PERCENTAGE LEASE

(The Landing Strip, 1424 Continental Street, Suite D, San Diego, CA 92154)

by and between

THE CITY OF SAN DIEGO,
a California municipal corporation

and

GRACIELA GONZALEZ AND ALEXIS GONZALEZ,
as individuals

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PERCENTAGE LEASE

(The Landing Strip, 1424 Continental Street, San Diego, CA 92123)

This PERCENTAGE LEASE (this "**Lease**") is entered into between THE CITY OF SAN DIEGO, a California municipal corporation ("**Landlord**"), and Graciela Gonzalez and Alexis Gonzalez, as individuals (together, "**Tenant**").

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, LANDLORD AND TENANT AGREE AS FOLLOWS:

1. **PURPOSES**. At the Commencement Date, Landlord owns the Premises (defined in Section 2 below and depicted in **EXHIBIT A**).

2. **DEFINITIONS**. All defined terms or words indicated by initial capitalization in this Lease and not specifically defined in a particular section of this Lease are defined below.

2.1 Additional Rent. All sums this Lease requires Tenant to pay Landlord or any other Person, whether or not expressly called Additional Rent, except Minimum Rent.

2.2 Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person. Affiliated shall have the correlative meaning.

2.3 Application. Each application, document, or submission (or amendment of any of the foregoing) necessary or appropriate for Tenant to pursue or obtain an Approval for Construction this Lease allows or an Approval to use or operate the Premises in accordance with this Lease.

2.4 Approval. All licenses, permits (including building, grading, 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 under any Law to commence, perform, or complete any Construction, or for the use, occupancy, maintenance, or operation of the Premises in accordance with this Lease.

2.5 Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11 United States Code or 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.

2.6 Business Day. Monday through Friday, except City holidays when City offices are closed.

2.7 Casualty. Any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting the Premises, whether or not insured or insurable.

2.8 Certifying Party. Defined in Section 30.

2.9 City Attorney. City Attorney of the City of San Diego, California.

2.10 Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine, or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature), or any judgment.

2.11 Commencement Date. The date on which this Lease is approved as to form by the City Attorney, as shown on the signature page to this Lease.

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

2.13 Condemnation Award. All award(s) paid or payable (whether or not in a separate award) to a Party after the Commencement Date, because of or as compensation for a Condemnation, including: (a) an award made for improvements that are the subject of the Condemnation; (b) the full amount of money paid or payable or other value deliverable by the condemning authority for the estate or interest that is the subject of the Condemnation, as determined in the Condemnation proceeding; (c) all interest on such award; and (d) all other monetary amounts payable on account of such Condemnation.

2.14 Condemnation Effective Date. For any Condemnation, the earlier of: (a) the first date when the condemning authority acquires title to or possession of any part of the Premises that is the subject of the Condemnation; or (b) the commencement of Government action creating a physical right to compensation, but not resulting in an actual transfer of an interest in or right to use or occupy the Premises.

2.15 Construction. Any alteration, construction, demolition, excavation, fill, grading, development, expansion, reconstruction, removal, replacement, rehabilitation, redevelopment, repair, Restoration, or other work affecting the Premises, including new construction.

2.16 Control. Regarding a specified Person, possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person or bind such Person, whether by ownership of Equity Interests, by contract, or otherwise.

2.17 Controlling and Controlled. Exercising or having Control.

2.18 County. The County of San Diego, California.

2.19 Default. Any Monetary Default or Non-Monetary Default.

2.20 Default Interest. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per year; or (b) the highest rate of interest, if any, that Law allows under the circumstances.

2.21 Depository. Bank of America, N.A., a Federal chartered bank.

2.22 Director. The then current director of Landlord's Department of Real Estate and Airport Management or such Person's successor in function.

2.23 Environmental Condition. Any of the following events relating to the Premises: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.

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

2.25 Equipment. All fixtures incorporated in the Premises by either Landlord or Tenant, and used, useful, or necessary to operate the Premises.

2.26 Equity Interest. All or any part of any 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 Person.

2.27 Estoppel Certificate. A written certification of each of the following: (a) the nature of the Certifying Party's interest in the Premises and all Transfers of which the Certifying Party is aware, except as otherwise disclosed in the public record; (b) this Lease is unmodified and in full force and effect, or, if there have been modifications, that this Lease is in full force and effect, as modified, in the manner specified in the certification; (c) to the Certifying Party's knowledge (meaning to the current, actual knowledge of the Mayor, in the case of Landlord, or the Tenant, in the case of Tenant, each without any duty of inquiry or investigation), there are no uncured breaches, Defaults or failures to perform under this Lease on the part of the Requesting Party or the Certifying Party or specifying any such breaches, Defaults or failures claimed to exist; (d) the dates to which any amounts of Rent have been paid by or to the Requesting Party in advance; (e) the Commencement Date and the Scheduled Expiration Date; and (f) any other matters reasonably requested by the Requesting Party.

2.28 Event of Default. Defined in Section 25.1.

2.29 Expiration Date. 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 after an Event of Default, or otherwise.

2.30 [Reserved].

2.31 Federal. Relating or under the authority of the federal government of the United States of America.

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

2.33 FF&E. All movable furniture, equipment, and personal property of Tenant or anyone claiming through Tenant (excluding Equipment) used in operating the Premises for the Permitted Use that may be removed, without material damage to the Premises, and without adversely

affecting: (a) the structural integrity 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. FF&E includes items such as furniture, telephone, telecommunications, and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, computer systems, and peripherals.

2.34 Government. Every governmental agency, authority, bureau, department, quasi-governmental body, utility, utility service provider, or other entity or instrumentality having or claiming jurisdiction over the Premises (or any activity this Lease allows), including the Federal government of the United States of America, the State and County governments and their subdivisions and municipalities, including Landlord (in Landlord's governmental capacity), any planning commission, board of standards and appeals, building department, zoning board of appeals, design review board or committee, the California Coastal Commission, and all other applicable governmental agencies, authorities, and subdivisions having or claiming jurisdiction over the Premises or any activities on or at the Premises.

2.35 Gross Revenue. The sum of all the following: (a) the gross amount of cash paid, or to be paid; (b) the fair market value of other property transferred or to be transferred; (c) the outstanding amount of Tenant liabilities assumed, or to be assumed; (d) the value of any liability forgiveness provided to Tenant; or (e) in the case of a Transfer, sublease, or license without any of the previously described forms of consideration, the fair market value of the estate or interest in the property transferred. Any fair market value determination shall be as of the date of the subject Transfer, sublease, or license.

2.36 Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product, or any "hazardous" or "toxic" material, substance or waste defined by those or similar terms or regulated as such under any Law, any matter, waste or substance subject to any 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 form of energy from whatever source; provided, however, Hazardous Substance shall not include any household chemical products in normal quantities used for operation and maintenance of the Premises in compliance with Law.

2.37 Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into or from the Premises, or relating to transportation of any Hazardous Substance to or from the Premises (whether on its own or contained in other material or property), or arising at any time from the use, occupancy, or operation of the Premises or any activities conducted at, on, under or in the Premises whether or not caused by a Party or occurring before or after the Commencement Date.

2.38 Immaterial Loss. A Casualty or Condemnation resulting in a Loss of ten thousand dollars ($10,000) or less.

2.39 Improvements. All improvements located on the Premises from time to time.

2.40 Indemnify. Where this Lease states that any Indemnitor shall "Indemnify" any Indemnitee from, against, or for a particular Claim, the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise), including all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Claim; or (b) in enforcing the Indemnitor's indemnity obligation regarding the Claim. "Indemnified," "Indemnification," or similar terms shall have the correlative meanings.

2.41 Indemnitee. A Person entitled to be Indemnified under this Lease.

2.42 Indemnitor. A Person agreeing to Indemnify any other Person under this Lease.

2.43 [Reserved].

2.44 Insubstantial Condemnation. Any Condemnation, except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

2.45 Landlord. Initially, means the Landlord named in the initial paragraph of this Lease. After every transfer or conveyance of the Fee Estate, "Landlord" means only the owner(s) of the Fee Estate at the time in question. If any former Landlord no longer has any interest in the Fee Estate or a transfer or conveyance of the entire Fee Estate occurs (in all cases in compliance with this Lease), the transferor shall be entirely freed and relieved of all obligations of Landlord under this Lease accruing from and after the date of such transfer or conveyance.

2.46 Landlord Default. The occurrence of any of the following, subject to Landlord's right to Notice and opportunity to cure in accordance with Section 25.12: (a) any material failure by Landlord to perform its obligations under this Lease; or (b) Landlord's failure to comply with any material restriction or prohibition in this Lease.

2.47 Landlord Parties. Collectively, Landlord, its City Council, elected officials, officers, employees, and agents.

2.48 Landlord Party. Individually, Landlord, its City Council, elected officials, officers, employees, or agents.

2.49 Law. All laws, ordinances, requirements, orders, proclamations, directives, rules, or regulations of any Government affecting the Premises, this Lease, or the Permitted Use, in any way, including any development, use, maintenance, taxation, operation, or occupancy of, or environmental condition affecting, the Premises, or the Permitted Use, or relating to any taxes, or otherwise relating to this Lease, the Premises, the Permitted Use, or any Party's rights, obligations, or remedies under this Lease, whether in force on the Commencement Date or passed, enacted, modified, amended, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

2.50 Lease Year. Each of: (a) the period from the Commencement Date through the day before the first anniversary of the Commencement Date; and (b) every subsequent period of twelve (12) calendar months beginning on an anniversary of the Commencement Date and ending on the day before the immediately following anniversary of the Commencement Date during the Term. Each Lease Year is referred to in this Lease in consecutive chronological order, starting with "Lease Year 1" and continuing with "Lease Year 2," and if the Extended Term is entered into, "Lease Year 3."

2.51 Leasehold Estate. Tenant's leasehold estate in the Premises, and all Tenant's rights and privileges under this Lease, upon and subject to all the terms and conditions of this Lease.

2.52 Legal Costs. For 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 or Indemnified for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, including in or as a result of any: (a) Bankruptcy Proceeding; (b) litigation between the Parties; (c) negotiating or documenting any agreement, certificate or other matter with a Third Person requested by the other Party; (d) requirement or request that such Person or its employees act as a witness in any proceeding regarding this Lease or the other Party; or (e) review or approval that the other Party requests of such Person. All references to Legal Costs of Landlord shall include the salaries, benefits and costs of the City Attorney in representing Landlord and the lawyers employed in the City Attorney's office who provide legal services regarding a particular matter, adjusted to or billed at an hourly rate based on their respective salary and multiplied by the time spent on such matter rounded to increments of 1/10th of an hour, in addition to Legal Costs of outside counsel retained by Landlord for any matter.

