice or grace or cure periods being applicable thereto other than the aforesaid thirty (30) day period). If at any time during the Term there is no Issuing Bank that satisfies the Minimum Rating Requirement from which Tenant is able to obtain, at a commercially reasonable cost, a Replacement L/C, then Landlord may draw down the full amount of the existing Letter of Credit and retain the proceeds thereof as substitute security, subject to the provisions of this Article, provided that Landlord shall invest any amounts so drawn or otherwise posted by Tenant and not immediately thereafter applied to cure any Default or to pay damages then due and payable in a mutual fund designated by Landlord that invests solely in U.S. Treasury bills. Following any such draw by Landlord, Tenant shall, and at Landlord's option, obtain a Replacement L/C in the amount of the Security from a bank that satisfies the Minimum Rating Requirement and upon issuing of same to Landlord, Landlord shall return such funds drawn by Landlord, without interest.**]**

**[IF CASH SECURITY DEPOSIT REQUIRED:**

12.1 *Security Deposit****.*** Concurrent with Tenant’s execution of this Lease, Tenant shall deposit with Landlord a cash security deposit (the “Security Deposit") in the amount of the Security. The Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Lease Term. If Tenant defaults with respect to any provisions of this Lease, including, but not limited to, the provisions relating to the payment of Rent, Landlord may, but shall not be required to, use, apply or retain all or any part of the Security Deposit for the payment of any Rent or any other sum in default, or for the payment of any amount that Landlord may spend or become obligated to spend by reason of Tenant’s default, or to compensate Landlord for any other loss or damage that Landlord may suffer by reason of Tenant’s default. If any portion of the Security Deposit is so used or applied, Tenant shall, within five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount, and Tenant’s failure to do so shall be a default under this Lease. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit, or any balance thereof, shall be returned to Tenant, or, at Landlord’s option, to the last assignee of Tenant’s interest hereunder, within sixty (60) days following the expiration of the Lease Term. Tenant shall not be entitled to any interest on the Security Deposit. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, and all other provisions of law, now or hereafter in force, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any officer, employee, agent or invitee of Tenant.]

1. *Prohibited Liens*.
   1. *Tenant's Covenant*

*.* It is the mutual expectation of the parties hereto that no lien can attach to the Premises or any other portion of the Center. If a Prohibited Lien is filed then Tenant shall, within sixty (60) days after receiving Notice from Landlord of such filing, commence appropriate action to cause such Prohibited Lien to be paid, discharged, bonded, or cleared from title. Tenant shall thereafter prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any such filing, then Landlord shall promptly Notify Tenant. Nothing in this Lease shall be construed to obligate Tenant regarding any lien that results from any act or omission by Landlord. If any Subtenant causes a Prohibited Lien, then Tenant's obligations under this paragraph shall be suspended so long as both: (a) Tenant is with reasonable diligence endeavoring to cause the Subtenant to remove the Prohibited Lien; and (b) the holder of the Prohibited Lien has not commenced foreclosure proceedings.

* 1. *Protection of Landlord*

*.* NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT UPON CREDIT, AND THAT NO MECHANIC'S OR OTHER LIEN FOR ANY SUCH LABOR OR MATERIALS SHALL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS LEASE SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING TENANT ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES, OR THE FURNISHING OF ANY MATERIALS THAT WOULD GIVE RISE TO THE FILING OF ANY LIENS AGAINST THE FEE ESTATE. TENANT SHALL INDEMNIFY LANDLORD AGAINST ANY CONSTRUCTION UNDERTAKEN BY TENANT OR ANYONE CLAIMING THROUGH TENANT, AND AGAINST ALL PROHIBITED LIENS.

1. *Hazardous Substances*.
   1. *Restrictions*

*.* Tenant shall not, and shall cause any Subtenant to not, cause or permit to occur on, under or at the Premises during the Term: (a) any violation of any Environmental Law; or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance, or transportation to or from the Premises of any Hazardous Substance, unless both: (i) reasonably necessary and customary to conduct any legal business in the Premises or any Sublet Premises in accordance with customary standards in such business, or to operate and maintain the Premises or any Sublet Premises for uses this Lease permits and (ii) in compliance with all Environmental Laws.

* 1. *Compliance; Clean-Up*

*.* Tenant shall: (a) comply, or cause to be complied, with Environmental Law and, to the extent Environmental Law requires, clean up any Hazardous Substance Discharge on, at, or under the Premises caused by Tenant or any Subtenant; (b) make, or cause to make, all submissions to, deliver, or cause to be delivered, all information required by, and otherwise fully comply, or cause to be complied, with all requirements of any Government under Environmental Laws related to the Premises; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge caused by Tenant or any Subtenant, prepare and submit, or cause to be prepared and submitted, the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out, or cause to be carried out, all such clean-up plans required by Tenant's or any Subtenant's acts or omissions; and (e) Indemnify Landlord against any Hazardous Substances Discharge or violation of Environmental Law caused by Tenant or any Subtenant. Any party's obligations under this paragraph shall not limit such party's rights against third parties. Notwithstanding the foregoing, in no event shall Tenant be obligated to remove any Hazardous Substance Discharge, comply with Environmental Laws, or Indemnify Landlord, as hereinabove provided to the extent that any of same relate solely to conditions that existed prior to the Commencement Date, or are caused by any Person that is unrelated to any of Landlord, Tenant or any Subtenant(s), or any of their respective agents, employees, or contractors.

1. *Indemnification; Liability of Landlord*.
   1. *Obligations*

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* + 1. *Tenant’s Obligations*

. To the fullest extent permitted by applicable Law, Tenant shall Indemnify the Indemnitees against any: (a) action, negligence or willful misconduct of Tenant (and anyone claiming by or through Tenant) or its or their partners, members, directors, officers, or employees; (b) failure of Tenant or its partners, members, directors, officers, or employees to act within the scope of the duties of Tenant under this Lease; (c) Default or Event of Default by Tenant under this Lease; or (d) breach of any representation or warranty made by Tenant in this Lease. In addition, Tenant shall Indemnify the Indemnitees against any claim arising out of the following during the Term and so long as Tenant remains in possession after the Expiration Date: (v) use, occupancy, control, management, operation, and possession of the Premises by Tenant and all Subtenants; (w) any Construction and any agreements that Tenant (or anyone claiming through Tenant) makes for any Construction; and (x) the condition of the Premises or any street, curb or sidewalk adjoining the Premises, or of any vaults, tunnels, passageways or space under, adjoining or appurtenant to the Premises excluding any conditions existing on the Commencement Date hereof. Notwithstanding anything to the contrary in this Lease, Tenant shall not be required to Indemnify any Indemnitee regarding the Indemnitee's gross negligence or willful misconduct or for the acts or omissions of any Transit Agency, Rail Operator or Landlord’s Security Contractor. This paragraph does not apply to Environmental Law and Hazardous Substances Discharges, which are covered elsewhere.

* + 1. *Landlord’s Obligations*

. Landlord shall hold Tenant harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) suffered or incurred as a result of an Indemnitee's gross negligence or willful misconduct or the acts or omissions of any Transit Agency, Rail Operator or Landlord’s Security Contractor.

* 1. *Liability of Landlord*

*.* To the fullest extent permitted by applicable Law, during the Term: (a) Tenant is and shall be deemed to be in exclusive control and possession of the Premises; and (b) none of Landlord or any of its Affiliates shall be liable for any injury or damage to (i) any property of Tenant or any other Person occurring on or about the Premises, or (ii) any Person occurring on or about the Premises, unless caused by Landlord's willful misconduct, gross negligence or breach of this Lease; provided, however, that notwithstanding whether the injury or damage is caused by any act or failure to act of any Indemnitee, neither Landlord, nor any Indemnitee shall have any liability for any injury or damage for which Tenant would have been reimbursed under policies of insurance required by the terms of this Lease to be maintained by Tenant (I) had Tenant not failed to procure or maintain such policies of insurance or (II) has Tenant not failed to procure or maintain such policies of insurance with at least the limits herein specified. Landlord's right to enter and inspect the Premises is intended solely to allow Landlord to ascertain whether Tenant is complying with this Lease and (to the extent this Lease allows) to cure any Default. Such provisions shall not impose upon Landlord any liability to third parties, but nothing in this Lease shall be construed to exculpate, relieve, or Indemnify Landlord from or against any liability of Landlord: (y) to third parties existing at or before the Commencement Date; or (z) arising from Landlord's intentional acts or omissions or negligence.

* 1. *Indemnification Procedures*

*.* Wherever this Lease requires Tenant to Indemnify any Indemnitee:

* + 1. *Selection of Counsel*

. Tenant shall select counsel reasonably acceptable to Indemnitee. Counsel to Tenant's insurance carrier shall be deemed satisfactory. Even though Tenant shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. Such counsel may attend all proceedings and meetings. Tenant's counsel shall actively consult with Indemnitee's counsel.

* + 1. *Settlement*

. Tenant may, with Indemnitee's consent, not to be unreasonably withheld, settle the claim. Indemnitee's consent shall be given for any settlement by which: (w) Tenant procures (by payment, settlement, or otherwise) a release of Indemnitee by which Indemnitee need not make any payment to the claimant; (x) neither Indemnitee, nor Tenant on behalf of Indemnitee, admits liability; (y) the continued effectiveness of this Lease is not jeopardized in any way; and (z) Indemnitee's interest in the Premises is not jeopardized in any way, each as determined in Indemnitee's reasonable discretion.

* 1. *Survival*

*.*  The provisions of this Section 15 shall survive the expiration or sooner termination of the Term.

1. *Insurance Requirements*.
   1. *Landlord’s Insurance*.
      1. Landlord shall maintain in full force and effect during the Term the following insurance coverages pertaining to the Center (collectively, “Landlord Maintained Insurance”):

A. Commercial property insurance, including special form perils endorsement or equivalent insuring the Center, Center Equipment and Center FF&E (excluding Tenant/Subtenant FF&E, Tenant/Subtenant Equipment and Tenant's and all Subtenants work, improvement and betterments, inventory, merchandise, signs, goods, trade fixtures, furnishings, equipment, furniture, wall coverings, floor coverings, and other personal property including personal property in the Tenant’s and all Subtenants’ care, custody and control) including plate glass, and other breakables in the Center. Such insurance may insure for loss from flood, earthquake, terrorism and any other causes or coverages that Landlord may elect.

B. Commercial general liability insurance in the Landlord's name with limits of liability in the amount of at least $100,000,000 each occurrence/$100,000,000 general aggregate limit (other than products-completed operations)/$100,000,000 products/completed operations aggregate limit on a combined single limit basis for injuries to persons (including death) and damage to property and otherwise on whatever terms and with whatever limits Landlord chooses. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy.

C. Such other types of insurance in connection with the Center as Landlord may deem appropriate or necessary, in whatever limits Landlord chooses.

* + 1. All policies of Landlord Maintained Insurance shall (i) be in Landlord’s name, (ii) apply as primary and not on an excess or contributing basis with any policies of the Tenant, and (iii) name Tenant, AC Transit and any other Transit Agencies and Rail Operators as may be required by the terms the Transit Agency Leases or Rail Operator Agreements, respectively, as additional insureds.
    2. The premiums for any Landlord Maintained Insurance shall be paid by Landlord but treated as Operating Expenses of the Center, such that Tenant shall reimburse Landlord, within thirty (30) days of written demand, for Tenant’s share of such premiums, which share will be calculated by deducting from the overall amount of such premiums the portion thereof to be borne by Landlord, as calculated using Landlord’s Areas of Responsibility Operating Sharing Percentage as to the portion of the premium allocated to the Areas of Responsibility and Landlord’s Areas of Shared Responsibility Operating Sharing Percentage as to the portion of the premium allocated to the Areas of Shared Responsibility. Any deductibles under Landlord Maintained insurance shall be Operating Expenses of the Center, payable by Tenant but subject to reimbursement as provided under Section 8.3 below.
    3. Tenant shall be responsible for administering all Landlord’s Maintained Insurance, including without limitation, processing and overseeing any claims thereunder. For purposes of the foregoing, Landlord shall deliver to Tenant, within five (5) Business Days of a request therefor, a copy of the policies of Landlord’s Maintained Insurance.
  1. *Tenant's Insurance*.
     1. Landlord requires Tenant and Tenant shall cause all Subtenants, to maintain in full force and effect during the Term the following Property Insurance:

A. Commercial property insurance, including special form perils endorsement or equivalent insuring the Tenant/Subtenant FF&E and the Tenant/Subtenant Equipment including plate glass, and other breakables in the Premises for the full replacement value, without deduction for depreciation. This policy shall have an agreed value endorsement or equivalent wording. This insurance must include Tenant's and all Subtenants work, improvement and betterments, inventory, merchandise, signs, goods, trade fixtures, furnishings, equipment, furniture, wall coverings, floor coverings, and other personal property including personal property in the Tenant’s and all Subtenants’ care, custody and control. The Tenant and all Subtenants shall insure for loss from flood, including coverage for water damage from all causes including but not limited to sprinkler damage, sewer discharge or backup, water line breakage, and overflow from other Subtenants space or any portion of the Center which is not part of the Premises. Where available, Tenant shall insure for earthquake. Landlord shall be named as loss payee with respect to the coverage for the Tenant and Subtenants improvements and betterments. All policies have a waiver of subrogation endorsement in favor of all Additional Insureds set forth on **Exhibit J** attached hereto and made a part hereof. The deductible or self-insured retention shall not exceed $250,000 per occurrence without Landlord's written consent. Any requirement for co-insurance must be removed.

B. Tenant and all Subtenants must carry and insure so-called "Loss of Business Income Insurance", including extra expense and contingent business income coverage. The insurance limits for this insurance shall be based upon a minimum of twelve (12) months of income with a three hundred sixty five (365) day "Extended Period of Indemnity" endorsement.

* + 1. In addition to the Property Insurance to be carried by Tenant and all Subtenants pursuant to Section 16.2.1, Tenant shall also procure at its sole cost and expense policies of insurance to be in force and maintained at all times during the Term in accordance with the terms and conditions set forth below or its then reasonably available equivalent:

**Workers' Compensation** (including employer's liability insurance with limits of not less than $2,000,000, which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of the State.

**Commercial General Liability** (I.S.O. 2001 Form or equivalent approved by the Landlord) in the Tenant's name with limits of liability in the amount of at least $100,000,000 each occurrence/$100,000,000 general aggregate limit (other than products-completed operations)/$100,000,000 products/completed operations aggregate limit on a combined single limit basis for injuries to persons (including death) and damage to property. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event primary limits are reduced or aggregate limits are exhausted.

Such policy should be written on an occurrence form, and shall include:

Contractual coverage for liability assumed by the Tenant under this Lease (including Tenant's indemnification obligations under Article 15 hereof);

Personal and advertising injury coverage;

Products-completed operations;

Independent contractors coverage;

Liquor liability coverage, when applicable; and

Additional insured endorsement (I.S.O. Form CG 20 10 11/85 'Form B' version or its equivalent approved by the Landlord naming the Additional Insureds as set forth on **Exhibit J** attached hereto and made a part hereof.

**Business Automobile Liability** - (I.S.O. Form CA 00 01 10 01 or equivalent approved by Landlord) in the Tenant's name with limits of liability in the amount of at least $2,000,000 each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle.

**Errors & Omission Liability**: Tenant will purchase and maintain professional liability/errors and omissions liability insurance. The policy shall have limits of at least $5,000,000 for each claim; and have a retroactive coverage date no later than the effective date of this Lease. Tenant shall maintain either active policy coverage or an extended reporting period providing coverage for claims first made and reported to the insurance company within twelve (12) months after termination or expiration of this Lease. Defense costs must be in addition to the limit of liability. If said policy is subject to an aggregate limit, replacement insurance will be required if it is likely such aggregate will be exhausted. The policy may contain a deductible/self-insured retention clause with a maximum limit of $250,000 which is the sole responsibility of Tenant. If the deductible/self-insured retention exceeds the maximum allowed, prior approval by Landlord is required.

Such insurance shall be subject to the terms and conditions and exclusions that are usual and customary for this type of insurance. Tenant shall maintain continuous insurance coverage during the Term.

* + 1. During the performance of any Construction, Tenant (or its contractor) shall carry, or cause to be carried, the following insurance and such additional insurance having limits as Landlord may from time to time require which shall meet all general policy provisions as set forth in this Lease:

**Workers' Compensation** (including employer's liability insurance with limits of not less than $2,000,000, which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of the State.

**Commercial General Liability** (I.S.O. 2001 Form or equivalent approved by Landlord) in the contractor's name with limits of liability in the amount of at least $10,000,000 each occurrence/$10,000,000 general aggregate limit (other than products- completed operations)/$10,000,000 products/completed operations aggregate Limit on a combined single limit basis for injuries to persons (including death) and damage to property. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event primary limits are reduced or aggregate limits are exhausted.

Such policy should be written on an occurrence form, and shall include:

Contractual coverage for liability assumed by the Tenant and its contractor under this Lease;

Personal and advertising injury coverage;

Products-completed operations;

Independent contractors coverage;

"XCU" coverage (explosion, collapse, and underground hazards) where necessary;

Contractual liability exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary; and

Additional Insured endorsement (I.S.O. Form CG 20 10 11/85 "Form B" version or its equivalent approved by the Landlord) naming the Additional Insureds listed on **Exhibit J** attached hereto and made a part hereof.

**Business Automobile Liability** - (I.S.O. Form CA 00 01 10 01 or equivalent approved by the Landlord) in the contractor's name with limits of liability in the amount of at least $2,000,000 each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle.