2.53 Loss. Any Casualty, Condemnation, or other damage or injury to the Premises.

2.54 Loss Proceeds. Any Condemnation Award(s) or Property Insurance Proceeds.

2.55 Maintenance Deficiency. Defined in Section 10.3.

2.56 Maintenance Standard. Defined in Section 10.2.

2.57 Market Value. Regarding either the Fee Estate or the Leasehold Estate, as applicable, means, as of any date of determination, the present fair market value of such estate (including the fair market value of the rights of the holder of such estate in and to any improvements) as of such date, considered: (a) as if no Loss occurred; (b) without adjusting for any expectation of any Loss; (c) as if the Leasehold Estate was not terminated; (d) taking into account the benefits and burdens of this Lease, the remaining Term, and all other matters affecting such estate and its valuation, in accordance with then current appraisal practices; and (e) discounting to present value all the obligations and benefits associated with such estate (including, in the case of the Fee Estate, the Rent and Landlord's reversion). The Market Value shall be determined as if the Term were to continue until the Scheduled Expiration Date.

2.58 Mayor. The Mayor, from time to time, of Landlord or such Person's designee or successor in function, or, if the Fee Estate is transferred to a Person other than Landlord, then such Fee Estate owner's representative designated in a Notice to Tenant.

2.59 Minimum Rent. $1,974.00 per calendar month, as adjusted under Section 7.

2.60 Modification. 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 a specified agreement, document, or terms.

2.61 Modify. Agree to, cause, make, or permit any Modification.

2.62 Monetary Default. Any failure by Tenant to: (a) pay, when and as this Lease requires, any Rent, including Additional Rent, whether to Landlord or to a Third Person; (b) properly apply any Loss Proceeds or other money, if any, that this Lease requires Tenant to apply in a particular manner or for a particular purpose; (c) comply with all obligations regarding Prohibited Liens set forth in Section 14; or (d) obtain, replace, maintain, or pay premiums for (or give Landlord written evidence of) any insurance coverage when and as this Lease requires.

2.63 Non-Monetary Default. The occurrence of any of the following, except to the extent constituting a Monetary Default: (a) any breach by Tenant of its obligations under this Lease; (b) Tenant's failure to comply with any restriction or prohibition in this Lease; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Lease by Tenant.

2.64 Notice. Any approval, consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default or termination of this Lease or Notice of a Landlord Default. Notices shall be delivered, and shall become effective, only in accordance with Section 27.

2.65 Notify. Give a Notice.

2.66 Parties. Collectively, Landlord and Tenant.

2.67 Party. Individually, Landlord or Tenant, as applicable.

2.68 Percentage Rent. "**Percentage Rent**" means and refers to rent in an amount equal to the percentages of Gross Revenue derived from certain designated business activities, applied as follows:

Percentage of Gross Revenue	Business Activity
Six percent (6%)	Sale of food or non-alcoholic beverages
Six percent (6%)	Sale of alcoholic beverages (including beer and wine)
Ten percent (10%)	Operation of private parties and special

	retail events
Ten percent (10%)	Maintenance of coin-operated vending, game, or service machines or devices on the Premises, which are owned or leased by Tenant
Fifty percent (50%)	Receipt of commissions or any other compensation by Tenant for installation and maintenance of coin-operated vending, game, or service machines or devices on the Premises
Ten percent (10%)	Sale of retail goods or services not covered above
Twenty percent (20%)	Operation of any Landlord-authorized activity (other than those described above) conducted on the Premises
One hundred percent (100%)	Any unauthorized use of the Premises

2.69 Permitted Exceptions. Each of the following matters: (a) taxes not on rolls; (b) the lien of Real Estate Taxes, if any, relating to the Leasehold Estate because of the creation of the Leasehold Estate under this Lease; (c) all adverse claims based upon the assertion that some portion of said land is tide or submerged lands or has been created by artificial means or has accreted to such portion so created; (d) zoning, environmental, municipal, building, and all other Laws imposed by any Federal, State, municipal, or local government or any public or quasi-public board, authority, or similar agency having jurisdiction over the Premises; (e) all Applications made at Tenant's request or all Approvals issued because of such Applications; (f) matters consented to or otherwise caused by Tenant; and (g) all liens, encumbrances, covenants, conditions, restriction, reservations, contracts, permits, licenses, easement or rights-of-way relating to or affecting the Premises, whether or not of record.

2.70 Permitted Use. Operating a restaurant and bar (with the right to sell alcohol, subject to Tenant obtaining the appropriate Approvals), providing catering services, and other related or incidental purposes with the prior written approval of Landlord.

2.71 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

2.72 Premises. A portion of that certain real property within Brown Field Terminal Building, commonly known as "The Landing Strip," which comprises of approximately 3,070 square feet, located at 1424 Continental Street, Suite D, San Diego, California, 92154, consisting of a full

kitchen, restaurant, bar area, kitchen storage area, outside seating area, and propane tank area, and generally depicted and shown, as of the Commencement Date, in **EXHIBIT B.**

2.73 Prevailing Wage Law. Defined in **EXHIBIT I**, Section 1.

2.74 Prevailing Wage Determination. Any of the following: (a) any determination by the State or Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the State or Federal Government that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any Prevailing Wage Law, including the obligation to maintain certified payroll records under California Labor Code section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts or impose penalties or sanctions, at law or in equity, including under California Labor Code section 1781 or 1782.

2.75 Prohibited Lien. Any deed of trust, mortgage, or other security instrument securing repayment of money encumbering the Leasehold Estate, or any mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien against the Leasehold Estate arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to or on behalf of Tenant (or anyone claiming through Tenant).

2.76 Prohibited Transferee. Any Person: (a) with whom Landlord is in litigation at the time the Transfer to such Person is made or is to be made by Tenant, exclusive of defendants in eminent domain litigation commenced by Landlord where the right of Landlord to take the subject property is not challenged; (b) that Landlord reasonably determines has any connection with any terrorist organization, including, any foreign governmental entity identified as a "State Sponsor of Terrorism" by the United States Department of State or subject to economic or political sanctions by the United States or any Person identified as a specially designated national or blocked person by the United States Department of the Treasury listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury, or otherwise subject to any other prohibition or restriction imposed by laws, rules, regulations or executive orders, including Executive Order No. 13224, administered by the Office of Foreign Asset Control; (c) that is entitled to claim diplomatic immunity; (d) that is a domestic or foreign governmental entity; or (e) that is immune or may elect to be immune from suit under State or Federal law.

2.77 Property Insurance. Defined in **EXHIBIT E**.

2.78 Property Insurance Proceeds. Net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by Landlord, Tenant, or Depository, excluding proceeds of Tenant's business interruption insurance exceeding Rent.

2.79 Real Estate Taxes. All general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes and the like), supplemental taxes, possessory interest taxes, special taxes imposed under the Mello-Roos Community Facilities District Act or other special taxing district, assessments, municipal water and sewer rents, rates or charges, excises, levies, license and permit fees, fines, penalties and other Governmental charges and any interest or costs with

respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever that at any time during the Term and applicable to the Term or any part of it that may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises, or any vault, passageway or space in, over or under any street constituting a portion of the Premises, or any FF&E, Equipment or other facility used in the operation of the Premises, or the rent or income received from the Premises, or any use or occupancy of the Premises. Tenant acknowledges and agrees that this Lease creates a possessory interest in the Premises subject to property taxation and that Tenant may be subject to payment of property taxes levied on such interest. Any possessory interest tax imposed shall be solely a tax liability of Tenant and shall be paid before delinquency by Tenant. If at any time during the Term, the method of taxation prevailing at the Commencement Date shall be altered so that any new tax, assessment, levy (including any municipal, State or Federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Premises or any rent or income from the Premises and imposed upon Landlord, then all such new taxes, assessments, levies, real estate taxes, or charges, or the part thereof, to the extent that they are so measured or based, shall be deemed to be included within the term "Real Estate Taxes," to the extent that such Real Estate Taxes would be payable, if the Premises were the only property of Landlord subject to such Real Estate Taxes.

2.80 Rent. Collectively, Minimum Rent and all Additional Rent.

2.81 Requesting Party. Defined in Section 30.

2.82 Restoration. After a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining improvements, substantially equivalent to their condition before the Loss, subject to any changes in Law limiting the foregoing.

2.83 Restoration Funds. Any Loss Proceeds (and deposits by Tenant) to be applied to Restoration.

2.84 Restore. Accomplish a Restoration.

2.85 Security Deposit. Five Thousand Nine Hundred Twenty-Two Dollars ($5,922.00).

2.86 Scheduled Expiration Date. 11:59 p.m. on the day preceding the third anniversary of the Commencement Date.

2.87 SDMC. Defined in Section 9.5.

2.88 Sign. Defined in Section 9.13.

2.89 State. The State of California.

2.90 Substantial Condemnation. Any Condemnation that: (a) takes the entire Premises; or (b) in Tenant's reasonable determination renders the remainder of the Premises Uneconomic.

2.91 Temporary Condemnation. A Condemnation of the temporary right to use or occupy all or part of the Premises.

2.92 Tenant. Graciela and Alexis Gonzalez, as individuals, and their permitted successors or assigns under this Lease.

2.93 Tenant Improvements. Items that are or are to be installed on the Premises by or for the benefit of Tenant, such as floor coverings, wall coverings, walls and doors that are not load bearing, window treatments, and other similar items.

2.94 [Reserved].

2.95 Tenant Parties. Collectively, Tenant, its directors, officers, members, managers, partners, employees, agents, attorneys, and owners of Equity Interests in Tenant.

2.96 Tenant Party. Individually, Tenant, its directors, officers, members, managers, partners, employees, agents, attorneys, or owners of Equity Interests in Tenant.

2.97 Term. Defined in Section 4.

2.98 Third Person. Any Person that is not a Party, an Affiliate of a Party or an elected official, director, officer, shareholder, member, principal, partner, manager, owner of an Equity Interest, employee, or agent of a Party.