**Builder's Risk/Installation Floater** The Tenant or its contractor shall furnish evidence to the Landlord that it carries primary coverage for builder's risk/installation floater on an all-risk completed value form in an amount equal to the total contract price. The insurance shall cover any and all real and personal property owned, used or intended for use or hereafter created, installed or acquired, including while in the course of building, erection, installation and assembly.

The policy shall also include coverage for machinery, supplies and equipment, and other personal property of any kind owned, rented or in the care, custody and control of the contractor, and its subcontractors to be incorporated in the building, erection, assembly and installation of the project. Said policy shall remain in force until the construction is completed and accepted.

The policy shall provide that:

Any requirement for co-insurance must be removed;

In the event the policy has a deductible, such deductible amount shall not exceed $250,000 except with the express permission of the Landlord;

Said policy is to be written with the contractor as First Named Insured and naming the Additional Named Insureds and Loss Payee listed on **Exhibit J** attached hereto and made a part hereof;

Losses are to be adjusted with the Additional Named Insureds as listed on **Exhibit J** attached hereto and made a part hereof;

Policy shall be endorsed to provide that "all premium considerations are the sole responsibility of the contractor;" and

Evidence of coverage requires submission of a policy; however, a temporary binder may be accepted pending issuance of the policy.

**Professional Liability Insurance** - In the event that professional services are to be performed, Tenant shall cause such consultant to provide insurance covering actual or alleged negligent acts, errors or omissions committed in the performance of activities and/or arising out of work under this Lease, regardless of the type of damages. The policy shall also extend to include personal injury, bodily injury and property damage. The policy shall have a limit of liability of not less than $5,000,000 per claim. Defense costs must be in addition to the limit of liability. If said policy is subject to an aggregate limit, replacement insurance will be required if it is likely such aggregate will be exhausted. The policy may contain a deductible/self- insured retention clause with a maximum limit of $250,000 which is the sole responsibility of the consultant. If the deductible/self-insured retention exceeds the maximum allowed, prior approval by Landlord is required.

Such insurance shall be subject to the terms and conditions and exclusions that are usual and customary for this type of insurance.

Tenant shall cause such consultant to maintain continuous insurance coverage during the Term. In addition to the coverage requirements above, the policy shall include:

A retroactive date to coincide with or precede the insureds' initial services under the Lease and shall continue until the expiration or earlier termination of the Lease (including subsequent policies purchased as renewals or replacements);

Policy allows for reporting of circumstances or incidents that might give rise to future claims; and

An extended reporting period of at least one (1) year will be available and must be purchased in the event ongoing coverage is not maintained.

* 1. *Subtenant's Insurance*.
     1. The Tenant shall require all Subtenants to procure at such Subtenant's sole cost and expense policies of insurance to be in force and maintained at all times during the term of their respective Sublease in accordance with the terms set forth below:

**Workers' Compensation** including Employer's Liability Insurance with limits of not less than $1,000,000, which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of the State.

**Commercial General Liability** (I.S.O. 2001 Form or equivalent approved by Tenant) in the Subtenant's name with limits of liability in the amount of at least $5,000,000 each occurrence/$5,000,000 general aggregate limit (other than products-completed operations)/$5,000,000 products/completed operations aggregate limit on a combined single limit basis for injuries to persons (including death) and damage to property. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event primary limits are reduced or aggregate limits are exhausted.

Such policy should be written on an occurrence form, and shall include:

Contractual coverage for liability assumed by the Subtenant under the sublease;

Personal and advertising injury coverage;

Products-completed operations;

Independent contractors coverage;

Liquor liability coverage, when applicable;

"XCU" coverage (explosion, collapse, and underground hazards) where necessary;

Contractual liability exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary; and

Additional Insured endorsement (I.S.O. Form CG 20 26 07/04 and CG 20 37 07/04 or its equivalent approved by the Tenant) naming the Additional Insureds as set forth on **Exhibit J** attached hereto and made a part hereof.

**Business Automobile Liability** - (I.S.O. Form CA 00 01 10 01 or equivalent approved by the Tenant) in the Subtenant's name with limits of liability in the amount of at least $1,000,000 each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle.

* + 1. The Subtenants or its contractors shall procure at its sole cost and expense policies of insurance to be in force and maintained at all times during the construction, installation or alteration work in accordance with the terms set forth in this Lease:

**Workers' Compensation** including employer's liability insurance with limits of not less than $1,000,000, which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of the State.

**Commercial General Liability** (I.S.O. 2001 Form or equivalent approved by Landlord) in the contractor's name with limits of liability in the amount of at least $3,000,000 each occurrence/$3,000,000 general Aggregate Limit (other than products-completed operations)/$3,000,000 products/completed operations aggregate limit on a combined single limit basis for injuries to persons (including death) and damage to property. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event primary limits are reduced or aggregate limits are exhausted.

Such policy should be written on an occurrence form, and shall include:

Contractual coverage for liability assumed by the contractor;

Personal and advertising injury coverage;

Products-completed operations

Independent contractors coverage;

"XCU" coverage (explosion, collapse, and underground hazards) where necessary;

Contractual liability exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary; and

Additional Insured endorsement (I.S.O. Form CG 20 26 07/04 and CG 20 37 07/04 or its equivalent approved by the Tenant) naming the Additional Insureds as set forth on **Exhibit J** attached hereto and made a part hereof.

**Business Automobile Liability** - (I.S.O. Form CA 00 01 10 01 or equivalent approved by the Tenant) in the contractor's name with limits of liability in the amount of at least $1,000,000 each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle.

**Builder's Risk/Installation Floater** The contractor shall furnish evidence to the Tenant that it carries primary coverage for builder's risk/installation floater on an all- risk completed value form in an amount equal to the total contract price. The insurance shall cover any and all real and personal property owned, used or intended for use or hereafter created, installed or acquired, including while in the course of building, erection, installation and assembly.

The policy shall also include coverage for machinery, supplies and equipment, and other personal property of any kind owned, rented or in the care, custody and control of the contractor, and its subcontractors to be incorporated in the building, erection, assembly and installation of the project. Said policy shall remain in force until the construction is completed and accepted.

The policy shall provide that:

Any requirement for co-insurance must be removed;

In the event the policy has a deductible, such deductible amount shall not exceed $250,000 except with the express permission of the Tenant;

Said Policy is to be written with contractor as First Named Insured and the Additional Named Insured and Loss Payee as listed on **Exhibit J** attached hereto and made a part hereof;

Losses are to be adjusted with the Additional Named Insureds as listed on **Exhibit J** attached hereto and made a part hereof;

Policy shall be endorsed to provide that "all premium considerations are the sole responsibility of the contractor;" and

Evidence of coverage requires submission of a policy. However, a temporary binder may be accepted pending issuance of the policy.

**Professional Liability Insurance** - In the event that professional services are to be performed, Tenant shall cause Subtenant to cause such consultant to provide insurance covering actual or alleged negligent acts, errors or omissions committed in the performance of activities and/or arising out of work under this Lease, regardless of the type of damages. The policy shall also extend to include personal injury, bodily injury and property damage. The policy shall have a limit of liability of not less than $5,000,000 per claim. Defense costs must be in addition to the limit of liability. If said policy is subject to an aggregate limit, replacement insurance will be required if it is likely such aggregate will be exhausted. The policy may contain a deductible/self-insured retention clause with a maximum limit of $250,000 which is the sole responsibility of the consultant. If the deductible/self-insured retention exceeds the maximum allowed, prior approval by Tenant is required.

Such insurance shall be subject to the terms and conditions and exclusions that are usual and customary for this type of insurance.

Such consultant shall maintain continuous insurance coverage during the Term. In addition to the coverage requirements above, the policy shall include:

A retroactive date to coincide with or precede the insureds' initial services under the Lease and shall continue until the termination of the Lease (including subsequent policies purchased as renewals or replacements);

Policy allows for reporting of circumstances or incidents that might give rise to future claims; and

An extended reporting period of at least one (1) year will be available and must be purchased in the event ongoing coverage is not maintained.

* 1. *General Insurance Requirements applicable to Tenant’s Insurance:*
     1. All policies must be written in accordance with the following requirements:

Shall be endorsed to be primary and non-contributory to any other valid and collectible insurance and must be exhausted before implicating any Landlord's policy available.

Coverage shall apply as primary and not on an excess or contributing basis with any policies which may be available to the Landlord, and any contractor's policies, primary and excess, must be exhausted before implicating any Landlord's policy available. In addition, contractor's policies shall state or be endorsed to provide that, if a subcontractor's policy contains any provision that may adversely affect whether contractor's policies are primary and must be exhausted before implicating any Landlord's policy available, contractor's and subcontractor's policies shall nevertheless be primary and must be exhausted before implicating any Landlord policy available.

Shall be written by companies with an A.M. Best Company rating of A-, VII or better, licensed to do business by the State, and approved by the Landlord.

Should any of the policies listed herein be canceled, materially changed or not renewed, notice shall be delivered in accordance with the policy provisions to the Landlord.

Policies written on a "claims-made" basis are not acceptable except for Professional Liability.

Shall endeavor to provide evidence of renewal or replacement insurance with the same terms and conditions as required in the agreement at least two weeks prior to the expiration date.

All such insurance, except property, builders risk and professional liability, may contain deductibles or self-insured retentions of not more than $100,000 unless approved by the Landlord. Tenant shall be responsible for all claim expense and loss payments within the deductible or self-insured retention on the same basis as would be the case if commercial insurance was available for the loss.

All references to the required forms shall comply with the Insurance Services Office, Inc. ("ISO") or its equivalent approved by the Insurance Department of the State of California.

Landlord may increase the limits of any insurance required under this Lease up to once every three (3) years, upon at least one hundred eighty (180) days' Notice to Tenant, provided that any increased limit: (a) does not exceed the limit initially set forth times the CPI Adjustment Factor, rounded to the nearer multiple of $1,000,000; and (b) generally conforms to the limits customarily required by prudent landlords or institutional lenders for similar retail properties in the City and County of San Francisco.

* 1. *Insurance Submission Requirements*.
     1. The Tenant shall furnish evidence of all policies prior to occupancy or start of any work to:

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* + 1. Certificates of insurance may be supplied as evidence of such aforementioned policies. However, if requested by the Landlord, the Tenant shall deliver to the Landlord within forty-five (45) days of the request a copy of such policies, certified by the insurance carrier as being true and complete. If a certificate of insurance is submitted it must: (1) be provided on the MTA Certificate of Insurance Form; (2) be signed by an authorized representative of the insurance carrier or producer and notarized; (3) disclose any deductible, sub- limit, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; (4) indicate the Additional Insureds and Named Insureds as required herein. The Tenant must provide a copy of the Additional Insured endorsement (s) as required in the foregoing and must include the policy number(s); (5) reference the Lease number on the certificate; and (6) expressly reference the inclusion of all required endorsements. The Tenant shall be responsible for managing and tracking insurance compliance for all Subtenants and their contractors throughout the Term.
  1. *No Limit on Tenant's Liability*

*.* The minimum amounts of insurance required under Sections 16.2 and 16.3 of this Lease shall not be construed to limit the extent of Tenant's liability under this Lease.

* 1. *Right to Request Additional Insurance and Limits*

*.* Tenant further agrees to provide such increased limits, or expanded insurance coverages as the Landlord may, from time to time, deem appropriate.

* 1. *Waiver of Subrogation*

*.* Landlord and Tenant shall each secure an appropriate clause in, or endorsement upon, each insurance policy obtained by and covering or applicable to the Center and Center FF&E, in the case of Landlord, and the Premises and the Tenant/Subtenant FF&E, in the case of Tenant, located therein, pursuant to which the insurance company waives subrogation or permits the insured, prior to any loss, to agree with a third party to waive any claim it might have against said third party without invalidating the coverage under the insurance policy. The waiver of subrogation or permission for waiver of any claim shall extend to Landlord and Tenant, respectively as well as each of their respective agents and employees. Landlord and Tenant each hereby releases the other party hereto and their respective agents and employees in respect of any claim (including a claim for negligence) which it might otherwise have against the other party hereto or their respective agents or employees for loss, damage, or destruction with respect to the Center and the Center FF&E, Tenant/Subtenant FF&E, and all Tenant's and all Subtenants work, improvement and betterments, inventory, merchandise, signs, goods, trade fixtures, furnishings, equipment, furniture, wall coverings, floor coverings, and other personal property including personal property in the Tenant’s and all Subtenants’ care, custody and control, respectively, by fire or other casualty occurring during the Term.

* 1. *Blanket and/or Master Policies*

*.* The insurance required to be carried by Tenant pursuant to the provisions of this Lease may, at Tenant's option, be effected by so-called "blanket", "wrap-up" and/or "master" policies issued to Tenant and/or its Affiliates covering the Premises and other properties owned or leased by Tenant or its Affiliates, provided such policies (a) otherwise comply with the provisions of this Lease and (b) by endorsement, allocate to the Premises the specified coverage and limits of coverage herein required for all insureds required to be named as insureds hereunder.

* 1. *Suspension of Work / Event of Default*

*.* If, at any time during the period of this Lease, insurance as required is not in effect, or proof thereof is not provided to the Landlord, the Landlord without any liability to the Tenant shall have the option to: (i) direct the Tenant to suspend work or operation with no additional cost or extension of time due on account thereof; or (ii) treat such failure as an Event of Default; and Landlord may, at its option immediately terminate this Lease, and in such event, all the rights and privileges of Tenant hereunder shall thereupon immediately cease and terminate.

1. *Losses and Loss Proceeds*.
   1. *Prompt Notice*

*.* If either party becomes aware of any Casualty or actual, contemplated, Condemnation, then such party shall promptly so Notify the other party.

* 1. *Casualty*

*.* If any Casualty occurs after the Commencement Date, then no Fixed Rent, Additional Rent or Participation Rent shall abate and, unless this Lease is terminated as hereinafter provided (x) this Lease shall continue in full force and effect and (y) Landlord shall, at its sole cost and expense (subject to the provisions of this Section 17.2), promptly commence and complete the Restoration of the Core and Shell, the Center FF&E and the Center Equipment, to substantially the condition as they were in as of the Commencement Date (unless the parties agree otherwise) it being agreed and understood that Tenant shall be responsible for the Restoration of all other aspects and portions of the Premises including, without limitation, the Tenant/Subtenant FF&E and the Tenant/Subtenant Equipment. During any period of Restoration, the Management Fee payable to Tenant under Section 4.8 shall abate in proportion to the portion the percentage of the Areas of Responsibility and Areas of Shared Responsibility that were affected by the Casualty and are the subject of the Restoration, provided that Tenant shall have the right to negotiate with Landlord a mutually acceptable restoration management fee if Landlord selects Tenant to perform such function. Tenant shall exercise reasonable efforts to cooperate with Landlord and coordinate, to the maximum extent reasonably possible, Tenant's own operations and Restoration obligations to enable Landlord to perform its applicable Restoration obligations as expeditiously and efficiently as possible. Furthermore, Landlord shall exercise reasonable efforts to cooperate with Tenant and coordinate where and to the maximum extent reasonably possible Landlord's own operations and respective Restoration obligations to enable Tenant to perform its respective Restoration obligations as expeditiously and efficiently as possible. In any event, the parties shall use commercially reasonable efforts to commence their respective Restoration work promptly after the damage and destruction, subject to extension of time due to Unavoidable Delays, and each party shall diligently pursue its respective Restoration work with continuity and shall be completed as soon as reasonably possible, subject to Unavoidable Delays. Landlord will not carry insurance of any kind on, and shall have no obligation to repair any damage to, or to replace, any Tenant/Subtenant FF&E, Tenant/Subtenant Equipment, or any other property or effects of Tenant or any Subtenant; the obtaining of insurance coverage for loss of any of same shall be at the sole cost and expense of Tenant and any Subtenant, as applicable. If the Casualty is a Substantial Casualty, then either Landlord or Tenant may, by Notice to the other party hereto given within ninety (90) days after the Casualty, elect a Casualty Termination effective ninety (90) days after such Notice. Upon any Casualty Termination, Tenant shall assign and transfer to Landlord all of Tenant's rights in and to any of Tenant's Property Insurance Proceeds actually received, or which Tenant is entitled to receive, because of the Casualty. Unless Landlord or Tenant has validly elected a Casualty Termination: (a) this Lease shall not terminate; and (b) Tenant shall be solely responsible for negotiating and adjusting any of Tenant's Property Insurance Proceeds; it being agreed and understood that Landlord shall be solely responsible for negotiating and adjusting any of Landlord's Property Insurance Proceeds.

* 1. *Substantial Condemnation*

*.* If a Substantial Condemnation occurs after the Commencement Date, then as of the Condemnation Effective Date the Expiration Date shall occur and the parties shall apportion Rent. Landlord shall be entitled to receive the entire Condemnation Award, with respect to the Premises for any such Substantial Condemnation, and Tenant shall have no claim against Landlord or the condemning authority for the value of any unexpired portion of the Term and Tenant hereby expressly assigns to Landlord all of its right in and to any such Condemnation Award. Nothing contained in this Section 17.3 shall be deemed to prevent Tenant from making a separate claim in any condemnation proceedings against the condemning authority for the value of any of Tenant/Subtenant FF&E installed by and at the sole expense of Tenant or any Subtenant and the cost of Tenant's and any Subtenant's relocation included in such Condemnation, provided that such claim does not diminish or adversely affect Landlord's Condemnation Award. Landlord shall settle or compromise any Condemnation Award in its sole discretion. Notwithstanding anything contained in this Section 17.3 to the contrary, in the event that Landlord is the condemning authority, then any termination of this Lease as a result of a Substantial Condemnation shall be deemed a termination of convenience and Tenant shall have the right to make a claim for, and shall be entitled to, Tenant's direct provable damages as a result thereof, as reasonably evidenced to Landlord.