2.99 Transfer. Any of the following events, whether occurring by operation of law or otherwise, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of Tenant's legal, beneficial, or equitable interest in this Lease; (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in Tenant by the owner(s) of such Equity Interest(s); (c) any transaction described in clause "(b)" affecting any Equity Interest(s) or any owner of Equity Interests (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 even though Tenant is not technically the transferor. A "Transfer" shall not, however, include any of the foregoing (provided that the other Party to this Lease has received Notice of such event) relating to any Equity Interest: (i) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; or (ii) to any Person that, as of the Commencement Date, holds an Equity Interest in the Person whose Equity Interest is being transferred.

2.100 Unavoidable Delay. A delay in either Party performing any obligation under this Lease arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strikes, labor troubles or other union activities, Casualty, war, acts of terrorism, riots, Government action or inaction, regional natural disasters, or inability to obtain materials, except for the payment of money, unless the delay in the payment of money is due to one of the causes described above that prevents or materially limits the ability to transfer funds by or between

Federally regulated financial institutions. Unavoidable Delay shall not include delay caused by a Party's financial condition, illiquidity, or insolvency.

2.101 Uneconomic. The Premises: (a) are materially diminished in value or utility; (b) cannot be used for the intended purpose; (c) are subject to material impairment of access to, required parking facilities, or any material service(s) necessary or appropriate for economic operation; (d) require Restoration at a total cost that Tenant reasonably estimates in writing would exceed 1.5 times the then-current Market Value of the Premises; (e) do not comply with the operating requirements under a necessary Approval held by Tenant; or (f) cannot reasonably be operated as the Premises, whether in a manner substantially equivalent to past practice or on a scale that is smaller but nevertheless profitable (after taking into account the payment of all expenses, including Rent as adjusted after any Condemnation) and reasonably feasible.

3. **LEASING AND HIRING**. Landlord leases the Premises to Tenant and Tenant hires the Premises from Landlord, subject to the Permitted Exceptions, for the Term, upon the terms and conditions of this Lease.

4. **TERM**. The term of this Lease ("**Term**") shall be three (3) years and shall: (a) begin on the Commencement Date; and (b) end on the earlier of the Scheduled Expiration Date or an earlier Expiration Date occurring under the terms of this Lease.

5. **QUIET ENJOYMENT**. During the Term, Landlord covenants that Tenant shall and may peaceably and quietly enjoy the Premises for the Term, without molestation, hindrance, or disturbance by or from Landlord, subject to the terms and conditions of this Lease. The covenant of quiet enjoyment under this Lease is limited to occupancy of the Premises and express rights under this Lease. No implied or inferred rights are intended under this covenant. This covenant also is not intended to limit Landlord's governmental police or regulatory powers.

6. **PREMISES DELIVERY CONDITION**.

6.1 Delivery. Landlord shall deliver possession of the Premises to Tenant on the Commencement Date subject to the Permitted Exceptions.

6.2 Acceptance. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.5, ON THE COMMENCEMENT DATE, TENANT ACCEPTS THE PREMISES IN THE PREMISES' "AS IS/WHERE IS" CONDITION, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO TITLE, PHYSICAL CONDITION, SOIL CONDITION, THE PRESENCE OR ABSENCE OF FILL, OCEAN OR TIDAL IMPACTS, SHORING OR BLUFF STABILITY OR SUPPORT, SUB-SURFACE SUPPORT, ZONING, LAND USE RESTRICTIONS, THE AVAILABILITY OR LOCATION OF UTILITIES OR SERVICES, THE LOCATION OF ANY PUBLIC INFRASTRUCTURE ON OR OFF OF THE PREMISES (ACTIVE, INACTIVE OR ABANDONED), THE SUITABILITY OF THE PREMISES FOR ANY PARTICULAR USE OR THE EXISTENCE OR ABSENCE OF HAZARDOUS SUBSTANCES (EXCEPTING ANY HAZARDOUS SUBSTANCE DISCHARGE BY LANDLORD) AND WITH FULL KNOWLEDGE OF THE PHYSICAL CONDITION OF THE PREMISES, THE NATURE OF LANDLORD'S INTEREST IN AND USE OF THE PREMISES, ALL LAWS APPLICABLE TO THE PREMISES, AND THE

PERMITTED EXCEPTIONS. TENANT ACKNOWLEDGES, AGREES, AND REPRESENTS TO LANDLORD ALL THE FOLLOWING: (A) TENANT HAD AMPLE OPPORTUNITY TO INSPECT AND EVALUATE THE PREMISES AND THE FEASIBILITY OF THE USES AND ACTIVITIES TENANT IS ENTITLED TO CONDUCT ON THE PREMISES; (B) TENANT HAS RELIED AND WILL RELY ENTIRELY ON TENANT'S EXPERIENCE, EXPERTISE AND ITS OWN INSPECTION OF THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE IN ENTERING INTO THIS LEASE; (C) TENANT ACCEPTS THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE; AND (D) TO THE EXTENT TENANT'S OWN EXPERTISE WITH RESPECT TO ANY MATTER RELATING TO THE PREMISES IS INSUFFICIENT TO ENABLE TENANT TO REACH AN INFORMED CONCLUSION ABOUT SUCH MATTER, TENANT ENGAGED THE SERVICES OF PERSONS QUALIFIED TO ADVISE TENANT WITH RESPECT TO SUCH MATTERS. TENANT'S SIGNATURE ON THIS LEASE CONSTITUTES TENANT'S ACKNOWLEDGMENT, AGREEMENT, REPRESENTATION AND WARRANTY TO LANDLORD THAT TENANT RECEIVED ASSURANCES ACCEPTABLE TO TENANT BY MEANS INDEPENDENT OF THE LANDLORD PARTIES OF THE TRUTH OF ALL FACTS MATERIAL TO TENANT'S ENTRY INTO THIS LEASE AND THAT TENANT IS ENTERING INTO THIS LEASE AS A RESULT OF ITS OWN KNOWLEDGE, INSPECTION, AND INVESTIGATION OF THE PREMISES AND NOT AS A RESULT OF ANY REPRESENTATION MADE BY ANY LANDLORD PARTY RELATING TO THE CONDITION OF THE PREMISES. TENANT HAS NOT RELIED AND IS NOT RELYING ON ANY EXPRESS OR IMPLIED, ORAL OR WRITTEN REPRESENTATION OR WARRANTY MADE BY ANY LANDLORD PARTY OR ITS REPRESENTATIVE. LANDLORD SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE CONDITION OF THE PREMISES ON THE COMMENCEMENT DATE.

6.3 Hazardous Substances. LANDLORD SHALL HAVE NO LIABILITY TO TENANT OR TENANT'S SUCCESSORS, ASSIGNS, OR OTHERS WHO ACQUIRE AN INTEREST IN THE PREMISES FROM OR THROUGH TENANT WITH RESPECT TO THE CURRENT OR FUTURE PRESENCE OF ANY HAZARDOUS SUBSTANCE ON THE PREMISES, EXCEPT TO THE EXTENT OF A HAZARDOUS SUBSTANCE DISCHARGE BY LANDLORD.

6.4 Waivers and Releases. BY ENTERING INTO THIS LEASE, TENANT WAIVES AND RELEASES LANDLORD AND ITS REPRESENTATIVES FROM ALL CLAIMS RELATING TO THE CONDITION OF THE PREMISES AS OF THE COMMENCEMENT DATE, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.5. WITH RESPECT TO THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 6.4, TENANT WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 AND ALL SIMILAR PROVISIONS AND PRINCIPLES OF LAW. CALIFORNIA CIVIL CODE SECTION 1542 PROVIDES:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE

RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6.5 Specific Exclusions. THE FOREGOING GENERAL RELEASE NOTWITHSTANDING, TENANT IS NOT RELEASING LANDLORD FROM: (1) LANDLORD'S EXPRESS COVENANTS UNDER THIS LEASE; OR (2) LIABILITY FOR A HAZARDOUS SUBSTANCE DISCHARGE BY LANDLORD. NOTHWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, LANDLORD RETAINS ALL AVAILABLE DEFENSES OR IMMUNITIES OF LANDLORD UNDER APPLICABLE LAW.

AG

Initials of Authorized
Tenant Representative(s)

6.6 Asbestos Disclosure. Portions of the Improvements may contain asbestos. Tenant acknowledges receipt of written notice from Landlord of the presence of such asbestos in accordance with California Health and Safety Code section 25915. Tenant shall disclose to all appropriate Persons the existence of asbestos on the Premises as required by California Health and Safety Code section 25915. Tenant shall Indemnify Landlord against all Claims arising from or relating to the existence of asbestos on the Premises and Tenant's use or occupancy of the Premises.

6.7 Asbestos Remediation. If Tenant makes improvements, alterations, or repairs to the Improvements, Tenant shall be responsible for performance of all associated asbestos removal, management, remediation, or containment and all costs associated with such activities. Asbestos removal, management, remediation, or containment shall be conducted only with Landlord's prior written consent and in accordance with all applicable Laws.

7. **RENT**.

7.1 Rent. As part of the consideration to Landlord leasing the Premises to Tenant under this Lease, Tenant shall pay monthly rent to Landlord in the amount of the greater of: (a) the Percentage Rents (as defined in Section 2.68) or (b) the Minimum Rent (as defined in Section 2.59) ("**Minimum Rent**") without Notice. No later than the first (1st) Day of each succeeding month during each term, Tenant shall deliver to Landlord a schedule of Tenant's Gross Revenue for the month, together with a statement of Percentage Rent payable for that month. If the Percentage Rent calculated for any given month is greater than the Minimum Rent, Tenant shall pay Landlord the Percentage Rent, otherwise, Tenant shall pay the Minimum Rent concurrently with the delivery of such schedule and statement.

7.2 Gross Revenue. "**Gross Revenue**" means and refers to all revenue derived from all uses of the Premises, including without limitation all revenue derived from subtenants and licensees, whether received or to become due. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue. Notwithstanding the foregoing, Gross Revenue shall not include: (a) federal, state, or municipal taxes collected from consumers (regardless of whether such amount is stated to the consumer as a separate charge) and paid periodically by Tenant to a governmental agency and accompanied by a tax return or statement

as required by law; (b) refunds for goods returned for resale on the Premises or refunds of deposits; (c) goods returned to sources; (d) sums and credits received in the settlement of claims for loss of or damage to merchandise, to the extent previously reported as Gross Revenues; (e) cash refunds made to customers in the ordinary course of business; (f) interest, service or sales carrying charges or other charges, however denominated, paid by customers for extension of credit on sales and where not included in the merchandise sales price; (g) receipts from public telephones, stamp machines, public toilet locks, or vending machines installed solely for use by Tenant's employees; (h) income from sales of fixtures, equipment or property which are not stock in trade; (i) gift certificate or like vouchers until such time as the same shall have been converted into a sale by redemption; and (j) voluntary gratuities which are provided to Tenant's employees by Tenant's customers and are in addition to any mandatory gratuities or the basic price for services. Tenant shall clearly indicate the amount of all such taxes and refunds on its books and records.

7.3 Inspection of Records.

7.3.1 Records. Tenant shall, at all times during the Term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions resulting from the Permitted Use. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents as necessary to allow Landlord to easily determine the Gross Revenue.

Any retail sales or charges will be recorded by means of cash registers, other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt, or such other device approved by Landlord. The registers will be equipped with devices that lock in sales totals and other transaction information that are not resettable. Totals shall be recorded and registered at the beginning and end of each business day.

In the event of admission charges or rentals, Tenant shall issue serially numbered tickets for each such admission or rental and shall keep a record of such tickets, as well as a record of unissued tickets.

7.3.2 Financial Statements. Within sixty (60) days after the end of each Lease Year, Tenant will, at its expense, submit to Landlord a statement in which Gross Revenue and the corresponding amount of Rent paid to Landlord for the Lease Year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the Premises. The statement shall be signed by Tenant attesting to its accuracy and shall be legally binding.

7.3.3 Right to Inspect. Tenant shall maintain and preserve all books of account, records, and supporting documentation described in Section 7.4.1 for at least five (5) years from the date of creation of the record and make such records available to Landlord in one location within the City of San Diego. Landlord shall, at its discretion, have the right inspect and audit the business of Tenant, its agents, sublessees, concessionaires, and licensees operating on and in connection with the Premises, as necessary and appropriate for Landlord to determine the amounts of Rent due Landlord in compliance with the requirements of this Lease.

At Landlord's request, Tenant shall promptly provide, at Tenant's expense, any necessary data to enable Landlord to fully comply with all requirements of the state or federal government for lease information or reports concerning the Premises. Such data will include, if required, a detailed breakdown of Tenant's receipts and expenses.

7.3.4 Audit Cost. The full cost of Landlord's audit(s) will be borne by Landlord unless one or both of the following conditions exists, in which case Tenant agrees to pay Landlord's costs of audit:

(a) The audit(s) reveal an underpayment or more than five percent (5%) or more than $10,000, whichever is less, between the Rent due as reported and paid by Tenant pursuant to this Lease and Rent due as determined by the audit(s); or

(b) Tenant has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with Section 7.4.1.

Tenant shall pay any deficiency determined by the audit(s), plus interest on such amount as determined by Section 24.7 within thirty (30) days of Notice by Landlord. Landlord will credit any overpayments against incoming Rent. Any overpayment determined after the end of the Lease will be refunded by Landlord within thirty (30) days of confirmation by Landlord of the audit(s) findings.

7.3.5 Default. Tenant's failure to keep complete and accurate records and make such records available for Landlord inspection shall be, like all other failures to comply with covenants of this Lease, a breach of this Lease and cause for termination.

7.4 Periodic Increases in Minimum Rent. On the first day of Lease Year 2 (the first adjustment occurring on such date) and on the first day of every Lease Year thereafter, the Minimum Rent shall be increased by three percent (3%) of the prior Lease Year's Minimum Rent. Following the effective date of each increase in the Minimum Rent pursuant to this Section 7.4, Landlord shall Notify Tenant of the increased Minimum Rent. Each such Notice may be given by Landlord at any time following an increase in the Minimum Rent pursuant to this Section 7.4. Tenant shall pay to Landlord all increased Minimum Rent accrued between the effective date of such Minimum Rent increase pursuant to this Section 7.4 and Landlord's Notice of such Minimum Rent increase, within thirty (30) days following Notice of the subject increase. Until Landlord gives Tenant Notice of a Minimum Rent increase, Tenant shall continue to pay the Minimum Rent in effect prior to delivery of such Notice, subject to Tenant's obligation to pay increased Minimum Rent amounts accrued between the effective date of such increase in the Minimum Rent pursuant to this Section 7.4 and Landlord's Notice of such increase in the Minimum Rent, as provided in this Section 7.4.

7.5 Security Deposit. Tenant deposited the Security Deposit with Landlord. Landlord shall hold the Security Deposit as security for Tenant's faithful performance of all the terms, covenants conditions, restrictions, and agreements of this Lease to be observed or performed by Tenant during the Term. If Tenant does not timely perform any provision of this Lease, including the provisions relating to payment of Rent, Landlord may (but shall not be required to) use, apply, or retain the Security Deposit for the payment of any Rent or other amount not timely

paid, for the payment of any amount Landlord may spend or become obligated to spend by reason of Tenant's failure to perform, or to compensate Landlord for any other loss or damage Landlord may suffer by reason of Tenant's failure to perform. If any portion of the Security Deposit is so used or applied, Tenant shall, within seven (7) days after Notice requesting replenishment of the Security Deposit, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount. Landlord shall not be required to keep the Security Deposit separate from its general funds. Tenant shall not be entitled to interest on the Security Deposit. If Tenant fully and faithfully observes or performs every term, covenant, condition, restriction, and agreement of this Lease to be observed or performed by Tenant, the unused balance of the Security Deposit will be returned to Tenant within thirty (30) days after the Termination Date Tenant waives all rights regarding the Security Deposit set forth in California Civil Code Section 1950.7, or any similar, related, or successor provision of law.

7.6 Payment. Rent is payable to Landlord's City Treasurer in lawful money of the United States of America. Minimum Rent payments shall be delivered to Landlord as follows:

By first-class mail through the United States Postal Service, unless otherwise Notified by Landlord, with all postage pre-paid and addressed to:

The City of San Diego
Office of the City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

By hand delivery to:

Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

7.7 Required Payment Information. Tenant shall include Landlord's customer account number for Tenant with each Minimum Rent payment. Tenant's failure to include its Landlord customer account number may result in Tenant's payment not being timely applied to Tenant's account and the application of late payment charges. Tenant assumes all risk of loss and responsibility for all late payment charges or administrative fees under Section 25.7 arising from its failure to include its Landlord customer account number with a Minimum Rent payment. The place of payment may be changed at any time by Landlord upon thirty (30) days prior Notice to Tenant. Checks only constitute payment when collected. Tenant assumes all risk of loss and responsibility for late payment charges or administrative fees under Section 25.7 if payments are sent by mail.

7.8 Invoicing Courtesy. Landlord may invoice Tenant for monetary amounts payable under this Lease. However, any such invoicing is a courtesy only. Tenant shall make all payments becoming due under this Lease on or before each applicable due date, regardless of whether or not Landlord invoiced the required payment.

7.9 Additional Rent. In addition to Minimum Rent, Tenant shall pay to Landlord all Additional Rent. Except where this Lease expressly provides otherwise, Tenant shall pay all Additional Rent prior to delinquency.

7.10 No Offsets. Tenant shall pay all Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

7.11 No Allocation to FF&E. No Rent is allocable to any FF&E, Construction, or Tenant Improvements.

8. ADDITIONAL PAYMENTS BY TENANT; TAXES.

8.1 [Reserved].

8.2 Real Estate Taxes. Tenant shall pay and discharge all Real Estate Taxes payable or accruing for all period(s) within the Term before delinquency. Tenant shall also pay all interest and penalties assessed for late payment of Real Estate Taxes this Lease requires Tenant to pay. Tenant shall within a reasonable time after Notice from Landlord give Landlord reasonable proof that Tenant paid all Real Estate Taxes this Lease requires Tenant to pay. Tenant acknowledges and agrees that this Lease creates a possessory interest in the Premises subject to property taxation and Real Estate Taxes include all possessory interest taxes imposed as a result of this Lease.

8.3 Personal Property Taxes. Tenant shall pay and discharge all personal property taxes payable or accruing for all period(s) within the Term relating to all personal property stored at, used in the operation of, or otherwise relating to the Premises before delinquency. Tenant shall also pay all interest and penalties assessed for late payment of any such personal property tax.

8.4 Documentary Transfer Tax. Tenant shall pay all documentary transfer taxes imposed by the State, the County or other Government under California Revenue and Taxation Code Sections 11911, *et seq.*, with respect to entry into this Lease, each Modification to this Lease, each extension of this Lease, each Transfer, or otherwise imposed regarding this Lease or Tenant.

8.5 Transfer of Leasehold Estate. Without limiting the generality of Tenant's obligations to pay Real Estate Taxes and subject to the limitations on Transfers in this Lease, Tenant agrees that it shall pay all increases in Real Estate Taxes resulting from a change in ownership of the Leasehold Estate.

8.6 Utilities. Tenant shall arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, television, internet, satellite, and other similar charges or services, and the expenses of installation, maintenance, use, and service relating to all such items for the Premises during the Term. All utilities on the Premises shall be installed underground and shall be used for Tenant's operations only. Landlord shall have no responsibility for providing or paying for any utilities or services for the Premises during the Term. Landlord shall not be liable for any interference with or disruption of any utilities or services for the Premises, unless such interference or disruption results solely from Landlord's gross negligence or willful misconduct while acting in its proprietary capacity, except to the extent Landlord is immune under applicable law and subject to any defense to such liability available to Landlord.

8.7 Unauthorized Use Charge. Tenant shall pay Landlord one hundred percent (100%) of the Gross Revenue, without any deduction, credit, or set-off, from any use of the Premises that is not a Permitted Use within thirty (30) days after Tenant receives such revenue. Nothing in this Section 8.7 or Landlord's acceptance of any payment under this Section 8.7 is intended to authorize any use of the Premises that is not a Permitted Use, waive Tenant's Default for conducting or allowing such use, or waive any Landlord right or remedy under this Agreement.

9. **USE.**

9.1 Permitted Use. Tenant shall only use the Premises during the Term for the Permitted Use (as defined in Section 2) in compliance with Law, this Lease, the Parking Rules and Regulations attached hereto as **EXHIBIT B-2**, and no other uses. Tenant shall be solely responsible for operation of the Premises. Landlord shall have no responsibility for operation of the Premises.