* 1. *Insubstantial Condemnation*

*.* If an Insubstantial Condemnation occurs after the Commencement Date, then any Condemnation Award(s) shall be paid to Landlord and applied first toward Restoration of the Core and Shell, Center FF&E and Center Equipment. Whether or not the Condemnation Award is adequate, Tenant shall, at its expense, Restore the Premises, exclusive of the Core and Shell, Center FF&E and Center Equipment, in compliance with this Lease. After Tenant has completed and fully paid for its such Restoration, and to the extent that Landlord is not the condemning authority, then any remaining Condemnation Award shall be distributed to Landlord and Tenant as if it arose from a Substantial Condemnation that affected only the part of the Premises taken, with an equitable allocation of all elements taken into account in determining such distribution.

* 1. *Near End of Term*

*.* If an Insubstantial Condemnation occurs during the last two (2) years of the Term, then Tenant, upon ninety (90) days' prior Notice to Landlord, given at any time within thirty (30) days after such Insubstantial Condemnation, may cancel or terminate this Lease. Upon such termination, the Rent shall be apportioned as of the date of termination, and Tenant need not Restore in accordance with the provisions of this Article 17. In that event, the balance of the Condemnation Award, whether or not Landlord is the condemning authority, less any reasonable amounts expended by Tenant to the date of termination to safeguard, clear, or make emergency repairs to the Premises (the costs of which shall be reimbursed to Tenant from the Condemnation Award), shall belong to Landlord free of any claim by Tenant.

* 1. *Use of Loss Proceeds*

*.* All Loss Proceeds from Landlord's Property Insurance shall be paid to, and disbursed by, Landlord as Landlord deems fit for purposes of fulfilling Landlord's Restoration obligations in accordance with this Article 17. All Loss Proceeds from Condemnation Award(s) and Tenant's Property Insurance shall be paid to, and disbursed by, Landlord, subject to the terms of this Lease. If a Loss is an Immaterial Loss, then (subject to disbursement of Loss Proceeds to Tenant to Restore) Landlord shall release all such Loss Proceeds to Tenant and/or any Subtenant, as applicable, to be applied first to Tenant's and/or any Subtenant's Restoration, in accordance with this Article 17. If a Loss is not an Immaterial Loss, then Landlord shall retain such Loss Proceeds and pay them over to Tenant from time to time, upon the following terms, for Restoration in accordance with this Article 17. Landlord shall first reimburse Landlord and Tenant from such Loss Proceeds for their actual, necessary, and proper costs and expenses in collecting such Loss Proceeds. Landlord shall release such Loss Proceeds to Tenant from time to time as Tenant's Restoration progresses in accordance with the procedures reasonably required by Landlord. Until Tenant has completed and paid for Tenant's Restoration, Tenant shall hold all Loss Proceeds disbursed to it in trust to be used first to Restore the Premises (exclusive of the Core and Shell, Center FF&E and Center Equipment) and for no other purpose. If any Prohibited Lien is filed against the Premises, Tenant shall not be entitled to receive any further installment of such Loss Proceeds from any Condemnation Award(s) or Tenant's Property Insurance until Tenant has satisfied, bonded, or otherwise discharged such Prohibited Lien when and as this Lease requires. When Tenant has completed and paid for Restoration (exclusive of the Core and Shell, Center FF&E and Center Equipment), Landlord shall release to Tenant, and Tenant may retain any such remaining Loss Proceeds from any Condemnation Award(s) and Tenant's Property Insurance. If Restoration Funds are insufficient to Restore the Premises (exclusive of the Core and Shell, Center FF&E and Center Equipment), then Tenant shall nevertheless Restore at its expense. Landlord shall not release any Loss Proceeds until and unless Tenant has expended on such Restoration an amount equal to any such insufficiency.

* 1. *Continuation of Lease*

*.* Except as this Lease expressly provides, this Lease shall not terminate, be forfeited, or be affected in any other manner, and Tenant waives any right to quit or surrender the Premises or any part of the Premises, because of any Loss or any resulting untenantability. Unless and until this Lease has been validly terminated, Tenant's obligations under this Lease, including the obligation to pay Rent, shall continue unabated. Without limiting the foregoing, the provisions of this Lease, including this Article 17, constitute an express agreement between Landlord and Tenant with respect to any and all Loss relating to any Casualty or Condemnation of, all or any part of the Premises, the Center or any other portion of the real property on which the same is located, and any statute or regulation of the State, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and Section 1265.130 of the California Code of Civil Procedure, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any Loss relating to any Casualty or Condemnation of, all or any part of the Premises, the Center or any other portion of the real property on which the same is located.

1. *Representations and Warranties*.
   1. *Due Authorization and Execution*

*.* Landlord represents and warrants that  Landlord has full right, title, authority, and capacity to execute and perform this Lease and any other agreements and documents to which Landlord is a party and referred to or required by this Lease (collectively, the "Lease-Related Documents"); the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Landlord; the Lease-Related Documents constitute valid, binding, and enforceable obligations of Landlord; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Landlord's organizational documents), contract, or other restriction to which Landlord is a party or is bound.

* + - 1. Tenant represents and warrants that Tenant has full right, authority, and capacity to execute and perform this Lease and any other Lease-Related Documents; the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Tenant; the Lease-Related Documents constitute valid, binding, and enforceable obligations of Tenant; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Tenant's organizational documents), contract, or other restriction to which Tenant is a party or is bound.
      2. **[**Guarantor represents and warrants that Guarantor has full right, title, authority and capacity to execute and perform the Guaranty; the execution and delivery of the Guaranty have been duly authorized by all requisite actions of Guarantor; the Guaranty constitutes a valid, binding, and enforceable obligation of Guarantor; and neither the execution of the Guaranty nor the consummation of the transactions it contemplates violates any agreement (including Guarantor's organizational documents), contract, or other restriction to which Guarantor is a party or is bound.**]**
      3. The parties hereby agree that the respective parties' representations and warranties in this paragraph shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.
  1. *No Litigation*

*.* Tenant [and Guarantor each] represents and warrants, after diligent inquiry, that there is no threatened, pending or existing claim, litigation, suit, action, or proceeding before any court or administrative agency affecting Tenant [or Guarantor] that would, if adversely determined, materially adversely affect Landlord, the Premises, this Lease [or the Guaranty], the Leasehold Estate, or Tenant's ability to operate the Premises for the uses permitted hereunder, that there is no existing or, to Tenant's [and Guarantor's] knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting Tenant [or Guarantor] that would, if adversely determined, materially adversely affect Landlord, the Premises, this Lease [or the Guaranty], the Leasehold Estate, or Tenant's ability to operate the Premises for the uses permitted hereunder.

* 1. *FIRPTA*

*.* Tenant is not a "foreign person" within the meaning of Section 1445(f)(3) of the United States Internal Revenue Code of 1986.

* 1. *Office of Foreign Assets Control*

*.* Tenant represents and warrants that (i) neither Tenant nor any person, group or entity who owns any direct or indirect beneficial interest in Tenant, is listed on the list maintained by the United States Department of the Treasury, Office of Foreign Assets Control (commonly known as the OFAC List) or otherwise qualifies as a terrorist, specially designated national and blocked person or a person with whom business by a United States citizen or resident is prohibited; (ii) neither Tenant nor any person, group or entity who owns any direct or indirect beneficial interest in Tenant is in violation of any anti-money laundering or anti-terrorism statute, including, without limitation, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56 (commonly known as the PATRIOT Act), and the related regulations issued thereunder, including temporary regulations, and Executive Orders (including, without limitation, Executive Order 13224) issued in connection therewith, all as amended from time to time; and (iii) neither Tenant nor any person, group or entity who owns any direct or indirect interest in Tenant is acting on behalf of a Prohibited Person. Tenant shall indemnify and hold Landlord harmless from and against all claims, damages, losses, risks, liabilities and costs (including fines, penalties and legal costs and expenses) arising from any misrepresentation in this subsection or Landlord's reliance thereon. Tenant's obligations under this subsection shall survive the expiration or sooner termination of the Term.

* 1. *Special Purpose Entity*

*.* Tenant represents and warrants that it complies with all of the covenants set forth on **Exhibit I** attached hereto and made a part hereof and shall provide reasonable evidence of same to Landlord on or prior to the Commencement Date.

1. *[RESERVED]*.

1. *Train Platform Level, Lower Concourse and Transit Agency Areas*

*.* **[Subject to modification if Tenant proposes a commercial use of any portion of the train PLATFORM LEVEL AND/OR LOWER CONCOURSE.]**

* 1. *Train Platform Level*

*.* The Train Platform Level has been reserved for the use and operation by the Rail Operators and Landlord reserves the right to enter into agreements with the Rail Operators for the use and operation of the Train Platform Level ("Rail Operator Agreements") on such terms as Landlord desires, in Landlord’s sole and absolute discretion. This Lease and the rights of Tenant hereunder are subject and subordinate to any such Rail Operator Agreements and the rights of the Rail Operators thereunder. Without limiting the foregoing, Tenant shall have no rights or obligations with respect to day-to-day operation and management of the Train Platform Level, which shall be operated and managed solely by the Rail Operators; provided, however, that Tenant shall be responsible during Phase I for all maintenance or repair with respect to the platform areas located within the Train Platform Level in accordance with the provisions of this Lease and shall have the right to use the train platform space within the Train Platform Level solely for temporary use for Back of House Functions. Rail Operator personnel, agents and contractors shall at all times have unrestricted access to the Train Platform Level and Tenant hereby agrees to cooperate fully with each of the Rail Operators in connection therewith.

* 1. *Lower Concourse*

*.* During Phase I, the Lower Concourse Support Space may be used by Tenant solely for Back of House Functions and Tenant shall be responsible during Phase I for all maintenance or repair with respect to the Lower Concourse Support Space in accordance with the provisions of this Lease. The remainder of the Lower Concourse has been reserved for use for rail ticketing, passenger waiting areas and support areas relating to the Rail Operators uses and will remain unoccupied during Phase I. Landlord reserves the right to enter into Rail Operator Agreements with the Rail Operators for the use and operation of the Lower Concourse during Phase II on such terms as Landlord desires, in Landlord’s sole and absolute discretion. This Lease and the rights of Tenant hereunder are subject and subordinate to any such Rail Operator Agreements and the rights of the Rail Operators thereunder. Without limiting the foregoing, during Phase II, Tenant shall have no rights or obligations with respect to day-to-day operation and management of the Lower Concourse, including, without limitation, the Lower Concourse Support Space, which shall be operated and managed solely by the Rail Operators and any tenant with whom Landlord may contract for the lease of all or portions of the Lower Concourse. Rail Operator personnel, agents and contractors shall at all times have unrestricted access to the Lower Concourse and Tenant hereby agrees to cooperate fully with each of the Rail Operators in connection therewith.

* 1. *Transit Agency Areas*

*.* The Transit Agency Areas shown on **Exhibit B-3** have been reserved for the use and operation by the applicable Transit Agencies pursuant to the Transit Agency Leases. This Lease and the rights of Tenant hereunder are subject and subordinate to the Transit Agency Leases and the rights of the Transit Agencies thereunder. Without limiting the foregoing, Tenant shall have no rights or obligations with respect to day-to-day operation and management of the Transit Agency Areas, which shall be operated and managed solely by the Transit Agencies in accordance with the Transit Agency Leases; provided, however, that Tenant shall be responsible for all maintenance or repair with respect to the Transit Agency Areas in accordance with the provisions of this Lease. Notwithstanding the foregoing, Tenant shall have the right to locate temporary, movable carts and kiosks providing retail services to Transit Agency customers on the platforms within the Transit Agency Areas in locations approved in advance by Landlord and the Transit Agencies, which approval may be withheld, conditioned or delayed in the sole discretion of Landlord and the Transit Agencies, respectively. Transit Agency personnel, agents and contractors shall at all times have unrestricted access to the Transit Agency Areas and Tenant hereby agrees to cooperate fully with each of the Transit Agencies in connection therewith.

* 1. *First Rights to Negotiate*

*.*

* + - 1. *Train Platform Level and Lower Concourse Negotiation Rights.* Provided that (i) no Event of Default by Tenant is continuing and no occurrence or circumstance exists which, with the giving of Notice or passage of time, would constitute an Event of Default by Tenant hereunder, and (ii) Tenant has timely satisfied or exceeded all applicable key performance indicators set forth on **Exhibit D-3** attached hereto and made a part hereof, Tenant shall have the right to negotiate with Landlord for the prospective lease (subject to any Rail Operator Agreements and the rights of the Rail Operators thereunder) or management of the Train Platform Level and Lower Concourse following completion of Phase II, in accordance with the terms and conditions set forth in this Section 20.4(a) ("Negotiation Rights"). Prior to issuing a request for proposals for the lease or management of the Real Level and Lower Concourse following completion of Phase II (“Phase II RFP"), Landlord shall first give Notice to Tenant of its intent to issue a Phase II RFP (an "RFP Notice"). If Tenant desires to exercise it Negotiation Rights, Tenant shall Notify Landlord thereof no later than five (5) Business Days after its receipt of the RFP Notice (an “Exercise Notice") and Tenant shall have the right to negotiate with Landlord for a period of thirty (30) days following the date of the Exercise Notice ("Negotiation Period")) for the prospective lease or management of the Train Platform Level and Lower Concourse following completion of Phase II. If Tenant timely delivers an Exercise Notice to Landlord, then Landlord and Tenant shall in good faith negotiate during the Negotiation Period with regard to the prospective lease or management of the Train Platform Level and Lower Concourse following completion of Phase II by Tenant; provided, however, that Landlord shall have no affirmative obligation to lease the Train Platform Level and Lower Concourse to Tenant or contract with Tenant for the management of the Train Platform Level and Lower Concourse following completion of Phase II. If Tenant does not timely deliver an Exercise Notice to Landlord, then Tenant shall be deemed to have elected not to exercise its Negotiation Rights hereunder, in which case Tenant's Negotiation Rights shall have no effect and Landlord may lease or contract for the management of the Train Platform Level and Lower Concourse, at such time and on such terms as it deems acceptable in its sole and absolute discretion. If Tenant timely delivers an Exercise Notice to Landlord but Landlord and Tenant fail to agree (within the Negotiation Period) upon terms for Tenant's prospective lease or management of the Train Platform Level and Lower Concourse, then Tenant's Negotiation Rights shall have no further effect and Landlord may lease or contract for the management of the Train Platform Level and Lower Concourse, at such time and on such terms as it deems acceptable in its sole and absolute discretion.
      2. *Under Ramp Park*. Prior to issuing a request for proposals for the lease or management of the Under Ramp Park, Landlord may, in its sole and absolute discretion, elect to first offer to negotiate with Tenant for the lease or management of the Under Ramp Park in accordance with the terms and conditions set forth in this Section 20.4(b) ("Park Negotiation Rights"). In the event Landlord elects to provide Tenant with Park Negotiation Rights, Landlord will Notify Tenant thereof (a "Park Negotiation Notice"). If Tenant desires to negotiate with Landlord for the lease or management of the Under Ramp Park following receipt of a Park Negotiation Notice, Tenant shall Notify Landlord thereof no later than five (5) Business Days after its receipt of the Park Negotiation Notice (an “Election Notice") and Tenant and Landlord shall thereafter negotiate for a period of thirty (30) days following the date of the Election Notice ("Park Negotiation Period")) for the prospective lease or management of Under Ramp Park following completion of Phase II. If Tenant timely delivers an Election Notice to Landlord, then Landlord and Tenant shall in good faith negotiate during the Park Negotiation Period with regard to the prospective lease or management of the Under Ramp Park following completion of Phase II by Tenant; provided, however, that Landlord shall have no affirmative obligation to lease the Under Ramp Park to Tenant or contract with Tenant for the management of the Under Ramp Park following completion of Phase II. If Tenant does not timely deliver an Election Notice to Landlord, then Tenant shall be deemed to have elected not to pursue its Park Negotiation Rights hereunder, in which case Tenant's Park Negotiation Rights shall have no effect and Landlord may lease or contract for the management of the Under Ramp Park, at such time and on such terms as it deems acceptable in its sole and absolute discretion. If Tenant timely delivers an Election Notice to Landlord but Landlord and Tenant fail to agree (within the Park Negotiation Period) upon terms for Tenant's prospective lease or management of the Under Ramp Park, then Tenant's Park Negotiation Rights shall have no further effect and Landlord may lease or contract for the management of the Under Ramp Park, at such time and on such terms as it deems acceptable in its sole and absolute discretion.