9.2 Premises Operation. Tenant shall operate the Premises in a manner that will provide decent, safe and sanitary facilities to all users of the Premises and will comply with all the provisions of this Lease and all applicable Law. Tenant shall keep all areas immediately adjacent to the Premises clean and clear of refuse and obstructions. Tenant shall be solely responsible for operation of the Premises and has agreed to maintain the operating hours set forth in **EXHIBIT C**. Landlord shall have no responsibility for operation of the Premises.

9.3 Parking Lot. During normal operating hours (as set forth in **EXHIBIT C**), Tenant shall have exclusive use of twenty (20) spaces in the Parking Lot for the benefit of its employees, contractors, customers, and invitees. The designated spaces, to be determined and modified by Landlord from time to time, will be marked with appropriate signage by Landlord and be subject to the Parking Rules and Regulations attached hereto as **EXHIBIT B-2**

9.4 Competent Management. Tenant shall provide competent management of the Permitted Use to Landlord's reasonable satisfaction. For the purposes of this Section 9.3 the following terms are defined:

9.4.1 "Competent management" means and refers to management practices generally considered acceptable within Tenant's industry for the management and operation of activities substantially similar to the Permitted Use and in compliance with all applicable Law, and regulations, and in a fiscally responsible manner.

9.4.2 "Fiscally responsible manner" means and refers to in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.

9.5 Trash and Refuse. Tenant shall, at its sole cost and expense, provide covered containers on the Premises to receive trash and refuse generated on the Premises. Refuse containers shall not be located outside the Premises. Tenant shall contract to ensure that refuse containers are emptied on a regular basis and shall prevent refuse containers from overflowing or creating unhealthful, unsightly, or unsanitary conditions. Tenant shall contract to ensure that the contents of all refuse containers on the Premises are disposed of at authorized landfills or other garbage reception areas, as provided under applicable Law at the time of refuse collection.

9.6 Single Use Plastic Reduction Ordinance. Unless an exception applies, Tenant will comply with the Single Use Plastic Reduction Ordinance codified in San Diego Municipal Code ("**SDMC**") sections 66.0901 through 66.0907. By signing this Lease, Tenant certifies that it will comply with the requirements of the Single Use Plastic Reduction Ordinance throughout the Term.

9.7 Limitation on Construction. Tenant shall not perform any Construction on or related to the Premises that is not Restoration or maintenance required to be performed by Tenant under this Lease.

9.8 Continuous Operation. Tenant shall continuously use and operate the entirety of the Premises during the Term for the Permitted Use and no other use. Notwithstanding the immediately preceding sentence, nothing in this Lease shall obligate Tenant to use or operate any affected part of the Premises for any purpose following a Loss (other than an Immaterial Loss), until Tenant has completed Restoration.

9.9 Abandonment. Tenant shall not abandon, vacate, or surrender the Leasehold Estate created by this Lease or any portion of the Premises during the Term.

9.10 No Discrimination or Segregation. Tenant covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all Persons claiming under or through it, him or her, that neither Tenant nor any Person claiming under or through Tenant shall establish or allow any discrimination against or segregation of any Person or group of Persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the use of the Premises.

9.11 Noise. Tenant shall not use or permit the use of the Premises in any manner that creates or maintains any noise or sound violating SDMC Chapter 5, Article 9.5.

9.12 Nuisance. Tenant shall not itself and shall not allow any other Person to use the Premises for any unlawful purpose and shall not itself and shall not allow any other Person to perform, permit or suffer any act or omission upon or about the Premises that would result in a nuisance or a violation of Law.

9.13 Exterior Signs. No banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising (each, a "**Sign**") may be placed within or on the exterior of the Premises without Landlord's prior written consent, in each instance, which consent may be given or withheld in Landlord's sole and absolute discretion, except for Signs located inside the Improvements and not visible outside the Improvements or Signs required by Law. All Signs on the Premises will be maintained and repaired by Tenant, at its sole cost and expense, in good, clean, and operating condition during the Term. Tenant will remove all Signs from the Premises on or before the Expiration Date and repair all damage caused by installation or removal of Signs, all at Tenant's sole cost and expense. Tenant shall comply with all Laws requiring the posting of Signs on the Premises. If any unauthorized Sign is found on the Premises, Tenant shall remove the Sign at Tenant's sole cost and expense within twenty-four (24) hours after Notice from Landlord requesting the removal. If Tenant does not remove the

Sign within such twenty-four (24) hour period, Landlord may enter the Premises and remove the Sign at Tenant's sole cost and expense. If Landlord removes a Sign from the Premises under this Section 9.13, Tenant shall reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing such work (including the costs of Landlord's staff time, administrative overhead, and Legal Costs), within fifteen (15) days after Notice to Tenant of such costs. Any amount of money reimbursable to Landlord by Tenant under this Section 9.13 that is not paid within fifteen (15) days after Notice to Tenant of such amount shall accrue Default Interest from the date incurred until paid.

9.14 No Artist's Rights. Tenant shall not install any artwork on the Premises that may provide the creator or owner of such artwork with any right to prevent removal of such artwork from the Premises under any Law.

9.15 Availability of Tenant Employees. Tenant agrees to have one or more of its employees who is/are knowledgeable regarding this Lease and the operation of the Premises, such that such Person(s) can meaningfully respond to Landlord or Landlord's staff regarding operation of the Premises and attend meetings with Landlord's staff or meetings of Landlord's City Council, when requested to do so with reasonable advance Notice to Tenant.

9.16 Compliance with Law. Tenant shall, during the Term, at Tenant's sole cost and expense, in all material respects: (a) comply with all Laws; (b) procure and comply with all Approvals required by Law; and (c) comply with all notices issued by Landlord (in its governmental capacity) or any other Government under the authority of current or future Law.

9.17 Accident Reports. Tenant shall immediately, or as soon as practicable and not more than 48 hours after Tenant becomes aware of any accident on or around the Premises causing more than ten thousand dollars ($10,0000) in property damage or injury to any Person, report to Landlord the names and addresses of the Person(s) involved, the circumstances, the date and hour of the accident, the names and addresses of all witnesses, and all other pertinent information.

10. MAINTENANCE.

10.1 Obligation to Maintain. Except to the extent that this Lease otherwise expressly provides or allows, or Tenant is performing Construction in compliance with this Lease, Tenant shall during the Term keep and maintain the Premises in good order, condition, and repair, in accordance with the Maintenance Standard, subject to reasonable wear and tear and any other condition this Lease expressly does not require Tenant to repair or restore. Tenant's obligation to maintain the Premises includes an obligation to make all repairs that the Premises, including the Improvements, may require under applicable Law. When installing new or replacement equipment or appliances in the Premises, Tenant shall only install equipment or appliances that are electric and do not consume fossil fuels. Tenant shall remove trash and debris from the Premises and the adjacent areas and maintain them in a reasonably clean condition. Except as provided in this Section 10.1, Landlord shall have no obligation to maintain or repair the Premises. To the maximum extent allowed by Law, Tenant expressly waives all Landlord's obligations to maintain or repair the Premises, all right to terminate this Lease under California Civil Code sections 1932 or 1933 or any similar Law, and all right to make repairs at Landlord's

expense under California Civil Code sections 1941 through 1942 or any similar Law. Notwithstanding anything to the contrary in this Section 10.1, Landlord shall, subject to Sections 6.2, 6.4, and 19.1, be responsible for maintaining the roof of the Premises during the Term at its sole cost and expense. Landlord shall not be liable to Tenant for any injury or damage caused by failure of the roof. Upon written Notice from Tenant and subject to Section 15 below, Landlord shall repair and maintain the roof and may (but shall not be obligated to) replace the roof as soon as practicable.

10.2 Maintenance Standard. Tenant's obligation to maintain the Premises under Section 10.1 includes maintenance, repair, reconstruction, and replacement of all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Premises, now existing or made in the future, as necessary to maintain the appearance, character and level of quality of the Premises. Tenant's obligation to maintain the Premises described in the immediately preceding sentence shall include: (a) maintaining the surfaces of the Premises in an evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability; (b) removing all papers, mud, sand, debris, filth, and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep such areas in a clean and orderly condition; (c) removing or covering graffiti in accordance with Section 10.4; (d) placing, keeping in repair and replacing all necessary and appropriate directional signs, markers, and lines; (e) operating, keeping in repair, and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (f) providing security services and taking all reasonably appropriate measures to ensure the safety of Persons using the Premises; and (g) maintaining, mowing, weeding, trimming, and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance, character and level of quality of the landscaping, all at the sole cost and expense of Tenant. Tenant's obligation to maintain the Premises described in the two immediately preceding sentences is, collectively, referred to in this Lease as the "**Maintenance Standard**." Tenant may contract with a maintenance contractor to provide for performance of all or part of the duties and obligations of Tenant to maintain the Premises; provided, however, that Tenant shall remain responsible and liable for complying with the Maintenance Standard for the Premises during the Term.

10.3 Maintenance Default. At any time during the Term, if there is an occurrence of an adverse condition on any area of the Premises in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then Landlord may Notify Tenant of the Maintenance Deficiency. If Tenant fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days following Tenant's receipt of Notice of the Maintenance Deficiency, Landlord shall have the right (but no obligation) to enter the Premises following five (5) days advance Notice and perform all acts necessary to cure the Maintenance Deficiency or to take any other action at law or in equity that may then be available to Landlord to accomplish the abatement of the Maintenance Deficiency. Any amount of money expended by Landlord for the cure or abatement of a Maintenance Deficiency under this Section 10.3 shall be reimbursed to Landlord by Tenant within thirty (30) days after Notice to Tenant of the amount. Any amount of money expended by Landlord for the cure or abatement of a Maintenance Deficiency under this Section 10.3 that is not reimbursed to Landlord by Tenant within thirty (30) days after Notice to Tenant of such amount shall accrue Default Interest until paid in full.

10.4 Graffiti. Graffiti, as defined in Government Code section 38772, applied to any exterior surface of the Improvements shall be removed by Tenant by either painting over the evidence of such vandalism with a paint color-matched to the surface on which the paint is applied or removed with solvents, detergents, or water, as appropriate. Notwithstanding Section 10.3, if any such graffiti is not removed within seventy-two (72) hours after the time Tenant discovers or receives Notice of the graffiti or, in the case of graffiti that cannot reasonably be removed within seventy-two (72) hours after the time Tenant discovers or receives Notice of the graffiti, whichever is earlier, if Tenant does not duly commence and diligently complete such cure within a reasonable time under the circumstances, then after Notice to Tenant, Landlord shall have the right (but no obligation) to enter the Premises and remove the graffiti. Any amount of money expended by Landlord for removal of graffiti from the Premises under this Section 10.4 shall be reimbursed to Landlord by Tenant, within thirty (30) days after Notice to Tenant of such amount. Any amount of money expended by Landlord for removal of graffiti under this Section 10.4 not reimbursed to Landlord by Tenant within thirty (30) days after Notice to Tenant of such amount shall accrue Default Interest until paid in full.