1. *Tenant's [and Guarantor's] Transfers*.
   1. *Tenant's Right.*
      * 1. Tenant may not Transfer this Lease or any portion of its interest herein without Landlord's consent. Any assignee of Tenant shall assume all obligations and liabilities of Tenant under this Lease. Tenant shall pay, or cause to be paid, all transfer and other taxes payable on account of any such Transfer. Tenant shall promptly Notify Landlord of its intent to enter into any Transfer and supply Landlord with all materials Landlord may request so that Landlord may determine whether or not to grant its consent thereto. Furthermore, the transfer of a majority of the issued and outstanding capital stock, or of a majority of the total interest in, Tenant, however accomplished, and whether in a single transaction or in a series of related or unrelated transactions, shall be deemed a Transfer requiring Landlord's consent.
        2. Notwithstanding the foregoing provisions of this Article, Tenant shall have the right, without Landlord's consent, but upon notice thereof, to: (i) assign this Lease to an Affiliate of Tenant, provided that Tenant remains fully liable for its obligations hereunder [and the Guarantor remains liable under the Guaranty]; or (ii) assign this Lease to any party acquiring all or substantially all of the assets of Tenant by purchase, merger, contribution, consolidation, or otherwise, provided that (a) Tenant remains fully liable for its obligations hereunder [and Guarantor remains liable under the Guaranty], (b) the assignee or successor tenant agrees in writing to assume all of Tenant's obligations hereunder, (c) such Transfer is for a valid business purpose and not to circumvent any obligations under this Lease, and (d) any assignee is not a Prohibited Person. In either of (i) or (ii) above, (1) [the Guarantor shall continue to have a net worth at least equal to the greater of (x) Guarantor's net worth as of the date of this Lease or (y) the Guarantor's net worth immediately prior to any such assignment; and (2)] the assignee shall have experience commensurate with that of Tenant hereunder in each case as reasonably demonstrated to Landlord, and (3) the Control of the assignee [and the Control of the Guarantor] shall be held, directly or indirectly, by the same Person; otherwise Landlord consent shall be required.
   2. *[Guarantor's Right*

*.* Guarantor may not Transfer, all or any portion of, its interest in this Lease without Landlord's prior written consent in each instance. Any assignee of Guarantor shall assume all obligations and liabilities of Guarantor under the Guaranty. Guarantor shall pay, or cause to be paid, all transfer and other taxes payable on account of any such Transfer. Guarantor shall promptly Notify Landlord of its intent to enter into any Transfer and supply Landlord with all materials Landlord may request so that Landlord may determine whether or not to grant its consent thereto. Furthermore, the transfer of a majority of the issued and outstanding capital stock, or of a majority of the total interest in, Guarantor, however accomplished, and whether in a single transaction or in a series of related or unrelated transactions, shall be deemed a Transfer requiring Landlord's consent.]

1. *Landlord's Self Help Right and Liquidated Damages*.
   1. *Landlord's Right to Cure*

*.* If Tenant at any time fails to make any payment or take any action this Lease requires, then Landlord shall have the right at any time in the event of a Material O&M Default, or in the event of an emergency (for purposes hereof, "emergency" shall be deemed to mean that there is an imminent risk to any Person or portion of the Center), or upon thirty (30) days' Notice to Tenant in all other circumstances, to take such actions as this Lease may permit without waiving or releasing Tenant from any obligation or Default and without waiving Landlord's right to immediately take such action as Landlord deems appropriate under the circumstances, as a result of such Default, and may (but need not) make such payment or take such actions. Tenant shall reimburse Landlord, as Additional Rent, for an amount equal to (a) all reasonable sums paid, and reasonable costs and expenses (including Legal Costs) incurred by Landlord in exercising its cure rights under this paragraph, and (b) Default Interest.

* 1. *Liquidated Damages*

*.* In addition to any sums due under Section 22.1 above, Tenant shall also pay to Landlord, as liquidated damages and not as a penalty, the parties agreeing that the damages to be suffered by Landlord would be substantial, but the exact amount would be difficult to quantify, and have negotiated and agreed to these liquidated damages, the amount equal to the greater of (i) Two Thousand Five Hundred and 00/100 ($2,500.00) Dollars for each day that any Material O&M Default continues and (ii) an amount equal to three (3) times the amount required to cure such Material O&M Default, and, if any Material O&M Default relates to the failure of any vertical transportation equipment constituting all or any portion of the Center Equipment becomes inoperable for a period of more than twenty-four (24) hours after Landlord's Notice of such failure, then such liquidated damages shall be in an amount equal to the greater of (i) Five Thousand and 00/100 ($5,000.00) Dollars for each day that such Material O&M Default continues and (ii) an amount equal to three (3) times the amount required to cure such Material O&M Default relating to such vertical transportation equipment, together with an administrative fee equal to fifteen percent (15%) of the actual cost thereof, all of which shall be payable by Tenant to Landlord as Additional Rent hereunder.

1. *Quiet Enjoyment; Title to Certain Premises; Certain Agreements*.
   1. *Quiet Enjoyment*

*.* So long as this Lease has not been terminated, Landlord covenants that Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term, subject to the terms of this Lease, without molestation, hindrance, or disturbance by or from Landlord or by anyone claiming by or through Landlord or having title to the Premises paramount to Landlord, and free of any encumbrance created or suffered by Landlord.

* 1. *Access and Inspection*

*.* Notwithstanding anything to the contrary in this Lease, Landlord and its agents, representatives, and designees shall have the right to enter the Premises at any time and from time to time to: (a) ascertain whether Tenant is complying with this Lease; (b) cure Tenant's Defaults; (c) inspect the Premises and any Construction; (d) perform such tests, borings, and other analyses as Landlord determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge; or (e) show the Premises to a prospective Transferee of Landlord's interest. In entering the Premises, Landlord and its designees shall not unreasonably interfere with operations on the Premises.

* 1. *Title*

*.* Notwithstanding anything to the contrary in this Lease, all Improvements, Center Signage (excluding any signage belonging to any Subtenants), Center Equipment, and Center FF&E located in, on, or at the Premises or otherwise constituting part of the Premises shall during the Term be owned by, and belong to, Landlord, unless herein elsewhere specifically provided. All benefits and burdens of ownership of the foregoing including, without limitation, title, depreciation, tax credits, and all other tax items, shall be and remain in Landlord.

1. *Events of Default; Remedies*.
   1. *Definition of "Event of Default."*

An "Event of Default" means the occurrence of any one or more of the following:

* + 1. *Monetary Default*. If a Monetary Default occurs and continues for five (5) Business Days after Notice from Landlord, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment provided however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 or any similar or successor law.
    2. *Prohibited Liens*. If Tenant fails to comply with any obligation regarding Prohibited Liens and does not remedy such failure within ninety (90) days after Notice from Landlord provided however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 or any similar or successor law.
    3. *Bankruptcy or Insolvency*. If Tenant or Guarantor ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Tenant's or Guarantor's assets or Tenant's interest in this Lease (unless such appointment, attachment, execution or other seizure was involuntary and is contested with diligence and continuity and is vacated and discharged within ninety (90) days).
    4. *Nonmonetary Default*. If any other Nonmonetary Default occurs and Tenant does not cure it within thirty (30) days after Notice from Landlord describing it in reasonable detail, or, in the case of a Nonmonetary Default that cannot with due diligence be cured within thirty (30) days from such Notice, if Tenant shall not (x) within thirty (30) days from Landlord's Notice advise Landlord of Tenant's intention to take all reasonable steps to cure such Nonmonetary Default; (y) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (z) complete such cure within a reasonable time under the circumstances (not necessarily limited to thirty (30) days); provided however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 or any similar or successor law.
    5. *Chronic Repair and Maintenance Defaults.* If Tenant fails to keep, repair and maintain, or cause to be kept, repaired and maintained, the Premises in good order and condition in accordance with all applicable Laws and the O & M Guidelines set forth on **Exhibit L-1** attached hereto and made a part hereof, and otherwise in accordance with the Retail Standard, all as reasonably determined by Landlord's Representative from time to time, within twenty-four (24) hours after Landlord's Notice advising Tenant of such failure, and such Default occurs three (3) times in any twelve (12) month period (or two (2) times in any twelve (12) month period if such failure relates to any vertical transportation equipment constituting all or any portion of the Center Equipment, the repair and maintenance of which Tenant is obligated pursuant to Article 8).
  1. *Remedies*

*.* If an Event of Default occurs, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

* + 1. *Termination of Lease*. Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:
       1. The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus
       2. The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus
       3. The worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus
       4. Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant’s failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and
       5. At Landlord’s election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term “rent” as used in this Section 24.2.1 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Sections 24.2.1(a) and (b), above, the “worth at the time of award” shall be computed by allowing interest at the rate specified herein for Default Interest. As used in Sections 24.2.1(c) above, the “worth at the time of award” shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

* + 1. *Continuation of Lease.* Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee’s breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.
    2. *No Waiver*. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy upon a Default, and no acceptance of full or partial Rent during continuance of any such Default, shall waive any such breach or Default or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by Tenant, and no Default, shall be Modified except by a written instrument executed by Landlord. No waiver of any Default shall affect or alter this Lease. Each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default of such covenant, agreement, term or condition of this Lease.
    3. *Injunction of Breaches*. Whether or not an Event of Default has occurred, Landlord may obtain a court order enjoining Tenant from continuing any Default or from committing any threatened breach or Default. Tenant specifically and expressly acknowledges that damages would not constitute an adequate remedy for any Nonmonetary Default.
    4. *Restoration Funds.* Upon any termination of this Lease, to the extent that Landlord then holds any Restoration Funds, they shall be applied solely as Landlord directs, including as a payment toward any sums then payable to Landlord.
    5. *Efforts to Relet*. For the purposes of this Article 24, Tenant’s right to possession shall not be deemed to have been terminated by efforts of Landlord to relet the Premises, by its acts of maintenance or preservation with respect to the Premises, or by appointment of a receiver to protect Landlord’s interests hereunder. The foregoing enumeration is not exhaustive, but merely illustrative of acts which may be performed by Landlord without terminating Tenant’s right to possession
  1. *Tenant's Late Payments; Default Interest*

*.* If Tenant fails to make any payment to Landlord required under this Lease within ten (10) days after such payment is first due and payable, then in addition to any other remedies of Landlord, and without reducing or adversely affecting any of Landlord's other rights and remedies, Tenant shall pay Landlord Default Interest on such late payment, beginning on the date such payment was first due and payable and continuing until the date when Tenant actually makes such payment, which is intended to compensate Landlord for the inconvenience and staff time incurred by Landlord to handle the late or missed payment, shall not be deemed a penalty or compensation for use of funds, and shall not be credited against any other obligations of Tenant under this Lease.

* 1. *Holding Over*

*.* If for any reason or no reason Tenant remains in the Premises after the Expiration Date, then Landlord will suffer injury that is substantial, difficult, or impossible to measure accurately. Therefore, if Tenant remains in the Premises after the Expiration Date, for any reason or no reason, then in addition to any other rights or remedies of Landlord, Tenant shall pay to Landlord, as liquidated damages and not as a penalty, for each month (prorated daily for partial months) during which Tenant holds over after the Expiration Date, a sum equal to: One Hundred Fifty Percent (150%) (for the first month or partial month of holding over), One Hundred Seventy Five Percent (175%) (for the second month or partial month of holding over), and Two Hundred Percent (200%) (for each subsequent month or partial month of holding over) times the monthly Rent, including Additional Rent, payable under this Lease during the year preceding the Expiration Date.

* 1. *Waivers*

*.* TO THE EXTENT PERMITTED BY APPLICABLE LAW, LANDLORD AND TENANT IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM, OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT REGARDING THE PREMISES, ENFORCEMENT OF THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, ANY CLAIM OF INJURY OR DAMAGE ARISING BETWEEN LANDLORD AND TENANT, OR ANY ACTIONS OF LANDLORD IN CONNECTION WITH OR RELATING TO THE ENFORCEMENT OF THIS LEASE. TENANT WAIVES ANY RIGHT OF REDEMPTION PROVIDED FOR BY LAW. TENANT WAIVES ANY RIGHT TO INTERPOSE ANY COUNTERCLAIM IN ANY ACTION, ARBITRATION OR PROCEEDING BY LANDLORD TO ENFORCE THIS LEASE OR LANDLORD'S RIGHTS AND REMEDIES UNDER THIS LEASE. SEE ALSO SECTIONS 3.2 AND 10.4 ABOVE, WHICH ADDRESS ARBITRATION OF THOSE PROVISIONS ONLY.

* 1. *Accord and Satisfaction; Partial Payments*

*.* No payment by Tenant or receipt by Landlord of a lesser amount than the amount owed under this Lease shall be deemed to be other than a part payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment of Rent shall not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy.

* 1. *Miscellaneous*

*.* Landlord and Tenant further agree as follows with respect to any Defaults and Landlord's rights and remedies.

* + 1. *Survival*. No termination of this Lease and no taking possession of or reletting the Premises shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession, or reletting.
    2. *Multiple Suits*. Landlord may sue to recover damages, or sum(s) equal to any installment(s) of Rent payable by Tenant, from time to time at Landlord's election. Nothing in this Lease requires Landlord to await the date when this Lease or the Term would have expired absent an Event of Default and a resulting termination of this Lease.
    3. *Receipt of Monies*. Unless such payment shall fully cure all Monetary Defaults, no receipt of moneys by Landlord from Tenant after the giving of a termination notice or a notice to obtain possession, or after the retaking of possession by Landlord as aforesaid, shall reinstate, continue, or extend the Term or affect any notice previously given to Tenant, waive Landlord's right to enforcement of Rent payable by Tenant or thereafter falling due, or waive Landlord's right to recover possession of the Premises. After the service of any such notice, or commencement of any suit or summary proceedings, or after a final order or judgment for possession of the Premises, Landlord may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit, or judgment, unless such payments fully cure all Monetary Defaults. Any sums so collected (without thereby curing all Monetary Defaults) shall instead be deemed payments on account of use and occupation of the Premises or, at Landlord's election, to have been made on account of Tenant's liability under this Lease.
    4. *No Double Recovery*. In no event shall Landlord be entitled, directly or indirectly, to recover twice for the same element of Landlord's damages.

1. *End of Term*

. Upon any Expiration Date:(a) all Improvements, Tenant Controlled Signage (excluding any signage belonging to any Subtenants) and Tenant/Subtenant Equipment shall become Landlord's property; (b) Tenant shall deliver to Landlord possession of the Premises, in the condition this Lease requires, subject to any Loss that this Lease does not require Tenant to Restore; (c) Tenant shall surrender any right, title, or interest in and to the Premises and deliver such evidence and confirmation thereof as Landlord reasonably requires; (d) Tenant shall deliver the Premises free and clear of all: (i) Subleases except as otherwise herein elsewhere specifically provided, and (ii) liens except liens that Landlord or any of its agents caused; (e) Tenant shall assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Premises; (f) the parties shall cooperate to achieve an orderly transition of operations from Tenant to Landlord (or a substitute tenant designated by Landlord) without interruption, including delivery of such books and records (or copies thereof) as Landlord reasonably requires; (g) the parties shall adjust for Impositions and all other expenses and income of the Premises and any prepaid Rent and shall make such payments as shall be appropriate on account of such adjustment in the same manner as for a sale of the Premises (but any sums otherwise payable to Tenant shall first be applied to cure any Default); and (h) Tenant shall assign to Landlord (or a substitute tenant designated by Landlord), and Landlord shall reimburse Tenant for, all utility and other service provider deposits for the Premises. Notwithstanding anything to the contrary in this paragraph, Tenant may remove from the Premises any Tenant/Subtenant FF&E that (in either case) Tenant acquired after the Commencement Date, but Tenant must do so, if at all, before or within thirty (30) days after the Expiration Date. Tenant shall not, however, remove any Center Equipment or Tenant/Subtenant Equipment or any portion thereof. Tenant shall repair any damage from such removal. During such thirty (30) day period: (x) Tenant may enter the Premises for such purposes, without being deemed a holdover; (y) Landlord shall have no obligation to preserve or protect such Tenant/Subtenant FF&E; and (z) in entering the Premises, Tenant shall comply with Landlord's instructions and requirements relating thereto. Tenant's Tenant/Subtenant FF&E not removed within thirty (30) days after the Expiration Date shall be deemed abandoned.

1. *Notices*

*.* All Notices shall be in writing and shall be addressed to Landlord and Tenant (and their designated copy recipients) as set forth in **Exhibit G** attached hereto and made a part hereof. Notices (including any required copies as set forth in **Exhibit G** ) shall be delivered either (x) personally, by hand delivery (against a signed receipt), (y) by Federal Express or other overnight (one-night) courier service or (z) by certified mail (return receipt requested) to the addresses set forth in **Exhibit G**, in which case they shall be deemed delivered on the date of delivery (or when delivery has been first attempted, as evidenced by a receipt) to such address(es). Either party may change its address by giving Notice in compliance with this Lease. Notice of such a change shall be effective only upon receipt. Any party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. The parties' attorneys may give any Notice on behalf of its respective client.

1. *Brokers*

*.* Each party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Lease and no person is entitled to any commission or finder's fee on account of any agreements or arrangements made by such party; and (b) shall Indemnify the other party against any breach of such representation. Tenant shall be responsible for any and all broker or finder's fees, commission, or other forms of compensation which may be due and payable in connection with any Sublease permitted hereunder.

1. *Additional Deliveries; Third Parties*.
   1. *Estoppel Certificates*

*.* Up to twice a year, Landlord may require Tenant to execute, acknowledge, and deliver to Landlord (or directly to a designated third party) up to four original counterparts of an Estoppel Certificate. Tenant shall sign, acknowledge, and return such Estoppel Certificate within fifteen (15) days after request, even if Landlord is in Default. Any Estoppel Certificate shall bind the Tenant. In addition to the foregoing, from time to time during the term, within fifteen (15) days after Landlord's request, Tenant shall deliver to Landlord a factual statement related to any Sublease (in such form and with such content as reasonably requested by Landlord) including, but not limited to, the status of any Subtenant default under any Sublease and certain other financially pertinent information related to any Sublease.