11. Capital Improvements and Zero Emissions Municipal Buildings and Operations Policy (ZEMBOP)

11.1.1 Capital Improvements. As consideration of this Lease, Tenant shall agree to remove the existing "Landing Strip" signage and replace with new signage at Tenant's sole cost and expense, including but not limited to obtaining all necessary permits and approvals, no later than twelve (12) months from the effective date of this Lease. Tenant shall provide the signage specifications for Landlord's review and consent prior to installation. All signs on the Premises will be maintained by Tenant in good, clean, and operating condition during the Term. Tenant will remove all Signs from the Premises on or before the Expiration Date and repair all damage caused by installation or removal of Signs, all at Tenant's sole cost and expense.

11.1.2 Zero Emissions Municipal Buildings and Operations Policy (ZEMBOP)
In 2022, the City Council adopted a Climate Action Plan (CAP) which calls for the elimination of all Greenhouse Gas (GHG) emissions from fossil fuel consumption in the City and aims for electricity to be generated from zero carbon sources by 2035.

Thereafter, the City Council adopted Council Policy 900-03, the Zero Emissions Municipal Buildings and Operations Policy (ZEMBOP) that includes certain requirements for leased facilities
where the City is a landlord.

Tenant acknowledges and agrees that the ZEMBOP, as it may be amended from time to time, is hereby incorporated into this Lease by reference, and Tenant agrees to take any action to the extent required by ZEMBOP to achieve zero emissions as provided therein.

Notwithstanding anything to the contrary contained herein, if Tenant shall make certain improvements to the Premises, Tenant shall not install any new equipment or appliances which consume natural gas or other fossil fuel. Should the Tenant-maintained natural gas equipment present as of the Effective Date of this Lease require replacement, any replacement equipment installed must be electric and must not consume fossil fuels.

Tenant shall, at its sole cost and expense, seek and obtain all necessary Approvals required for constructing the improvements to the Rental Space pursuant to the ZEMBOP Plan.

12. **PREVAILING WAGE LAWS.** Tenant shall comply with Prevailing Wage Laws in performing all Construction on the Premises.

13. **TITLE TO IMPROVEMENTS AND PERSONAL PROPERTY**. All Improvements, Equipment, and FF&E located in, on, or at the Premises or otherwise constituting part of the Premises, with the exception of the Landlord-owned property set forth in **EXHIBIT D**, shall, during the Term, be owned by, and belong to, Tenant, and all benefits and burdens of ownership of such Improvements, Equipment, or FF&E, including title, depreciation, taxes, tax credits, assessments, and all other tax items and obligations shall be and remain in Tenant during the Term.

14. **PROHIBITED LIENS**.

14.1 Tenant's Covenant. Tenant shall Notify Landlord of each Prohibited Lien within twenty (20) days following Tenant's receipt of notice of such Prohibited Lien. Tenant shall, within thirty (30) days after receiving notice of a Prohibited Lien (but in any case within fifteen (15) days after Tenant receives notice of commencement of foreclosure proceedings regarding any Prohibited Lien), cause such Prohibited Lien to be paid, discharged, and cleared from title to the Leasehold Estate; provided, however, that if Tenant disputes such Prohibited Lien in good faith, Tenant may maintain an appropriate dispute of such Prohibited Lien without payment, if Tenant records a bond complying with the provisions of California Civil Code Section 3143 and causes the release of the Leasehold Estate from the disputed Prohibited Lien. Tenant shall, thereafter, prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any Prohibited Lien, then Landlord shall Notify Tenant.

14.2 Protection of Landlord. LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL FURNISHED OR TO BE FURNISHED TO TENANT UPON CREDIT AND NO MECHANIC'S OR OTHER LIEN FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL 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 PROFESSIONAL, CONTRACTOR, SUBCONTRACTOR, LABORER, OR EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICES OR LABOR OR THE FURNISHING OF ANY MATERIAL 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 LABOR, OR THE FURNISHING OF ANY EQUIPMENT OR MATERIAL THAT WOULD GIVE RISE TO THE FILING OF ANY LIEN AGAINST THE FEE ESTATE. TENANT SHALL INDEMNIFY LANDLORD AGAINST ALL LIABILITY ARISING FROM OR RELATING TO CONSTRUCTION UNDERTAKEN BY TENANT OR ANYONE CLAIMING THROUGH TENANT AND AGAINST ALL PROHIBITED LIENS.

14.3 No Liens Against Public Property. TENANT ACKNOWLEDGES AND AGREES THAT ON THE COMMENCEMENT DATE THE FEE ESTATE IS OWNED BY LANDLORD, WHICH IS A PUBLIC ENTITY, AND THE FEE ESTATE IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES. TENANT FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES OF SUCH FACT AND THAT LANDLORD AND THE FEE ESTATE ARE NOT RESPONSIBLE FOR PAYMENT OF CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL. LANDLORD SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES TO POST AND KEEP POSTED ON THE PREMISES ALL NOTICES LANDLORD MAY DEEM NECESSARY FOR THE PROTECTION OF LANDLORD OR THE FEE ESTATE FROM MECHANIC'S LIENS OR OTHER CLAIMS. TENANT SHALL GIVE LANDLORD TEN (10) DAYS PRIOR WRITTEN NOTICE OF THE COMMENCEMENT OF ANY CONSTRUCTION OR OTHER WORK ON THE PREMISES TO ENABLE LANDLORD TO POST SUCH NOTICES.

15. **INSURANCE**. To protect the Landlord Parties against Claims arising from or related to this Lease, the Premises, or the Permitted Use, Tenant shall maintain, at its sole expense, throughout the Term, all the insurance coverage described in **EXHIBIT E** attached to this Lease.

16. **LOSSES AND LOSS PROCEEDS**.

16.1 Notice. If either Party becomes aware of any Loss, such Party shall Notify the other Party of such Loss within a reasonable time.

16.2 Casualty. If any Casualty occurs after the Commencement Date, no Rent shall abate, and Tenant shall Restore with reasonable promptness (regardless of the availability or sufficiency of Property Insurance Proceeds for such purpose); and (b) Tenant shall be solely responsible for: (i) negotiating and adjusting any Property Insurance Proceeds regarding the Casualty; and (ii) the costs of Restoration.

16.3 Substantial Condemnation. On the occurrence of a Substantial Condemnation, this Lease shall terminate in its entirety, on the Condemnation Effective Date. Neither Landlord nor Tenant shall settle or compromise any Condemnation Award without consent from the other Party, not to be unreasonably withheld; provided, however, neither Landlord nor Tenant shall be required to obtain the consent of the other Party to settle or compromise any Condemnation Award when Landlord is the condemning authority. Any Condemnation Award shall be paid to Depository under Section 16.6. For a Substantial Condemnation, Landlord and Tenant shall allocate the Condemnation Award as follows and in the following order of priority, without duplication, until exhausted:

16.3.1 *Landlord's Costs*. For a Substantial Condemnation where Landlord is not the condemning authority, to reimburse Landlord for Landlord's actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

16.3.2 *Tenant's Costs*. To reimburse Tenant for Tenant's actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

16.3.3 *Tenant's Claim*. Tenant shall receive such portion of the Condemnation Award equal to the Market Value of the portion of the Leasehold Estate taken as of the Condemnation Effective Date.

16.3.4 *Landlord's Claim*. Landlord shall receive such portion of the Condemnation Award equal to the Market Value of the portion of the Fee Estate taken as of the Condemnation Effective Date.

16.3.5 *Landlord's Residual Claim*. Landlord shall receive the entire remaining Condemnation Award.

16.4 Insubstantial Condemnation. If an Insubstantial Condemnation occurs after the Commencement Date, then any Condemnation Award(s) shall be paid to Depository and applied first toward Restoration, in the same manner as Restoration after Casualty. Regardless of whether the Condemnation Award is adequate, Tenant shall, at its expense, Restore in compliance with this Lease. After Tenant completes and pays for Restoration, any remaining Condemnation Award shall be distributed to Landlord and Tenant in accordance with Section 16.3, as if it arose from a Substantial Condemnation affecting only the part of the Premises taken.

16.5 Temporary Condemnation. If a Temporary Condemnation occurs after the Commencement Date, then no Rent shall abate under this Lease and this Lease shall not be affected in any way, except as to use restrictions resulting from the Temporary Condemnation. To the extent that the period of a Temporary Condemnation includes any period outside the Term, the Condemnation Award from such Temporary Condemnation allocable to a period outside the Term shall belong to Landlord. Otherwise, Tenant shall receive the Condemnation Award (to the extent attributable to periods within the Term).

16.6 Use of Loss Proceeds. Landlord assigns to Tenant the right to receive all Loss Proceeds, subject to the terms of this Lease. All Loss Proceeds shall be paid to Depository, to be disbursed by Depository under the terms of this Lease. If Landlord receives any Loss Proceeds, Landlord shall remit them to Depository. If a Loss is an Immaterial Loss, then Depository shall release all Loss Proceeds to Tenant, to be applied first to Restoration. If a Loss is not an Immaterial Loss, then Depository shall retain the Loss Proceeds and pay them over to Tenant, from time to time, upon the following terms, for Restoration, unless there is a Substantial Condemnation in which case the Loss Proceeds shall be paid to Landlord and Tenant as provided in Section 16.3. Depository shall first reimburse Landlord and Tenant from such Loss Proceeds for their actual, necessary, and proper costs and expenses in collecting such Loss Proceeds. Depository shall release Loss Proceeds to Tenant, from time to time, in proportion to the percentage of completion of the Restoration, subject to a reasonable retention (at least ten percent (10%)). When Tenant has completed and paid for Restoration, Depository shall release to Tenant, and Tenant may retain all remaining Loss Proceeds. Until Tenant has completed and paid for Restoration, Tenant shall hold all Loss Proceeds in trust for the benefit of Landlord to be

used first to Restore 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 Loss Proceeds, until Tenant has bonded, satisfied, or otherwise discharged such Prohibited Lien under Section 14.1. If Loss Proceeds are insufficient to Restore and there is no Substantial Condemnation affecting the portion of the Premises requiring Restoration, then Tenant shall nevertheless Restore at Tenant's sole cost and expense. Depository shall not release any Loss Proceeds, unless and until Tenant expends an amount of money equal to the insufficiency of Loss Proceeds for such Restoration. Landlord shall determine the amount of the insufficiency between the total amount of Loss Proceeds available for Restoration and the total costs of such Restoration.

16.7 Continuation of Lease. Except as this Lease expressly provides, this Lease shall not terminate, be forfeited, or be affected in any other manner by any Loss. Tenant waives all right to quit or surrender the Premises because of any Loss or any resulting untenantability, including the provisions of California Civil Code sections 1932 and 1933, and agrees that the provisions of this Lease shall exclusively govern the rights and responsibilities of the Parties in the event of a Loss. Unless and until this Lease is validly terminated in accordance with its terms, Tenant's obligations under this Lease, including the obligation to pay Rent, shall continue unabated.

16.8 No Effect on Landlord Eminent Domain Authority; No Condemnation. Nothing in this Lease is intended to, nor shall be interpreted to, waive, limit, or restrict any Landlord power of eminent domain over the Premises or any other property. No action by Landlord in pursuing its rights or performing its obligations under this Lease shall be considered any type or form of Condemnation.

17. **WASTE**. Subject to the provisions of this Lease concerning Construction, Condemnation and Casualty, Tenant shall not commit or suffer to be committed any waste of the Premises, Improvements, or Equipment. Tenant agrees to keep the Premises, Improvements, and Equipment clean and clear of refuse and obstructions, to promptly dispose of all garbage, trash, and rubbish and to pay all taxes, fees, and other charges levied regarding this Lease, the Leasehold Estate, the Premises, Improvements, Equipment, or FF&E. Tenant shall immediately Notify Landlord of any waste, Casualty, or damage to the Premises. If waste, Casualty, or damage to the Premises arises from the Permitted Use, at Landlord's election, in Landlord's sole and absolute discretion, Tenant shall make, or cause to be made, full repair of the waste, Casualty, or damage and Restore the Premises to its condition existing immediately prior to the waste, Casualty, or damage. Tenant shall commence preliminary steps toward Restoration of the Premises as soon as practicable, but no later than thirty (30) days after the date the waste, Casualty, or damage occurs. Tenant shall complete all required Restoration of the Premises within ninety (90) days after the date the waste, Casualty, or damage occurs. Tenant must obtain all Approvals required for Restoration of all waste, Casualty, or damage to the Premises.

18. **ENVIRONMENTAL CONDITIONS**. Tenant shall not cause or permit any Environmental Condition. If Tenant discovers or becomes aware of an Environmental Condition, Tenant shall Notify Landlord of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following the Tenant becoming aware of such Environmental Condition.

18.1 Remediation. If an Environmental Condition occurs, Tenant shall remediate the Environmental Condition in accordance with Law to allow all uses of the Premises permitted by Law immediately before the Environmental Condition is discovered, at Tenant's sole cost and expense. If Tenant knows or has reasonable cause to believe that an Environmental Condition is an imminent danger to public health and safety, Tenant shall take all actions necessary to alleviate the imminent danger, at Tenant's sole cost and expense.

18.2 Removal. If a Tenant Party stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Premises in accordance with Law, Tenant shall remove all such Hazardous Substances from the Premises prior to the Termination Date and provide Landlord with documentation demonstrating the legal removal and disposal of the Hazardous Substances. Tenant shall be responsible for all costs incurred by Landlord to remove or dispose of any Hazardous Substances not removed from the Premises by Tenant in accordance with this Section 8.2.

18.3 Reports. Tenant shall deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to Landlord within three (3) days after Notifying Landlord of the Environmental Condition. Tenant shall also submit all required reports relating to the Environmental Condition to other Governments as required by Law.

18.4 Environmental Assessment. Upon reasonable cause to believe that an Environmental Condition has occurred, Landlord may cause an environmental assessment of the Premises to be performed by a professional environmental consultant registered with the State as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be performed at Tenant's sole cost and expense. Tenant shall reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing the environmental assessment within fifteen (15) days after Notice to Tenant of the amount of such costs and expenses. Any amount reimbursable to Landlord by Tenant under this Section 18.4 that is not paid within fifteen (15) days after Notice to Tenant of such amount, shall accrue Default Interest until paid.

19. **ACCESS AND INSPECTION**. Notwithstanding anything to the contrary in this Lease, Landlord and its agents may enter the Premises upon reasonable advance Notice, without the payment of charges or fees, during regular hours of operation of the Premises, solely to: (a) ascertain whether Tenant is complying with this Lease; (b) cure Tenant's Defaults as permitted by this Lease; (c) perform such tests, borings, or other analyses as Landlord determines are necessary or appropriate relating to possible (non)compliance with Law or possible Hazardous Substance Discharge; provided, however, no invasive testing shall be conducted by Landlord without Tenant's prior written consent, not to be unreasonably withheld. In entering the Premises, Landlord and its agents shall not unreasonably interfere with Tenant's Permitted Use of the Premises and shall comply with Tenant's reasonable instructions. Landlord's entry onto the Premises under this Section 18 shall not entitle Tenant to any rights or remedies, except as expressly provided in this Section 18, and such entry shall not constitute an actual or constructive eviction of Tenant from the Premises, nor shall it entitle Tenant to any offset, deduction, or abatement of Rent. Landlord may enter the Premises without Notice to Tenant in the event of an emergency or if the giving of Notice would undermine the purpose and efficacy of Landlord's entry onto and inspection of the Premises. All Landlord representatives or agents who enter the

Premises shall identify themselves at the main entrance to the Premises and may be accompanied by a Tenant representative, at Tenant's discretion, while on the Premises. If in Landlord's reasonable judgment it is necessary, Landlord shall have the further right, from time to time, at its own cost, to retain a consultant or consultants to inspect the Premises regarding compliance by Tenant with this Lease. Tenant acknowledges and agrees that: (i) all such Landlord inspections are for the sole purpose of protecting Landlord's rights under this Lease; (ii) are made solely for Landlord's benefit; (iii) Landlord's inspections may be superficial and general in nature; (iv) are for the purposes of informing Landlord of the conformity of the Premises with this Lease; and (v) Tenant shall not be entitled to rely on any such inspection(s) as constituting Landlord's approval, satisfaction, or acceptance of any materials or workmanship, conformity of the Premises with this Lease or otherwise. Tenant agrees to make its own regular inspections of the Premises to determine the conformity of the Premises with this Lease.

20. **INDEMNIFICATION**.

20.1 Tenant Indemnity Obligations. In addition to Tenant's obligations to Indemnify the Landlord Parties under other provisions of this Lease, Tenant shall Indemnify the Landlord Parties against all Claims arising from: (a) Tenant's use or occupancy of the Premises or this Lease; (b) personal injury (including death) or property damage (to property of Tenant or any other Person) occurring on the Premises or adjoining real property; (c) personal injury (including death) or property damage resulting from Tenant's use or occupancy of the Premises; (d) wrongful intentional acts or negligence of one or more of the Tenant Parties; (e) strict liability relating to Tenant's use or occupancy of the Premises; (f) all Applications made at Tenant's request; (g) an agreement that Tenant (or anyone claiming by or through Tenant) makes with a Third Person regarding this Lease or the Premises; (h) services, labor, material, or equipment supplied to, for, or on behalf of Tenant; (i) a workers' compensation claim by one or more employees or contractors of one or more of the Tenant Parties; (j) a Prevailing Wage Determination; or (k) an Environmental Condition occurring on or after the Commencement Date. Notwithstanding anything to the contrary in this Lease, Tenant's obligations to Indemnify the Landlord Parties excludes Claims arising solely from the established active negligence or willful misconduct of a Landlord Party.

20.2 Independence of Insurance and Indemnity Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease shall not be construed or interpreted as in any way restricting, limiting, or Modifying Tenant's insurance or other obligations under this Lease. Tenant's obligations to Indemnify the Landlord Parties under this Lease are independent of Tenant's insurance and other obligations under this Lease. Tenant's compliance with its insurance obligations and other obligations under this Lease shall not in any way restrict, limit, or Modify Tenant's obligations to Indemnify the Landlord Parties under this Lease and are independent of Tenant's obligations to Indemnify the Landlord Parties and other obligations under this Lease.

20.3 Survival of Indemnification Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease shall survive the expiration or earlier termination of this Lease, until all actual or prospective Claims subject to Tenant's obligations to Indemnify the Landlord Parties under this Lease are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

20.4 Indemnification Procedures. Wherever this Lease requires Tenant to Indemnify the Landlord Parties:

20.4.1 *Notice*. The affected Landlord Parties shall Notify Tenant of the Claim within a reasonable time.

20.4.2 *Selection of Counsel*. Tenant shall select counsel reasonably acceptable to Landlord's City Council. Even though Tenant shall defend the Claim, the affected Landlord Parties may, in their respective sole and absolute discretion, engage separate legal counsel, at Tenant's expense, to advise them regarding the Claim and their defense. The affected Landlord Parties' separate legal counsel(s) may attend all proceedings and meetings. Tenant's legal counsel shall actively consult with the Landlord Parties' separate legal counsel, subject to applicable conflict of interest and privileged communication limitations.

20.4.3 *Cooperation*. The affected Landlord Parties shall reasonably cooperate with Tenant's defense of the Landlord Parties.

20.4.4 *Settlement*. Tenant may only settle a Claim with the prior written consent of the affected Landlord Parties, in their respective sole and absolute discretion.

20.5 Immediate Duty to Defend. The duty to defend that is within Tenant's obligations to Indemnify the Landlord Parties under this Lease includes Claims for which the Landlord Parties may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default or other obligation on the part of Tenant or the Landlord Parties have been determined. The duty to defend applies immediately, regardless of whether the Landlord Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the Parties that the Landlord Parties be entitled to obtain summary adjudication or summary judgment regarding Tenant's duty to defend the Landlord Parties at any stage of a Claim within the scope of Tenant's obligations to Indemnify the Landlord Parties under this Lease.