* 1. *Further Assurances*

*.* Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease. Upon request from Tenant (prospective or current), Landlord shall promptly, under documentation reasonably satisfactory to the requesting party: acknowledge any Subtenant's nondisturbance and recognition rights (provided such Subtenant joins in such agreement, if any); (b) certify (subject to any then exception reasonably specified) that this Lease is in full force and effect, that no Lease Impairment has occurred, that to Landlord's knowledge no Default exists, the date through which Rent has been paid, and other similar matters as reasonably requested; and (c) provided Tenant reimburses Landlord's reasonable attorneys' fees and expenses, amend this Lease, provided such amendment does not materially adversely affect Landlord or reduce any payment.

* 1. *Net Lease*

*.* Except as herein expressly provided to the contrary and in any event subject to Section 8.1 hereof, this Lease is intended to be, and shall be construed as, an absolutely net lease, whereby under all circumstances and conditions (whether now or hereafter existing or within the contemplation of the parties), the Rent shall be a completely net return to Landlord throughout the Term; and except as hereinabove provided, Tenant shall pay any and all expenses, costs, obligations and charges whatsoever which shall arise, be incurred or become due during the Term with respect to or in connection with the improvement, operation, management, maintenance and repair of the Premises. Notwithstanding the foregoing, Tenant shall have no obligation to pay any interest, principal or other charges due or to become due under any lien or encumbrance voluntarily or involuntarily created, suffered or incurred by Landlord.

* 1. *Modification*

*.* Any Modification of this Lease must be in writing signed by the party to be bound.

* 1. *Successors and Assigns*

*.* This Lease shall bind and benefit Landlord and Tenant and their successors and permitted assigns, but this shall not limit or supersede any Transfer restrictions. Nothing in this Lease confers on any Person (except Landlord and Tenant,) any right to insist upon, or to enforce against Landlord or Tenant, the performance or observance by either party of its obligations under this Lease.

1. General Contracting Requirements.
   1. *Submitting False Claims; Monetary Penalties*

. Pursuant to San Francisco Administrative Code Chapter 6, Article V, any Contractor, subcontractor, or consultant who submits a false claim shall be liable to the TJPA for three times the amount of damages which the TJPA sustains because of the false claim, plus a civil penalty of up to $10,000, and other damages as provided by statute. A Contractor, subcontractor or consultant will be deemed to have submitted a false claim to the TJPA if the Contractor, subcontractor or consultant (a) knowingly presents or causes to be presented to an officer or employee of the TJPA a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the TJPA; (c) conspires to defraud the TJPA by getting a false claim allowed or paid by the TJPA; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the TJPA; or (e) is a beneficiary of an inadvertent submission of a false claim to the TJPA, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the TJPA within a reasonable time after discovery of the false claim.

* 1. *Disallowance*

. If Contractor claims or receives payment from the TJPA for a service, reimbursement for which is later disallowed by the State of California or United States Government, the Contractor shall promptly refund the disallowed amount to the TJPA upon the TJPA’s request. At its option, the TJPA may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, the Contractor certifies that the Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. The Contractor acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

* 1. *Taxes*

. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of the Contractor.

* 1. *Qualified Personnel*

*.* The Contractor represents and warrants to the TJPA that the Contractor is qualified to perform the services as contemplated by this Agreement. The Contractor further represents and warrants to the TJPA that it has all required licenses and approvals to perform the work contemplated by this Agreement, and that all work performed under this Agreement shall be performed only by personnel under the supervision and in the employment of the Contractor. All personnel engaged in the work shall be fully qualified and shall be authorized, licensed and certified under state and local law to perform such work if authorization, licensing or certification is required.

* 1. *Independent Contractor, Payment of Taxes and Other Expenses*.
     1. *Independent Contractor*. The Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the TJPA under this Agreement. The Contractor or any agent or employee of the Contractor shall not have employee status with the TJPA, nor be entitled to participate in any plans, arrangements, or distributions by the TJPA pertaining to or in connection with any retirement, health or other benefits that the TJPA may offer its employees. The Contractor or any agent or employee of the Contractor is liable for the acts and omissions of itself, its employees and its agents. The Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, Federal Insurance Contributions Act (FICA), income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to the Contractor’s performing services and work, or any agent or employee of the Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or joint venture relationship between the TJPA and the Contractor.

Any terms in this Agreement referring to direction from the TJPA shall be construed as providing for direction as to policy and the result of the Contractor’s work only, and not as to the means by which such a result is obtained.

* + 1. *Payment of Taxes and Other Expenses.* Should the TJPA, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that the Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by the Contractor which can be applied against this liability). The TJPA shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by the Contractor for the TJPA, upon notification of such fact by the TJPA, the Contractor shall promptly remit such amount due or arrange with the TJPA to have the amount due withheld from future payments to the Contractor under this Agreement (again, offsetting any amounts already paid by the Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, The Contractor shall not be considered an employee of the TJPA. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that the Contractor is an employee for any other purpose, then the Contractor agrees to a reduction in the TJPA's financial liability so that the TJPA's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that the Contractor was not an employee.

* 1. *Proprietary or Confidential Information of the TJPA*

. The Contractor understands and agrees that, in the performance of the work or services under the Agreement or in contemplation thereof, the Contractor may have access to private or confidential information which may be owned or controlled by the TJPA and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the TJPA. The Contractor agrees that all information disclosed by the TJPA to the Contractor shall be held in confidence and used only in performance of this Agreement. The Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

* 1. *Protection of Private Information*

. The Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, the Contractor agrees to all of the following:

* + - 1. Neither the Contractor nor any of its subcontractors shall disclose Private Information obtained from the TJPA or the City in the performance of this Agreement to any other subcontractor, person, or other entity, unless one of the following is true.
         1. The disclosure is authorized by this Agreement;
         2. The Contractor received advance written approval from the TJPA to disclose the information; or
         3. The disclosure is required by law or judicial order.
      2. Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by the TJPA shall be in accordance with any conditions or restrictions stated in the approval.
      3. Private Information shall mean any information that (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives or (2) the law forbids any person from disclosing.
      4. Any failure of the Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the TJPA may terminate this Agreement, debar Contractor, or bring a false claim action against the Contractor.
  1. *News Releases/Interviews*

. All Contractor news releases, media interviews, testimony at hearings and public comment relating to the Transbay Transit Center Program shall be prohibited unless expressly authorized by the TJPA.

* 1. *Ownership of Results*

. Any interest of the Contractor or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media, or other documents prepared by the Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to the TJPA. However, the Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

* 1. *Works for Hire*

. If, in connection with services performed under this Agreement, the Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the TJPA. If it is ever determined that any works created by the Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, the Contractor hereby assigns all copyrights to such works to the TJPA, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the TJPA, the Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities

* 1. *San Francisco Sunshine Ordinance*

. In accordance with S.F. Administrative Code Section 67.24(e), the Contractors’ bids, responses to solicitations and all other records of communications between the TJPA and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person’s or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

* 1. *Public Access to Meetings and Records*

. If the Contractor receives a cumulative total per year of at least $250,000 in TJPA funds or TJPA-administered funds and is a nonprofit organization as defined in Chapter 12L of the S.F. Administrative Code, the Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. The Contractor further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the TJPA to terminate and/or not renew the Agreement, partially or in its entirety.

* 1. *Conflict of Interest*

. Through its execution of this Agreement, the Contractor acknowledges that it is familiar with the provisions of the Conflict of Interest Code of the TJPA; Section 15.103 of the San Francisco City Charter; Article III, Chapter 2 of San Francisco’s Campaign and Governmental Conduct Code; and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

* 1. *Limitations on Contributions*

. Through execution of this Agreement, the Contractor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the TJPA for the rendition of personal services, for the furnishing of any material, supplies or equipment, or for the sale or lease of any land or building, from making any campaign contribution to (1) a TJPA elective officer if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. The Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Contractor’s board of directors; the Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Contractor. Additionally, the Contractor acknowledges that the Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

* 1. *Prohibition on Political Activity with TJPA Funds*

. In accordance with San Francisco Administrative Code Chapter 12.G, the Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. The Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the TJPA’s Chief Financial Officer. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event that the Contractor violates the provisions of this Section, the TJPA may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit the Contractor from bidding on or receiving any new TJPA contract for a period of two (2) years. The TJPA will not consider the Contractor’s use of profit as a violation of this Section.

* 1. *Equal Employment Opportunity/Nondiscrimination; Penalties*

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* + - 1. *Contractor Shall Not Discriminate*. In the performance of this Agreement, the Contractor agrees not to discriminate against any TJPA or City employee working with such Contractor or subcontractor, applicant for employment with such Contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or Acquired Immune Deficiency Syndrome or Human Immunodeficiency Virus (AIDS/HIV) status, or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Contractor is encouraged to actively recruit minorities and women for its workforce and take other steps, such as on-the-job training and education, to ensure nondiscrimination in the Contractor's employment practices.

* + - 1. *Subcontracts*. The Contractor shall incorporate by reference in all subcontracts the provisions of Chapters 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from the TJPA upon request) and shall require all subcontractors to comply with such provisions. Contractor’s failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.
      2. *Nondiscrimination in Benefits*. The Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where the work is being performed for the TJPA elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Chapter 12B.2(b) of the San Francisco Administrative Code.
      3. *Condition to Contract.* As a condition to this Agreement, the Contractor shall execute the appropriate “San Francisco Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits” form (Form HRC-12B-101, HRC-12B-102, or HRC-12B-103) with supporting documentation and file the form with the TJPA Contract Compliance Manager.
      4. *Incorporation of Administrative Code Provisions by Reference.* The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Contractor understands that pursuant to Section 12B.2(h) and 12C.3(g)of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Contractor and/or deducted from any payments due the Contractor.
  1. Disadvantaged Business Enterprise (DBE) Requirements

. The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the TJPA deems appropriate.

Pursuant to the monitoring requirements outlined in Section XIII of the TJPA’s DBE Program (49 CFR 26.37), the Contractor will be required to update and submit the TJPA’s “Bidders/Proposers Information Request Form,” regardless of DBE participation. Upon award of the contract, the Contractor shall submit the TJPA’s “Progress Payment Report” with every invoice, the “Subcontractor Payment Declaration” within five days of each Contractor payment to a subcontractor, and a “Final Expenditure Report” with the completion of the contract.

* 1. *Requiring Minimum Compensation for Covered Employees*

. The Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the Web at http://www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

* + - 1. For each hour worked by a Covered Employee during a Pay Period on work funded under the TJPA contract during the term of this Agreement, the Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. Note that the gross hourly compensation for covered employees is $13.02 as of January 1, 2015.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, then the gross hourly compensation as of January 1, 2015, is $11.05 per hour.

* + - 1. The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the TJPA with regard to the Contractor’s compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.
      2. The Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by the Contractor of the terms of this Agreement. The TJPA shall determine whether such a breach has occurred.
      3. If, within thirty (30) days after receiving written notice of a breach of this Agreement for violating the MCO, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the TJPA shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:
         1. The right to charge the Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
         2. The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to the Contractor under this Agreement;
         3. The right to terminate this Agreement in whole or in part;
         4. In the event of a breach by the Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
         5. The right to bar the Contractor from entering into future contracts with the TJPA for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the TJPA. Any amounts realized by the TJPA pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

* + - 1. The Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.
      2. The Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the TJPA, which communications are marked to indicate that they are to be distributed to Covered Employees.
      3. The Contractor shall provide reports to the TJPA in accordance with any reporting standards promulgated by the TJPA under the MCO, including reports on subcontractors.
      4. The Contractor shall provide the TJPA with access to pertinent records after receiving a written request from the TJPA to do so and being provided at least five (5) business days to respond.
      5. The TJPA may conduct random audits of the Contractor. Random audits shall be (1) noticed in advance in writing; (2) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (3) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (4) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the TJPA from investigating any report of an alleged violation of the MCO.
      6. Any subcontract entered into by the Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. The Contractor shall notify the TJPA when it enters into such a subcontract and shall certify to the TJPA that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is the Contractor’s obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, the TJPA may pursue any of the remedies set forth in this Section against the Contractor.
      7. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by the Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. The Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by the Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against the Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. The Contractor also understands that the MCO provides that if the Contractor prevails in any such action, the Contractor may be awarded costs and expenses, including reasonable attorney’s fees and disbursements, from the Covered Employee if the court determines that the Covered Employee’s action was frivolous, vexatious or otherwise an act of bad faith.
      8. If the Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than $25,000 ($50,000 for nonprofits), but the Contractor later enters into an agreement or agreements that cause the Contractor to exceed that amount in a fiscal year, the Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and the TJPA to exceed $25,000 ($50,000 for nonprofits) in the fiscal year.
  1. *Requiring Health Benefits for Covered Employees*

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Unless exempt, the Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the Web at http://www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this agreement shall have the meanings assigned to such terms in Chapter 12Q.

* + - 1. For each Covered Employee, the Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.
      2. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.
      3. The Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. The TJPA shall notify the Contractor if such a breach has occurred. If, within thirty (30) days after receiving the TJPA's written notice of a breach of this Agreement for violating the HCAO, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the TJPA shall have the right to pursue the remedies set forth in 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the TJPA.
      4. Any Subcontract entered into by the Contractor shall require the subcontractors to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Contractor shall notify the TJPA when it enters into such a subcontract and shall certify to the TJPA that it has notified the subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on subcontractor through the Subcontract. Each Contractor shall be responsible for its subcontractors' compliance with this Chapter. If a subcontractor fails to comply, the TJPA may pursue the remedies set forth in this Section against Contractor based on the subcontractor’s failure to comply, provided that TJPA has first provided Contractor with notice and an opportunity to obtain a cure of the violation.
      5. The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the TJPA with regard to Contractor's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.
      6. The Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
      7. The Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the TJPA agreement.
      8. The Contractor shall keep itself informed of the current requirements of the HCAO.
      9. The Contractor shall provide reports to the TJPA in accordance with any reporting standards promulgated by the TJPA under the HCAO, including reports on subcontractors and subtenants, as applicable.
      10. The Contractor shall provide the TJPA with access to records pertaining to compliance with HCAO after receiving a written request from the TJPA to do so and being provided at least five (5) business days to respond.
      11. The Contractor shall allow the TJPA to inspect the Contractor’s job sites and have access to the Contractor’s employees in order to monitor and determine compliance with HCAO.
      12. The TJPA may conduct random audits of the Contractor to ascertain its compliance with HCAO. The Contractor agrees to cooperate with the TJPA when it conducts such audits.
      13. If the Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than $25,000 ($50,000 for nonprofits), but the Contractor later enters into an agreement or agreements that cause the Contractor's aggregate amount of all agreements with TJPA to reach $75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and the TJPA to be equal to or greater than $75,000 in the fiscal year.
  1. *First Source Hiring Program*

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* + - 1. *Incorporation of Administrative Code Provisions by Reference*

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

* + - 1. *First Source Hiring Agreement*
         1. The Contractor will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time.
         2. The Contractor will comply with requirements for providing timely, appropriate notification of available Entry Level Positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of Qualified Economically Disadvantaged Individuals to participating Employers.
         3. The Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A Contractor may establish its good faith efforts by filling (i) its first available Entry Level Position with a job applicant referred through the First Source Program; and (ii) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.
      2. *Hiring Decisions*

The Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

* + - 1. *Exceptions*

Upon application by Employer, the First Source Hiring Administration (“FSHA”) may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

* + - 1. *Liquidated Damages*

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of $2,070 for every new hire for an Entry Level Position improperly withheld from the First Source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

* + - 1. *Subcontracts*

Any subcontract entered into by the Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

* 1. *MacBride Principles – Northern Ireland*

. Pursuant to San Francisco Administrative Code Section 12F.5, the TJPA urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The TJPA urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of the Contractor acknowledges and agrees that he or she has read and understood this Section.

* 1. *Drug-Free Workplace Policy*

. The Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on TJPA premises. The Contractor agrees that any violation of this prohibition by the Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

* 1. *Resource Conservation*

. Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by the Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

* 1. *Tropical Hardwood/Virgin Redwood Ban*

. Pursuant to Section 804(b) of the San Francisco Environment Code, the TJPA urges Contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

* 1. *Preservative-treated Wood Containing Arsenic*

. The Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude the Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

* 1. *Food Service Waste Reduction Requirements*

. Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this agreement as though fully set forth. This provision is a material term of this agreement. By entering into this agreement, contractor agrees that if it breaches this provision, the TJPA will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars ($100.00) liquidated damages for the first breach, two hundred dollars ($200.00) liquidated damages for the second breach in the same year, and five hundred dollars ($500.00) liquidated damages for-subsequent breaches in the same year is a reasonable estimate of the damage that the TJPA will incur based on the violation, established in light of the circumstances existing at the time this agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by the TJPA because of Contractor's failure to comply with this provision.

* 1. *Graffiti Removal*

. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City and County of San Francisco's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

The Contractor shall remove all graffiti from any real property owned or leased by the Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of the Contractor’s (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the City’s Department of Public Works or the TJPA. This Article is not intended to require the Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include (a) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (b) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. Sections 101 et seq.).

* 1. *USDOT Requirements*

. The provisions contained in “USDOT Requirements for Professional Services Contracts,” attached as **Exhibit P**, are incorporated into this Agreement, and the Contractor agrees to abide by such provisions. Such provisions supplement the provisions in this Agreement, and shall be interpreted in the broadest possible manner to avoid any conflicts. If there is an unavoidable conflict between the USDOT terms and conditions and any other terms and conditions of this Agreement, in the TJPA’s sole determination, the USDOT terms and conditions shall take precedence.

* 1. *Compliance With Laws and Policies*

. The Contractor shall keep itself fully informed of the Charter of the City and County of San Francisco, of codes, ordinances and regulations of the City, of all state and federal laws and regulations in any manner affecting the performance of this Agreement, and of all published policies of the TJPA and must at all times comply with such Charter, codes, ordinances, regulations, and all applicable laws, and published policies as they may be amended from time to time.

* 1. *Compliance with Americans with Disabilities Act*

. The Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of the Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

* 1. *Compliance with Card Check Policy*

. The provisions contained in the “Labor Representation Policy,” attached as **Exhibit Q** (the “Card Check Policy”), are incorporated into this Agreement, and the Contractor agrees to abide by such provisions. Such provisions supplement the provisions in this Agreement, and shall be interpreted in the broadest possible manner to avoid any conflicts. If there is an unavoidable conflict between the terms and provisions contained in the Card Check Policy and any other terms and provisions of this Agreement, in the TJPA’s sole determination, the terms and provisions contained in the Card Check Policy shall take precedence.

1. Miscellaneous.
   1. *Costs and Expenses; Legal Costs*

*.* In the event of any litigation or dispute (except an Arbitration) between the parties, or claim made by either party against the other, arising from this Lease or the landlord-tenant relationship under this Lease, or Landlord's enforcement of this Lease upon a Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Premises or terminate this Lease, or in any Bankruptcy Proceeding affecting the other party to this Lease, the prevailing party shall be entitled to reimbursement of its Legal Costs with Default Interest and all other reasonable costs and expenses incurred in enforcing this Lease or curing the other party's Default. If Tenant requests any amendment or modification to this Lease, then Tenant shall reimburse Landlord's Legal Costs incurred in considering, reviewing, and otherwise processing such request. Furthermore, Tenant shall reimburse Landlord for all expenditures made and obligations incurred by Landlord in collecting or attempting to collect the Rent or in enforcing or attempting to enforce any rights of Landlord under this Lease or pursuant to law, including, without limitation, all Legal Costs so expended. Tenant’s obligations under this Section 29.1 shall survive the expiration or sooner termination of the Lease Term.

* 1. *No Consequential Damages*

*.* Whenever either party may seek or claim damages against the other party (whether by reason of a breach of this Lease by such party, in enforcement of any indemnity obligation, for misrepresentation or breach of warranty, or otherwise), neither Landlord nor Tenant shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise. The parties intend that any damages awarded to either party shall be limited to actual, direct damages sustained by the aggrieved party. Neither party shall be liable for any loss of profits suffered or claimed to have been suffered by the other.

* 1. *No Waiver by Silence*

*.* Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the noncomplaining party of any of its rights under this Lease. No waiver by either party at any time, express or implied, of any breach of this Lease shall waive such breach or any other breach.

* 1. *Performance Under Protest*

*.* If a dispute arises regarding performance of any obligation under this Lease, the party against which such obligation is asserted shall have the right to perform it under protest, which shall not be regarded as voluntary performance. A party that has performed under protest may institute appropriate proceedings to recover any amount paid or the reasonable cost of otherwise complying with any such obligation, with interest at the Prime Rate.

* 1. *Survival*

*.* All rights and obligations that by their nature are to be performed after any termination of this Lease shall survive any such termination.

* 1. *Unavoidable Delay*

*.* Each party's obligation to perform or observe any nonmonetary obligation under this Lease shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay.

* 1. *Financial Statements*

*.* Tenant shall deliver, or cause to be delivered, on or before April 1 of each calendar year during the Term (or if the subject entity has a fiscal year other than a calendar year, on the date which is 90 days following the expiration of such entity's fiscal year) a financial statement, certified as true and complete by a financial officer of the subject entity, for Tenant, Guarantor and any and all Subtenants leasing, or otherwise occupying, any portion of the Premises for which Landlord has delivered a non-disturbance agreement in accordance with Section 10.2 hereof. Upon request by Landlord, Tenant shall cause any such certified financial statement to be audited by a certified public accountant reasonably satisfactory to Landlord.

* 1. *Development Rights*

*.* Landlord and Tenant agree that Landlord retains any and all air rights, development rights, or comparable rights of any kind and nature with respect to the Center and the Premises and that Tenant has no rights in and to same and Tenant hereby consents, without further consideration to any utilization of such rights by Landlord.

1. *Interpretation, Execution, and Application of Lease*.
   1. *Captions*

*.* The captions of this Lease are for convenience and reference only. They in no way affect this Lease.

* 1. *Counterparts*

*.* This Lease may be executed in counterparts.

* 1. *Delivery of Drafts*

*.* Neither party shall be bound by this Lease unless and until such party shall have executed and delivered at least one counterpart of this Lease. The submission of draft(s) or comment(s) on drafts shall bind neither party in any way. Such draft(s) and comment(s) shall not be considered in interpreting this Lease.

* 1. *Entire Agreement*

*.* This Lease contains all terms, covenants, and conditions about the Premises. The parties have no other understandings or agreements, oral or written, about the Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Premises.

* 1. *Governing Law*

*.* This Lease, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State, without regard to principles of conflict of laws. The parties agree that any state or federal district court located in the City and County of San Francisco, State of California shall have exclusive jurisdiction over any case or controversy arising from, under or in connection with this Lease and shall be the sole and exclusive forum in which to adjudicate any such dispute(s), except that any dispute(s) arising under Sections 3.2 and 10.4 of this Lease shall be resolved exclusively through expedited Arbitration.

* 1. *Partial Invalidity*

*.* If any term or provision of this Lease or its application to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Lease shall be valid and be enforced to the fullest extent Law allows.

* 1. *Principles of Interpretation*

*.* No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Lease. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words "include" and "including" shall be construed to be followed by the words: "without limitation." Each of these terms shall be interpreted as if followed by the words "(or any part of it)" except where the context clearly requires otherwise: Center Equipment; Center FF&E; Fee Estate; Land; Leasehold Estate; Premises; Structure; and any other similar collective noun. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Landlord's option, any Modification that violates this Lease), and includes all exhibits, schedules, and riders to such document. The word "or" includes the word "and."

***[****Signatures on Next Page.****]***

**IN WITNESS WHEREOF,** Landlord and Tenant have executed this Lease on the Commencement Date.

**TRANSBAY JOINT POWERS AUTHORITY**

By:   
Name:  
Its:

**[TENANT]**

By:   
Name:  
Its:

[With respect to Sections 18.1(c) and (d), 18.2 and 21.2 hereof and in no way limiting any requirements and responsibilities of the Guarantor, as set forth in the Guaranty:

**[GUARANTOR]**

By:   
Name:  
Its:]

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|  |  |  |
| --- | --- | --- |
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|  | **Annual** | **Monthly** |

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LANDLORD’S AREAS OF SHARED RESPONSIBILITY CAPITAL SHARING PERCENTAGE

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EXHIBIT G

NOTICE ADDRESSEES (INCLUDING REQUIRED COPY RECIPIENTS)

TENANT'S NOTICE ADDRESSES:

LANDLORD'S NOTICE ADDRESSES:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

With additional copies to each of:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

and:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

EXHIBIT H

FORM OF ESTOPPEL CERTIFICATE

EXHIBIT I

SPECIAL PURPOSE ENTITY COVENANTS

Tenant and any of its successors or assigns shall be formed as a single member limited liability company and comply with the following provisions to qualify as a so-called "special purpose entity."

For purposes hereof, the following terms shall have the following definitions:

"Member" shall mean any Person or Persons who, at the time of reference thereto, has been admitted as a member of the Tenant entity, or any Tenant successor or assign or as an additional member and, in the case of any of the foregoing, has not withdrawn, in each such Person's capacity as a Member. "Member" shall mean any one of the Members.

"Independent Director" shall mean an individual who shall not have been at the time of such individual's initial appointment, and may not have been at any time during the preceding five years, and shall not be at any time while serving as an Independent Director of the Managing Member or the Tenant, if applicable, either (a) a shareholder of, or an officer, director, partner or employee of, the Tenant, Guarantor or Managing Member or any of their respective shareholders, partners, members, subsidiaries or Affiliates, (b) a customer of, or supplier to, the Tenant, Guarantor or Managing Member or any of their respective shareholders, partners, members, subsidiaries or Affiliates, (c) a person or other entity Controlling or under common Control with any such shareholder, officer, director, partner, member, employee, supplier or customer, or (d) a member of the immediate family of any such shareholder, officer, director, partner, member, employee, supplier or customer.

"Managing Member" means the Person appointed to (i) manage the affairs and business of the Tenant, (ii) exercise or refrain from exercising the authority and powers granted to the Tenant and (iii) otherwise act in all other matters on behalf of the Tenant, including without limitation, the implementation of the decisions of the Members.

* + - * 1. The Members shall cause the Tenant to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; provided, however, that the Tenant shall not be required to preserve any such right or franchise if the Members shall determine that the preservation thereof is no longer desirable for the conduct of its business and that the loss thereof is not disadvantageous in any material respect to the Tenant. The Members shall also cause the Tenant to maintain its status as a special purpose entity, which includes causing the Tenant to do the following:

not engage in any business or activity other than the leasing, operation and maintenance of the Premises, and activities incidental thereto and conduct and operate its business as presently conducted and operated;

not, acquire or own any assets other than its interests in the Premises, the Tenant/Subtenant Equipment and Tenant/Subtenant FF&E, as may be necessary for the operation of the Premises;

be formed and organized under Delaware law and otherwise comply with all other rating agency criteria for single member limited liability companies (including, without limitation, the inclusion of a "springing member"), except that such entity shall have two (2) members; one (1) of which shall be the Managing Member and (B) have at least one (1) Independent Director on its board of managers;

preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its formation or organization;

not merge or consolidate with any other Person;

not take any action (a) to dissolve, wind-up, terminate or liquidate in whole or in part, (b) to sell, transfer or otherwise dispose of all or substantially all of its assets; (c) to change its legal structure, (d) to transfer, or permit the direct or indirect transfer of, any partnership, membership or other Equity Interests, as applicable, other than Transfers to which Landlord shall have consented in writing; or (e) seek to accomplish any of the foregoing;

not, without the unanimous written consent of all of its Members and the Independent Director: (a) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute; (b) seek or consent to the appointment of a receiver, liquidator or any similar official; or (c) make an assignment for the benefit of creditors;

not amend or restate Tenant's, or its successors' or assigns', operating agreement if such change would adversely impact the requirements set forth in this Exhibit I;

not own any subsidiary or make any investment in, any other Person;

not commingle its assets with the assets of any other Person;

not incur any debt, secured or unsecured, direct or contingent (including, without limitation, guaranteeing any obligation), other than customary unsecured trade payables incurred in the ordinary course of operating the Premises;

maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person;

only enter into any contract or agreement with any general partner, member, shareholder, principal or Affiliate of the Tenant or Guarantor, or any general partner, member, principal or Affiliate thereof, upon terms and conditions that are intrinsically

fair and substantially similar to those that would be available on an arms-length basis with third parties;

not maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

not assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of another Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

not make any loans or advances to any other Person;

file its own tax returns as required under federal and state law;

hold itself out to the public as a legal entity separate and distinct from any other Person and conduct its business solely in its own name and shall correct any known misunderstanding regarding its separate identity, and shall not identify itself or any of its Affiliates as a division or part of the other;

maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

allocate shared expenses (including, without limitation, shared office space) and use separate stationery, invoices and checks;

shall pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds and maintain a sufficient number of employees (if any) in light of its contemplated business operations;

not acquire obligations or securities of its Members or any other Affiliate;

not permit any Affiliate or constituent party independent access to its bank accounts; and

not permit its assets to be listed as assets on the financial statement of any other Person; provided, however, that its assets may be included in a consolidated financial statement of its Affiliates, provided that (A) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of it and such Affiliates and to indicate that its assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person and (B) such assets shall be listed on its own separate balance sheet.

* + - * 1. As long as this Lease is in effect, the Managing Member shall cause the Tenant at all times to have at least one Independent Director who will be appointed by the Managing Member. To the fullest extent permitted by law, including Section 18-1101(c) of the Limited Liability Company Act of the State of Delaware (as it may be amended from time to time, or any successor statute, the "LLCA"), the Independent Director will consider only the interests of the Tenant, and its creditors, in acting or otherwise voting on the matters referred to in section (a)(vii) above of this **Exhibit I**. No resignation or removal of an Independent Director, and no appointment of a successor Independent Director, shall be effective until such successor shall have accepted his or her appointment as an Independent Director in writing. In the event of a vacancy in the position of Independent Director, the Managing Member shall, as soon as practicable, appoint a successor Independent Director. All right, power and authority of the Independent Director shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement. The Independent Director shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the General Corporation Law of the State of Delaware. No Independent Director shall at any time serve as trustee in bankruptcy for any Affiliate of the Tenant.
        2. Upon the occurrence of any event that causes all of the Members or the last remaining Member to cease to be Members of Tenant, or any of its successors or assigns) (other than upon an assignment by a Member of all of its limited liability company interest in the Tenant and the admission of a substituted member), the Person acting as an Independent Director shall, without any action of any Person and simultaneously with all Members or the last remaining Member ceasing to be members of the Tenant, automatically be admitted to the Tenant as a so called "Special Member" and shall continue the Tenant without dissolution. No Special Member may resign from the Tenant or transfer its rights as Special Member unless (i) a successor Special Member has been admitted to the Tenant as Special Member evidenced by written agreement and (ii) such successor has also accepted his appointment as Independent Director; provided, however, the Special Member shall automatically cease to be a Member of the Tenant upon the admission to the Tenant of a Substitute Member. The Special Member shall be a member of the Tenant that has no interest in the profits, losses and capital of the Tenant and has no right to receive any distributions of Tenant assets. Pursuant to Section 18-301 of the LLCA, the Special Member shall not be required to make any capital contributions to the Tenant and shall not receive a limited liability company interest in the Tenant. The Special Member, in its capacity as Special Member, may not bind the Tenant. Except as required by any mandatory provision of the LLCA, the Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Tenant, including, without limitation, the merger, consolidation or conversion of the Tenant. In order to implement the admission to the Tenant of the Special Member, the person acting as Independent Director shall evidence same in writing. Prior to its admission to the Tenant as Special Member, the Person acting as Independent Director shall not be a Member of the Tenant.

EXHIBIT J

INSURANCE AND INDEMNITY DEFINITIONS

Indemnitee [Definitions]:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Named Insureds for Railroad Protective Liability [16.2.2.F; 16.3.2.F]:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Additional Insured for General Liability [16.2.1.B; 16.2.2.B; 16.3.1.B; 16.3.2.B]:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Additional Named Insured and Loss Payee for Builders Risk [16.2.2.D; 16.3.2.D]:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

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O & M GUIDELINES

EXHIBIT M

DESIGN GUIDELINES

EXHIBIT M-1

DESIGN REVIEW PROCESS

EXHIBIT N

LIST OF PROHIBITED USES AND USERS

In addition to any of the use restrictions set forth in the Lease, the term Prohibited Uses shall mean any of the following uses:

1. Any use by a Prohibited Person;
2. Any pornographic use, which shall include, without limitation: (x) a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational or similar to those sold in first-class national bookstores; (y) a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto or (z) a massage parlor;
3. Any use which emits or results in unreasonably offensive odors, fumes, dust or vapors, is a public nuisance, emits noise or sounds which are reasonably objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse;
4. Any so-called "head shop", or other establishment primarily selling or exhibiting drug- related paraphernalia;
5. Any "second hand" store, "surplus" store, "99 cent" store, or low end discount store or thrift store;
6. Any operation primarily used as a storage facility and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;
7. Any central laundry, laundromat or on-site dry cleaning, but not including a store where clothing can be dropped off for cleaning and picked-up when cleaned;
8. Any pet store, veterinary hospital or animal raising or boarding facilities;
9. Any amusement or video arcade or other business deriving income from coin operated games, pool, billiard hall or ping pong parlor unless specifically approved by Landlord;
10. Daycare center, community center, teen center, recreational center or karate center;
11. Employment agency or social services center
12. Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black jack or poker; slot machines; video poker/black-jack/keno machines or similar devices or bingo hall;
13. Any church, temple, or mosque or other place for religious worship or spiritualist services;
14. Any mortuary or funeral home or chapel, sale or manufacture of tombstones or monuments;
15. Any car wash, automobile repair shop, or any business servicing motor vehicles in any respect, including, without limitation, any quick lithe oil change service, tire center or gasoline or service station or facility;
16. Any check cashing service store, except as an incidental use to a bank as permitted under this Lease;
17. Agency, Department or Bureau of any governmental authority;
18. Auction house or for the conduct of a public auction of any kind;
19. Dating or escort service;
20. Fund raising or solicitation for other purposes by means of telephone "bank" calls to the public from the Premises;
21. Messenger service;
22. Any pawn shop, gun shop, or tattoo parlor;
23. Headquarters, center or other facility devoted or opposed to the promotion, advancement, representation, purpose or benefit of: (a) any political party, political movement or political candidate, (b) any religion, religious group or religious denomination, (c) any foreign governmental;
24. Shoe repair; and
25. Gypsy, fortune teller or palm reader or card reader.

EXHIBIT O

Digital Guidelines

EXHIBIT O-1

Digital Content Development Guidelines

EXHIBIT P

**USDOT REQUIREMENTS FOR AGREEMENTS WITH THE TJPA**

*The USDOT’s requirements for agreements between the TJPA and a third party are summarized below. Certain USDOT provisions described below may not be applicable to all agreements with the TJPA. The italicized text is intended to assist the Contractor in understanding which Federal requirements may be applicable to an agreement. The USDOT and the TJPA have sole discretion to apply any particular provision described below.*

*These provisions supplement the provisions in the Agreement, and shall be interpreted in the broadest possible manner to avoid any conflicts. If there is an unavoidable conflict between the USDOT requirements and any other terms and conditions of the Agreement, in the TJPA’s sole determination, the USDOT requirements shall take precedence.*

**The following provisions (1-12) apply to all Agreements (excluding micropurchases—purchases of $3,000.00 or less).**

**1.** **DEFINITIONS**

*\*\* The Definitions apply to all Agreements.*

(a). **Agreement** means a contract, purchase order, memorandum of understanding or other agreement awarded by the TJPA to a Contractor, financed in whole or in part with Federal assistance awarded by FTA or FRA.

(b). **Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the TJPA is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

(c). **Contractor** means the individual or entity awarded an Agreement financed in whole or in part with Federal assistance originally derived from FTA.

(d). **Federal Cooperative Agreement** means the instrument by which FRA or FTA awards Federal assistance to the TJPA to support a particular Project, and in which FRA or FTA takes an active role or retains substantial control

(e.) **Federal Grant Agreement** means the instrument by which FTA or FRA awards Federal assistance to the TJPA to support a particular Project, and in which FTA or FRA does not take an active role or retain substantial control, in accordance with 31 U.S.C. Section 6304.

(f.) **FRA** is the acronym for the Federal Railroad Administration, one of the operating administrations of the U.S. DOT.

(g.) **FRA Directive** includes any FRA regulation, policy, procedure, directive, circular, notice, order or guidance providing information about FRA's programs, application processing procedures, and Project management guidelines.

(h). **FTA** is the acronym for the Federal Transit Administration, one of the operating administrations of the U.S. DOT.

(i). **FTA Directive** includes any FTA regulation, policy, procedure, directive, circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines, including the Master Agreement between FTA and the TJPA.

(j). **Government** means the United States of America and any executive department thereof.

(k). **Project** means the Transbay Transit Center Program, which will extend Caltrain to Transbay Terminal and replace Transbay Terminal with the new Transbay Transit Center Building.  Total project consists of three major components: a new, multi-modal Transbay Transit Center (TTC) on the site of the present Transbay Terminal; the extension of Caltrain commuter rail from its current SF terminus at 4th and Townsend St. to a new underground terminus under a proposed new TTC; and the establishment of a Redevelopment Area with related development projects, including transit-oriented development on publicly owned land in the vicinity of the new multi-modal TTC.

(l). **Recipient** means the TJPA.

(m). **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.

(n). **Subcontract** means a subcontract at any tier entered into by Contractor or its subcontractor relating to the Agreement, financed in whole or in part with Federal assistance originally derived from FTA or FRA. Unless otherwise specified, the Contractor must include each of these Federal provisions in any Subcontract related to this Agreement.

(o). **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

(p). **U.S.DOT Directives** means any U.S. DOT regulation, policy, procedure, directive, circular, notice, order or guidance providing information about U.S.DOT’s programs, application processing procedures, and Project management guidelines.

**2. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

*\*\* This requirement applies to all Agreements.*

The TJPA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the TJPA, Contractor, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the Agreement.

**3. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

*\*\* This provision applies to all Agreements.*

(a). The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions under the Agreement. Upon execution of the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Agreement or the FTA- or FRA-assisted Project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(b). The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA or FRA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

**4. ACCESS TO DOCUMENTS**

*\*\* This requirement applies to all Agreements. FRA requires the inclusion of these requirements in Subcontracts over $100,000.*

*\*\* Please be aware that the requirements in the Agreement regarding audit and inspection of records may require the Contractor to maintain files relating to this Agreement for a longer period of time than described in the requirement below. Please also be aware that, as described in the Agreement, the TJPA follows the provisions of the City and County of San Francisco Sunshine Ordinance regarding responses to public requests for certain bid documents. The Contractor must comply with the requirements described below and in the Agreement.*

(a). Where the TJPA is considered a “local government” and is a Recipient or a subgrantee of a Recipient, in accordance with 49 CFR Section 18.36(i), the Contractor agrees to provide the TJPA, the FTA or FRA Administrator, the Comptroller General of the United States and/or any of their authorized representatives access to any books, documents, accounts papers and records of the Contractor which are directly pertinent to this Agreement (“Documents”) for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR Section 633.17, to provide the FTA or FRA Administrator or its authorized representatives, including any project management oversight Contractor, access to Contractor's Documents and construction sites pertaining to a major capital project, defined at 49 U.S.C. Section 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309 or 5311.

(b). Where the TJPA is a Recipient or a subgrantee of a Recipient, in accordance with 49 U.S.C. Section 5325(a), and enters into a contract for a capital project or improvement (defined at 49 U.S.C. Section 5302[a]1) through other than competitive bidding, the Contractor agrees to provide the TJPA, the Secretary and the Comptroller General, or any authorized officer or employee of any of them, access to any Documents for the purposes of conducting an audit and inspection.

(c). The Contractor agrees to permit any of the foregoing parties to reproduce, by any means whatsoever, or to copy excerpts and transcriptions, as reasonably needed, of any Documents.

(d). The Contractor agrees to maintain all Documents required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the TJPA, the FTA or FRA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. (See 49 CFR Section 18.39[i][11]).

**5. FEDERAL CHANGES**

*\*\* This requirement applies to all Agreements.*

Contractor shall at all times comply with all applicable federal laws and regulations, and all FTA Directives, FRA Directives and U.S. DOT Directives applicable to the Project, as they may be amended or promulgated from time to time during the term of this Agreement. It is Contractor’s responsibility to be aware of any amendments or changes to such federal requirements and directives. Contractor's failure to so comply shall constitute a material breach of this Agreement.

**6. CIVIL RIGHTS REQUIREMENT**

*\*\* This requirement applies to all Agreements.*

*\*\* Please be aware that the requirements in the Agreement regarding nondiscrimination are broader than the USDOT Requirements described below. The Contractor must comply with the requirements described below and in the Agreement.*

(a). **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d et seq.; the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6101 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq.; Federal transit law at 49 U.S.C. Section 5332; and the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 et seq.; the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 et seq.; the Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 et seq.; and the Public Health Service Act, as amended, 42 U.S.C. 290dd et seq., the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability, or other protected class. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements federal agencies may issue, including U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act,” 49 CFR part 21; and U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR parts 27 and 37.

(b). **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the Agreement:

(1). **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, 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. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.

(2). **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.

(3). **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.

**7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

*\*\* The specific provisions checked below apply to this Agreement.*

(a). This Agreement is subject to the requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* The national goal for participation of Disadvantaged Business Enterprises (DBEs) is 10 percent. The TJPA’s Anticipated DBE Participation Level for each Federal Fiscal Year is published on the TJPA website by August 1 of each year.

🞎 A separate Agreement goal of \_\_\_\_\_\_\_ percent DBE participation hasbeen established for this Agreement.

🗹 A separate Agreement goal **has not** been established for this Agreement.

(b). The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the TJPAdeems appropriate. Each Subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR Section 26.13[b]).

(c). *(Checked box is applicable to this Agreement.)*

🞎 (*If a separate Agreement goal has been established, use the following)*

The Contractor was required to document sufficient DBE participation to meet the separate Agreement goal established for this Agreement or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR Section 26.53.

🗹 **(***If no separate Agreement goal has been established, use the following)*

The Contractor is required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(d). The Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than ten (10) days after the Contractor’s receipt of payment for that work from the TJPA. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractor’s work by the TJPA and Contractor’s receipt of the partial retainage payment related to the subcontractor’s work.

(e). The Contractor must promptly notify the TJPA whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the TJPA.

**8. AMERICANS WITH DISABILITIES ACT**

*\*\* This requirement applies to all Agreements.*

The Consultant agrees that all facilities constructed under this Agreement will be designed to meet the applicable Accessibility Guidelines for Transportation Facilities set out as appendix A to 49 CFR Part 37.

**9. INCORPORATION OF U.S. DEPARTMENT OF TRANSPORTATION TERMS**

*\*\* This requirement applies to all Agreements.*

The preceding provisions include, in part, certain standard terms and conditions required by U.S. DOT, FTA and FRA of the TJPA’s agreements, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by U.S. DOT, FTA, and FRA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all USDOT, FTA, and FRA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any TJPA requests which would cause the TJPA to be in violation of the USDOT, FTA, or FRA terms and conditions.

**10. FLY AMERICA REQUIREMENTS**

*\*\* This provision applies to all Agreements that involve the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S.*

(a). The Contractor agrees to comply with 49 U.S.C. Section 40118 (the “Fly America Act”) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.

(b). The Contractor shall submit the “Fly America Certification” if the regulation is applicable to the particular Agreement.

(c). The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier.

(d). Notwithstanding the foregoing, transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier’s designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

**11. CARGO PREFERENCE REQUIREMENTS***\*\* This provision applies to all Agreements involving equipment, materials, or commodities which may be transported by ocean vessels.*

The Contractor agrees to:

(a). use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Agreement to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels;

(b). furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-landing in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the TJPA (through the Contractor in the case of a subcontractor's bill-of-landing).

**12. ENERGY CONSERVATION REQUIREMENTS**

*\*\* This provision applies to all Agreements.*

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Section 6201 *et seq*.

**The following provision (13) applies to Agreements exceeding $10,000.**

**13. RECYCLED PRODUCTS**

*\*\* This provision applies to all Agreements to procure $10,000 or more of any one item designated by the EPA under 40 CFR Part 247, Subpart B**in a single fiscal year, and to all Agreements to procure any items designated in 40 CFR Part 247, Subpart B where the TJPA or the Contractor has used Federal funds to procure $10,000 or more of any one item in the previous fiscal year.*

*\*\* Please be aware that the requirements in the Agreement regarding resource conservation may be more restrictive than the USDOT Requirements described below. The Contractor must comply with the requirements described below and in the Agreement.*

The Contractor agrees to comply with the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. Section 6962 et seq.), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in 40 CFR Part 247, Subpart B.

**The following provision (14) applies to Agreements exceeding $25,000.**

**14. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)**

*\*\* This requirement applies to all Agreements and Subcontracts greater than or equal to $25,000, and to any Agreement for auditing services at any dollar value.*

(a). This Agreement is a “covered transaction” for purposes of federal suspension and debarment laws, including 2 CFR part 1200, and the provisions of U.S. Office of Management and Budget Appendix A “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180 , and the Contractor is required to comply with same. In particular, the Contractor is required to verify that the Contractor, its “principals,” and its “affiliates” are not “excluded” or “disqualified,” as defined by federal suspension and debarment laws.

(b). The Contractor shall submit the “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

**The following provisions (15-16) apply to Agreements exceeding $50,000.**

**15. CLEAN AIR**

*\*\* This provision applies to all Agreements greater than $50,000 and to subcontracts greater than $50,000.*

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq. The Contractor agrees to report each violation to the TJPA and understands and agrees that the TJPA will, in turn, report each violation as required to assure notification to FTA and FRA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding $50,000.

**16. CLEAN WATER REQUIREMENTS**

*\*\* This provision applies to all Agreements greater than $50,000.*

(a). The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq. The Contractor agrees to report each violation to the TJPA and understands and agrees that the TJPA will, in turn, report each violation as required to assure notification to FTA and FRA and the appropriate EPA Regional Office.

(b). The Contractor also agrees to include these requirements in each Subcontract exceeding $50,000 financed in whole or in part with Federal assistance provided by FTA and FRA.

**The following provisions (17-20) apply to Agreements exceeding $100,000.**

**17. BUY AMERICA REQUIREMENTS**

*\*\* This provision applies only to the following types of Agreements: construction agreements of any value; agreements for the acquisition of goods or rolling stock of any value if funded by FRA, and valued at more than $100,000 if funded by FTA.*

(a). The Contractor agrees to comply with 49 U.S.C. Section 5323(j), 49 CFR Part 661, and 49 U.S.C. 24405, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA- and FRA-funded projects, such as the Transbay Transit Center Program that is the subject of this Agreement, are produced in the United States, unless a waiver has been granted by FTA, FRA, or the product is subject to a general waiver. General waivers, when FTA funds are used, are listed in 49 CFR Section 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. Section 5323(j)(2)(C) and 49 CFR Section 661.11 when FTA funds are used, and 49 CFR 24405(a) when FRA funds are used.

(b). The Contractor shall submit the “Buy America Certification” at the time of bid/offer if the regulation is applicable to the particular agreement. The Prime Contractor is responsible for ensuring that lower tier subcontractors are in compliance.

**18. BREACHES AND DISPUTE RESOLUTION**

*\*\* This requirement applies to all Agreements in excess of $100,000.*

(a). **Disputes** - Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of TJPA's Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

(b). **Performance During Dispute** - Unless otherwise directed by the TJPA, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

(c). **Claims for Damages** - Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of the party’s employees, agents or others for whose acts the party is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

(d). **Remedies** - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the TJPA and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the TJPA is located.

(e). **Rights and Remedies** - The duties and obligations imposed by the Agreement Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the TJPA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**19. LOBBYING**

*\*\* This provision applies to the following types of Agreements, if the Agreement is equal to or greater than $100,000: construction, architectural and engineering; acquisition of rolling stock; professional services; operational services; and Turnkey.*

*\*\* Please be aware that the requirements in the Agreement regarding limitations on contributions may be more restrictive than the USDOT Requirements described below. The Contractor must comply with the requirements described below and in the Agreement.*

(a). The contractor shall submit the "New Restrictions on Lobbying Certification" if the regulation is applicable to the particular agreement.

(b). (1). No Federal appropriated funds have been or will be paid by or on behalf of the Contractor

to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance;

(2). If any funds other than Federal appropriated funds have been or will be paid to any

person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, the Applicant assures that it will complete and submit Standard Form- LLL, ‘Disclosure Form to Report Lobbying,’ in accordance with its instructions.  Such forms are forwarded from tier to tier up to the TJPA.

**20. AGREEMENT WORK HOURS AND SAFETY STANDARDS ACT**

\*\* *This requirement applies to Agreements and Subcontracts for construction over $100,000, and to non-construction Agreements valued at more than $100,000 that employ “laborers or mechanics on a public work,” as defined by 42 U.S.C. Section 3701.*

(a). **Overtime requirements** - No Contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b). **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(c). **Withholding for unpaid wages and liquidated damages** - The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

**The following provisions (21-23) apply to Construction Agreements.**

**21. SEISMIC SAFETY REQUIREMENTS**

*\*\* This provision applies only to Agreements for the construction of new buildings or additions to existing buildings.*

The Contractor agrees that any new building or addition to an existing building that is the subject of this Agreement will be designed and constructed in accordance with the standards for Seismic Safety required in U.S. DOT Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance with such regulations to the extent required by the regulations. The Contractor also agrees to ensure that all work performed under this Agreement, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**22. BONDING REQUIREMENTS**

*\*\* This provision applies to Agreements for construction or facility improvements. For those Agreements or Subcontracts exceeding $100,000, however, USDOT may accept the bonding policy and requirements of the TJPA, provided that the TJPA’s bonding policy and requirements meet the minimum requirements as follows:*

*(a). A bid guarantee from each bidder equivalent to 5 percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.*

*(b). A performance bond on the part of the Contractor for 100 percent of the Agreement price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.*

*(c). A cash deposit, certified check or other negotiable instrument may be accepted by the TJPA in lieu of performance and payment bonds, provided the TJPA has established a procedure to assure that the interest of USDOT is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.*

*TJPA requirements regarding payment bonds are more stringent than USDOT amounts stated below. The TJPA requires a payment bond on the part of the Contractor for 100 percent of the Agreement price.*

(1). **Bid Bond Requirements (Construction)**

(a). Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to TJPA and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority.

(b). Rights Reserved

In submitting a bid, it is understood and agreed by bidder that the right is reserved by TJPA to reject any and all bids, or part of any bid, and it is agreed that a bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of the TJPA.

It is also understood and agreed that if a bidder should withdraw any part or all of its bid within ninety (90) days after the bid opening without the written consent of theTJPA, shall refuse or be unable to enter into this Agreement, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, or refuse or be unable to furnish adequate and acceptable insurance, it shall forfeit its bid security to the extent of TJPA’s damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the TJPA) shall prove inadequate to fully recompense the TJPA for the damages occasioned by default, then a bidder agrees to indemnify the TJPA and pay over to the TJPA the difference between the bid security and the TJPA’s total damages, so as to make the TJPA whole.

A bidder understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

(2). **Performance and Payment Bonding Requirements (Construction)**

The Contractor shall be required to obtain performance and payment bonds as follows:

(a). Performance Bonds

1. The penal amount of performance bonds shall be 100 percent of the original Agreement price, unless the TJPA determines that a lesser amount would be adequate for the protection of the TJPA.

2. The TJPA may require additional performance bond protection when an Agreement price is increased. The increase in protection shall generally equal 100 percent of the increase in Agreement price. The TJPA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b). Payment Bonds

1. The penal amount of the payment bonds shall equal:

(i) 50 percent of the Agreement price if the Agreement price is not more than $1 Million;

(ii) 40 percent of the Agreement price if the Agreement price is more than $1 Million but not more than $5 Million; or

(iii) $2.5 Million if the Agreement price is more than $5 Million.

2. If the original Agreement price is $5 Million or less, the TJPA may require additional protection, as required by subparagraph 1, if the Agreement price is increased.

(3). **Performance and Payment Bonding Requirements (Non-Construction)**

The Contractor also may be required to obtain performance and payment bonds when necessary to protect the TJPA’s interest.

(a). The following situations may warrant a performance bond:

1. TJPA property or funds are to be provided to the Contractor for use in performing the Agreement or as partial compensation (as in retention of salvaged material).

2. A Contractor sells assets to or merges with another concern, and the TJPA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Agreements are for dismantling, demolition, or removal of improvements.

(b). When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original Agreement price, unless the TJPA determines that a lesser amount would be adequate for the protection of the TJPA.

2. The TJPA may require additional performance bond protection when an Agreement price is increased. The increase in protection shall generally equal 100 percent of the increase in Agreement price. The TJPA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c). A payment bond is required only when a performance bond is required, and if the use of payment bond is in the TJPA’s interest.

(d). When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

(i) 50 percent of the Agreement price if the Agreement price is not more than $1 Million;

(ii) 40 percent of the Agreement price if the Agreement price is more than $1 Million but not more than $5 Million; or

(iii) $2.5 Million if the Agreement price is increased.

(4). **Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the Agreement contains an advance payment provision and a performance bond is not furnished. The TJPA shall determine the amount of the advance payment bond necessary to protect the TJPA.

(5). **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The TJPA shall determine the amount of the patent indemnity to protect the TJPA.

(6). **Warranty of the Work and Maintenance Bonds**

(a). The Contractor warrants to the TJPA, the architect and/or engineer that all materials and equipment furnished under this Agreement will be of highest quality and new unless otherwise specified by the TJPA, free from faults and defects and in conformance with the Agreement documents. All work not so conforming to these standards shall be considered defective. If required by the Executive Director, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

(b). The work furnished under the Agreement must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the TJPA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the TJPA. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the TJPA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Agreement. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after final payment and shall be written in an amount equal to 100 percent of the Agreement sum, as adjusted (if at all).

**23. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

*\*\* This requirement applies to any Agreement for construction greater than $2,000. “Construction,” for purposes of this requirement, includes “actual construction, alteration and/or repair, including painting and decorating.” (29 CFR Section 5.5[a]).*

(a). **Minimum Wages**

(1). All laborers and mechanics employed or working upon the site of the work that is the subject of this Agreement (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act [29 CFR Part 3]), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.   
  
Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2). (A). The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i). Except with respect to helpers as defined as 29 CFR Section 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii). The classification is utilized in the area by the construction industry; and

(iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(iv). With respect to helpers as defined in 29 CFR Section 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C). In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D). The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

(3). Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4). If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(5). (A). The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(i). The work to be performed by the classification requested is not performed by a classification in the wage determination; and   
(ii). The classification is utilized in the area by the construction industry; and  
(iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C). In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D). The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

(b). **Withholding** - The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Agreement, the TJPA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(c). **Payrolls and Basic Records**

(1). Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR Section 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2). (A). The Contractor shall submit weekly for each week in which any Agreement work is performed a copy of all payrolls to the TJPA for transmission to the USDOT. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B). Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Agreement and shall certify the following:

(i). That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;

(ii). That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(iii). That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Agreement.

(C). The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D). The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(3). The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the USDOT or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Section 5.12.

(d). **Apprentices and Trainees**

(1). Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2). Trainees - Except as provided in 29 CFR Section 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3). Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(e). **Compliance with Copeland Act Requirements** - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.

(f). **Subcontracts** - The Contractor or subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR Section 5.5(a)(1) through (10) and such other clauses as the USDOT may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Section 5.5.

(g). **Agreement Termination: Debarment** - A breach of the contract clauses in 29 CFR Section 5.5 may be grounds for termination of the Agreement, and for debarment as a contractor and a subcontractor as provided in 29 CFR Section 5.12.

(h). **Compliance with Davis-Bacon and Related Act Requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Agreement.

(i). **Disputes Concerning Labor Standards** - Disputes arising out of the labor standards provisions of this Agreement shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(j). **Certification of Eligibility**

(1). By entering into this Agreement, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

(2). No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

(3). The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Section 1001.

**FLY AMERICA CERTIFICATION**

49 U.S.C. Section 40118

41 CFR Part 301-10

*Certificate of Compliance*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10.

Date

Signature

Company Name

Title

*Certificate of Non-Compliance*

*\*\*If a foreign air carrier was used, the certification shall adequately explain why services by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier.*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10.

Date

Signature

Company Name

Title

Explanation:

**BUY AMERICA CERTIFICATION**

**FTA Certification requirement relating to procurement of steel, iron, or manufactured products.**

*Certificate of Compliance*

The Contractor hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(1), the applicable regulations in 49 C.F.R. Part 661.

Date

Contractor Name

Authorized Representative Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

Title

***OR***

*Certificate of Non-Compliance*

The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j)(1), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

Date

Contractor Name

Authorized Representative Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

Title

**FRA Certification requirement relating to procurement of steel, iron, or manufactured products.**

*Certificate of Compliance*

The Contractor hereby certifies that it will comply with the FRA Buy America requirements of 49 U.S.C. Section 24405(a)(1).

Date

Contractor Name

Authorized Representative Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

Title

***OR***

*Certificate of Non-Compliance*

The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 24405(a)(1), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. Section 24405(a)(2).

Date

Contractor Name

Authorized Representative Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

Title

**NEW RESTRICTIONS ON LOBBYING CERTIFICATION**

The Contractor certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The Contractor shall require that the language of this certification be included in all Subcontracts, and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Section 1352 (as amended by the Lobbying Disclosure Act of 1995) and U.S. DOT regulations, “New Restrictions on Lobbying,” specifically 49 CFR 20.110. Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor certifies and affirms the truthfulness and accuracy of each statement of this certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section 3801 *et seq.,* apply to this certification and disclosure, if any.

Date

Contractor Name

Authorized Representative Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

Title

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

1. The prospective participant certifies to the best of its knowledge and belief that it and its principals:
   1. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
   2. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
   3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) b. of this certification; and
   4. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. The prospective proposer also certifies that if, later it becomes aware of any information contradicting the statements of paragraphs (a) through (d) above, it will promptly provide that information to the TJPA.
3. Where the prospective proposer is unable to certify to any of the statements in this certification, such prospective primary participant shall attach and provide a written explanation to the TJPA.

The certification in this clause is a material representation of fact relied upon by the TJPA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the TJPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of federal suspension and debarment laws, including 2 CFR part 1200, and the provisions of U.S. Office of Management and Budget Appendix A “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Bidder/Offeror Name:

Authorized Representative Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Representative Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Representative Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

EXHIBIT Q

CARD CHECK POLICY

[see attached]

TRANSBAY JOINT POWERS AUTHORITY

Labor Representation Policy — Policy No. 011 Adopted: 7/20/06  
Page 1 of 5

Board Policy No. 011 Category: Workplace Matters

**LABOR REPRESENTATION POLICY**

I. DEFINITIONS. FOR PURPOSES OF THIS POLICY, THE FOLLOWING DEFINITIONS SHALL APPLY

A. "Card check agreement" means a written agreement between an employer and a labor organization providing a procedure for determining employee preference on the subject of whether to be represented by a labor organization for collective bargaining, and if so, by which labor organization to be represented, which provides, at a minimum, the following:

1. Determining employee preference regarding union representation shall be by a card check procedure conducted by a neutral third party in lieu of a formal election;
2. All disputes over interpretation or application of the parties' card check agreement, and over issues regarding how to carry out the card check process or specific card check procedures shall be submitted to binding arbitration;
3. Forbearance by any labor organization from economic action against the employer at the worksite of an organizing drive covered by this Policy, and in relation to an organizing campaign only (not to the terms of a collective bargaining agreement), so long as the employer complies with the terms of the card check agreement;
4. Language and procedures prohibiting the labor organization or the employer from coercing or intimidating employees, explicitly or implicitly, in selecting or not selecting a bargaining representative.

B. "Contract" means a lease, management agreement, service agreement, loan, bond, guarantee, or other similar agreement in which one party is anyone operating a hotel or restaurant proj ect.

C. "Collective bargaining agreement" means an agreement between an employer and a labor organization regarding wages, hours and other terms and conditions of employment of the employer's employees. For purposes of this Policy, a collective bargaining agreement does not include a card check agreement as defined herein.

D. "Developer" means any person, corporation, association, general or limited partnership, limited liability company, joint venture or other entity which does or which proposes to purchase, lease, develop, build, remodel or otherwise establish a hotel or restaurant project.

1. "Economic action" means concerted action initiated or conducted by a labor union and/or employees acting in concert therewith, to bring economic pressure to bear against an employer, as part of a campaign to organize employees or prospective employees of that employer, including such activities as striking, picketing, or boycotting.

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1. "Employer" means any developer, manager/operator or subcontractor who employs individuals in a hotel or restaurant in a hotel or restaurant project.
2. "Hotel or restaurant project" means a development project or facility within the Transbay Transit Center or Transit Tower which contains a hotel or restaurant. For purposes herein a "hotel" shall mean any use or facility falling within either definition of Section 314.1(g) or (h) of the San Francisco Planning Code. For purposes herein a "restaurant" shall mean any facility that has as its principal purpose the sale of food and beverage for primarily on-site consumption, including any such facility operating within or as part of another facility, such as a hotel or retail store.
3. "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
4. "Manager/operator" means any person, corporation, association, limited or general partnership, joint venture or other entity (including a developer) that operates or manages a hotel or restaurant in a hotel or restaurant project, or provides any material portion of the services provided by such hotel or restaurant in a hotel or restaurant project.
5. "Subcontract" means any lease, sublease, management agreement or other similar agreement between a developer or a manager/operator and a subcontractor which contemplates or permits the subcontractor to operate or manage all or a portion of a hotel or restaurant in a hotel or restaurant project.
6. "Subcontractor" means any person, corporation, association, limited or general partnership, limited liability company, joint venture or other entity that enters into a subcontract with a developer or manager/operator.

II. POLICY, REQUIREMENTS AND PROCEDURES TO MINIMIZE LABOR/MANAGEMENT CONFLICT

1. General Policy. The Board of Directors declares as a matter of general policy that employers operating a hotel or restaurant in a hotel or restaurant project within the Transbay Transit Center or Transit Tower shall agree to abide by the procedures of a card check agreement for determining employee preference on the subject of labor union representation, as specified in this Policy.
2. Pursuant to this Policy, the following requirements are imposed, except that no Employer, Developer or Manager/Operator, however, shall be responsible for obligations under this Policy if that person or entity is otherwise exempt from those obligations as described below.

1. Employers. An employer of employees working in a hotel or restaurant in a hotel or restaurant project within the Transbay Transit Center or Transit Tower shall:

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1. Enter into a card check agreement with a labor organization which requests such an agreement for the purpose of seeking to represent those employees before executing the subcontract or contract pursuant to which it will operate a hotel or restaurant in a hotel or restaurant project;
2. If the parties are unable to agree to the terms of a card check agreement within 60 days of the commencement of such negotiations, they must enter into expedited binding arbitration in which the terms of a card check agreement will be imposed by an arbitrator. In such proceedings, to be conducted by an experienced labor arbitrator selected as provided by the rules of the American Arbitration Association or equivalent organization, the arbitrator shall consider any model card check agreement provided by the TJPA and/or prevailing practices and the terms of card check agreements in the same or similar industries, except that such card check agreement must include the mandatory terms identified in this Policy;
3. Comply with the terms of that card check agreement and this Policy;
4. Include in any subcontract (with a subcontractor) which contemplates or permits a Subcontractor to operate or manage a hotel or restaurant in a Hotel or Restaurant Project within the Transbay Transit Center or Transit Tower or to provide a service essential to the operation of such a hotel or restaurant, a provision requiring that subcontractor to comply with this Policy. This provision shall be a material and mandatory term of such subcontract, binding on all successors and assigns, and shall state (modified as necessary to accommodate particular circumstances):

"The Transbay Joint Powers Authority has a Policy which may apply to [Subcontractor]. Its terms are expressly incorporated by reference hereto. To the extent [Subcontractor] or its successors or assigns employs employees in a hotel or restaurant in [this facility] within the scope of that Policy, [Subcontractor] hereby agrees as a material condition of this [Subcontract] to enter into and abide by a card check agreement with a Labor Organization or Organizations seeking to represent [Subcontractor's] employees, if and as required by that Policy. [Subcontractor] recognizes that, as required by that Policy, it must enter into a card check agreement with a Labor Organization(s) as specified by that Policy before executing this [Subcontract], and that being party to such a card check agreement(s) is a condition precedent of rights or obligations under this [Subcontract]."

Notwithstanding the requirements provided in (a) - (d), any employer who has in good faith fully complied with those requirements will be excused from further compliance as to a labor organization which has taken economic action against that employer at that site in furtherance of a campaign to organize that employer's employees at that site for collective bargaining. This clause shall not be interpreted, however, to apply to economic action against an employer at other locations where that employer does business, or at any location for purposes other than organizing the employer's employees; nor shall economic action by one labor

organization excuse an employer from the obligations of this Policy or a card check agreement as to a different labor organization.

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2. Developers and Manager/Operators. Any developer or manager/operator of a hotel or restaurant project must:

1. To the extent it employs employees in a hotel or restaurant in a hotel or restaurant project, abide by the requirements stated in Subsection (1);
2. Include the provision specified in (1)(d) in any subcontract, modified as necessary to accommodate the circumstances of that particular subcontract;
3. Refrain from executing a subcontract by which an employer subject to (1) is authorized or permitted to operate a hotel or restaurant in a hotel or restaurant project until that employer has entered into a card check agreement with a labor organization, as required in (1);
4. Notify local labor council(s) and/or federation(s) of any hotels(s) or restaurant(s) and/or any employer(s) that will operate a hotel or restaurant in a hotel or restaurant project within the Transbay Transit Center or Transit Tower which may be subject to the requirements of (1), as soon as the developer or manager/operator identifies such hotel(s) or restaurant(s) or employer(s), but in no event later than 21 days before requiring an employer to sign a subcontract. This notification requirement applies only to hotels or restaurants or employers that will operate in a Hotel or Restaurant Project.
5. Inform any prospective subcontractor, that if the subcontractor acts as an employer subject to the requirements of (1), it must enter into a card check agreement pursuant to this Policy before it may execute the subcontract, and as a condition precedent to any rights or obligations under such document;
6. Take reasonable steps to enforce the terms of any subcontract requiring compliance with this Policy.

3. The TJPA.

1. TJPA Contracts. This Policy shall be included and incorporated in any contract entered into by the TJPA which contemplates the use or operation of a hotel or restaurant in a hotel or restaurant project within the Transbay Transit Center or Transit Tower. Such contract shall state that any developer or operator/manager of a hotel or restaurant project within the Transbay Transit Center or Transit Tower, and any employer(s) operating in such hotel or restaurant project, agree to comply with this Policy as essential consideration for the TJPA entering into the contract, and that failure to comply with this policy shall constitute a material breach of the contract.
2. Executive Director Authority to Issue Implementation Guidelines. To facilitate the requirements imposed by this Section, the TJPA may provide a model recommended card check agreement that includes the mandatory terms identified in this Policy and which provides the maximum protection against labor/management conflict arising out of an

organizing drive, and make such model recommended agreement available to parties required to enter into such agreement. The TJPA's Executive Director, or designee, may also prepare guidelines establishing standards and procedures related to this Policy.

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III. SCOPE AND EXEMPTIONS

1. Scope. This Policy is not intended to favor any particular outcome in the determination of employer preference regarding union representation, nor to skew the procedures in such a determination to favor or hinder any party to such a determination. Likewise, this Policy is not intended to enact or express any generally applicable policy regarding labor/management relations, or to regulate those relations in any way. The requirements of this Policy apply only to the procedures for determining employee preference regarding whether to be represented by a labor organization for purposes of collective bargaining and/or by which labor organization to be represented. Accordingly, this Policy does not apply to the process of collective bargaining in the event a labor organization has been recognized as the bargaining representative for employees of employers subject to this Policy. Moreover, nothing in the Policy requires an employer or other entity subject to this Policy to recognize a particular labor organization; nor does any provision of this Policy require that a collective bargaining agreement be entered into with any labor organization, or that an employer submit to arbitration regarding the terms of a collective bargaining agreement.
2. Exemptions. The requirements of this Policy shall not apply to:
3. Employers employing fewer than the equivalent of 50 full-time or part­time employees, provided that when a restaurant is located on the same premises as a hotel and routinely provides food or beverage services to the hotel's guests, employees of the restaurant and hotel shall be aggregated for purposes of determining the applicability of this ordinance;
4. Any employer which is signatory to a valid and binding collective bargaining agreement covering the terms and conditions of employment for its employees at that hotel or restaurant project, or which has entered into a card check agreement with a labor organization regarding such employees which agreement provides at least equal protection, as determined by the Executive Director of the TJPA, from labor/management conflict as provided by this Policy;
5. Any hotel or restaurant project where the developer, manager/operator or employer, is an agency of the federal government or a statewide agency or entity ("public agency") and that public agency would prohibit application of this Policy; or
6. Any hotel or restaurant project where the requirements of this Policy would violate or be inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency related to such hotel or restaurant project, or any related rules or regulations.

1. Note that tenant will be required to be a so-called bankruptcy remote entity. [↑](#footnote-ref-1)
2. Exhibit B-4 must also differentiate between existing Transit Agency Controlled Signage and future Tenant Controlled Signage. [↑](#footnote-ref-2)