20.6 Savings Provision. Notwithstanding anything in this Lease to the contrary, if the extent of Tenant's obligation to Indemnify the Landlord Parties under this Lease exceeds the indemnity obligation allowed by applicable Law, Tenant's obligation to Indemnify the Landlord Parties shall be reduced to the extent required to comply with applicable Law.

21. **LANDLORD'S TRANSFERS**. Landlord may transfer or convey the Fee Estate to any Person at any time. Landlord shall Notify Tenant of each transfer or conveyance of the Fee Estate promptly following such transfer or conveyance. Upon any transfer or conveyance of the Fee Estate in compliance with this Lease, the grantor shall be relieved from all liability (excluding liability arising before such transfer or conveyance) for performance of any covenants or obligations to be performed by Landlord under this Lease after the effective date of the transfer or conveyance. This Lease shall bind Landlord only while Landlord owns the Fee Estate, except as to any liabilities or obligations under this Lease arising before the effective date of transfer or conveyance of the Fee Estate.

22. **TENANT TRANSFERS**. Tenant shall not have any right to make or allow any Transfer without the prior written consent of Landlord, which may be given or withheld in Landlord's

sole and absolute discretion. Tenant acknowledges and agrees that Landlord will not approve a Transfer to a Prohibited Transferee. Tenant further acknowledges and agrees that, under the circumstances that this Lease is entered into by Landlord and Tenant, the restrictions in this Lease on Transfers are reasonable.

22.1 Transfer Revenue Sharing with Landlord. If Landlord approves a Transfer, Tenant shall pay to Landlord two percent (2%) of the Gross Revenue received by Tenant in consideration of the Transfer on or before the effective date of the Transfer.

23. **SUBLEASING OR LICENSING.** Tenant may not sublease or license use of the Premises without Landlord's prior written consent, which may be given or withheld in Landlord's sole and absolute discretion. Tenant acknowledges and agrees that, under the circumstances that this Lease is entered into by Landlord and Tenant, the restrictions in this Lease on subleasing and licensing are reasonable.

23.1 Sublease Revenue Sharing with Landlord. If Landlord approves a sublease or license of the Premises, Tenant shall pay to Landlord fifty percent (50%) of the Gross Revenue received by Tenant in consideration of the sublease or license within ten (10) days after Tenant receives all or any portion of such Gross Revenue, including up-front payments and periodic payments.

24. **LANDLORD'S RESERVATION OF RIGHTS.**

24.1 Government Action. Nothing express or implied in this Lease is intended, nor shall be construed or interpreted, to limit, restrict, waive, or vary any required Approval from Landlord under its police power land use regulatory authority or other police powers or constitute an Approval by Landlord under its police power land use regulatory authority or other police powers. By entering into this Lease, Landlord is not obligating itself or any other Government regarding any discretionary action relating to the development, occupancy, use, or maintenance of the Premises, including re-zonings, variances, environmental clearances, any Approval required for the Permitted Use, or otherwise. Tenant shall diligently seek and use commercially reasonable efforts to obtain, at Tenant's sole cost and expense, all Approvals required from Landlord (in its governmental regulatory capacity) and other Governments necessary for the Permitted Use. Nothing express or implied in this Lease is intended, nor shall be construed or interpreted, to limit, restrict, waive, or vary any Landlord police power land use regulatory authority or other police power.

24.2 Natural Resources. Landlord reserves all right, title, and interest in all natural resources relating to the Premises, including subsurface natural gas, oil, minerals, and water, on or within the Premises.

24.3 Access Rights. Landlord reserves the right to grant and use easements or establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or public or Government access to the Premises or other real property.

25. **EVENTS OF DEFAULT; REMEDIES.**

25.1 Definition of "Event of Default". An "**Event of Default**" means the occurrence of any one or more of the following:

25.1.1 *Monetary Default*. A Monetary Default that continues for ten (10) days after Notice to Tenant of the Monetary Default.

25.1.2 *Bankruptcy or Insolvency*. Tenant 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 one hundred twenty (120) 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 Tenant'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 vacated and discharged within one hundred twenty (120) days after being made).

25.1.3 *Non-Monetary Default*. Any Non-Monetary Default, other than those specifically addressed in Section 25.1.2, occurs and Tenant does not cure it within thirty (30) days after Notice to Tenant of the Non-Monetary Default. For a Non-Monetary Default that cannot reasonably be cured within thirty (30) days from the date of such Notice, Tenant will not be in Default if it does all the following: (a) within thirty (30) days from the date of Notice to Tenant of the Non-Monetary Default, advise Landlord of Tenant's intention to take all reasonable steps to cure such Non-Monetary Default; (b) within a reasonable time under the circumstances, Tenant commences such cure and diligently prosecutes such cure to completion.

25.2 Remedies. If an Event of Default occurs, then Landlord shall, at Landlord's option, in Landlord's sole and absolute discretion, have all the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law, in equity, or under any other provision of this Lease:

25.2.1 *Termination of Tenant's Rights*; *Conditional Limitation*. Landlord may serve upon Tenant a 10-day Notice of termination of this Lease. Upon the expiration of such 10-day period, this Lease and the Term shall automatically, and without further action by any Person, terminate, expire, and come to an end, by the mere lapse of time, as fully and completely as if the expiration of such 10-day period were the Expiration Date. The passage of such 10-day period constitutes the limit beyond which Tenant's tenancy no longer exists. Tenant shall then quit and surrender the Premises to Landlord in accordance with Section 26 but remain liable as this Lease provides. It is a conditional limitation of this Lease that the Term shall terminate and expire as set forth in this Section 25.2.1. This Section 25.2.1 is intended to establish a conditional limitation and not a condition subsequent.

25.2.2 *Recovery of Damages Following Termination*. If Tenant's right to possession of the Premises is terminated by Landlord following the occurrence of an Event of Default, this Lease shall also terminate on the date on which Tenant's right to possession of the Premises terminates. Upon any such termination of this Lease, Landlord may recover from Tenant:

(a) The worth at the time of award of the unpaid Rent which had been earned at time of termination;

(b) 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;

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(d) 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.

(e) The "worth at the time of award" of the amounts referred to in Sections 25.2.2(a) and 25.2.2(b) is computed by accruing Default Interest on such amounts. The "worth at the time of award" of the amount referred to in Section 25.2.2(c) is 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%).

25.2.3 *Taking Possession.* Landlord may re-enter and take possession of the Premises with process of Law, whether by summary proceedings or otherwise, and remove Tenant, with or without having terminated this Lease and without: (a) being liable for damages; (b) being guilty of trespass; or (c) terminating this Lease. This Section 25.2.3 is intended to constitute an express right of re-entry in favor of Landlord. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Following any such entry or re-entry by Landlord, Landlord may, at any time and from time to time, in Landlord's sole and absolute discretion, relet all or any portion of the Premises. Landlord may, in Landlord's sole and absolute discretion, eject all Persons or eject some and not others or eject none. Landlord shall apply all rents from any such reletting in the manner provided in Section 25.6. Any reletting may be for the remainder of the Term or for a longer or shorter period. Landlord may enter into any leases made under this Section 25.2.3 in Landlord's name and shall be entitled to all rents from the use, operation, or occupancy of the Premises. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus Landlord's expenses (including Legal Costs), less the avails of any reletting. No act by or on behalf of Landlord under this Section 25.2.3 shall constitute a termination of this Lease unless Landlord gives Tenant Notice of termination of this Lease.

25.2.4 *Suits Before Expiration Date*. Landlord may sue for damages or to recover Rent, from time to time, in Landlord's sole and absolute discretion.

25.2.5 *Receipt of Money*. No receipt of money by Landlord from Tenant after termination of this Lease or after giving any Notice of termination of this Lease shall reinstate, continue, or extend this Lease or affect any Notice previously given to Tenant, or waive

Landlord's right to enforce payment of any Rent payable or later falling due, or Landlord's right to recover possession by proper remedy, except as this Lease expressly states otherwise, it being agreed that after delivery of Notice of termination of this Lease or commencement of suit or summary proceedings, or after final order or judgment for possession, Landlord may demand, receive, and collect all money due or thereafter falling due from Tenant under this Lease, without in any manner affecting such Notice, proceeding, order, suit, or judgment, all such money collected being deemed payments on account of use and occupation of the Premises by Tenant or, in Landlord's sole and absolute discretion, on account of Tenant's liability to Landlord.

25.2.6 *No Waiver*. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, condition or restriction of this Lease or to exercise any right or remedy upon a Default or Event of Default, and no acceptance of full or partial Rent during continuance of any such Default or Event of Default, shall waive any such Default, Event of 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 or Event of Default, shall be Modified, except by a written instrument signed by Landlord. No waiver of any Default or Event of Default shall Modify this Lease. Each covenant, agreement, term, condition, and restriction 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, condition, or restriction of this Lease.

25.2.7 *Damages*. Landlord may recover from Tenant all damages Landlord incurs because of Tenant's Default, including reasonable costs of recovering possession, reletting the Premises, all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Landlord may recover such damages at any time after Tenant's Default, including after the Expiration Date. Notwithstanding any Law to the contrary, Landlord need not commence separate actions to enforce Tenant's obligations for each Lease Year's Rent not paid or each Lease Year's accrual of damages for Tenant's Default but may bring and prosecute a single combined action for all such Rent or damages.

25.3 Continue Lease. Landlord may, in Landlord's sole and absolute discretion, maintain Tenant's right to possession of the Premises. Landlord has the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). If Landlord elects to maintain Tenant's right to possession of the Premises after an Event of Default, this Lease shall continue and Landlord may continue to enforce it, including the right to collect Rent when due and all remedies for non-payment of Rent. Tenant acknowledges and agrees that the standards and conditions of this Lease regarding Tenant's right to Transfer this Lease or sublease the Premises are reasonable.

25.4 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 Default. Tenant specifically and expressly acknowledges that damages do not constitute an adequate remedy for a Non-Monetary Default.

25.5 Restoration Funds. Upon any termination of this Lease, to the extent Landlord or Depository then holds any Restoration Funds, such funds shall be applied as provided in this Lease, including as a payment toward any sums then payable to Landlord under this Lease.

25.6 Proceeds of Reletting. Landlord shall apply all proceeds of any reletting as follows, without duplication, but including Default Interest on all such sums:

25.6.1 *Landlord's Costs*. First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any Construction, and removing all Persons and property from the Premises, including reasonable and customary brokerage commissions and Legal Costs;

25.6.2 *Preparation for Reletting*. Second, to pay to itself the cost and expense reasonably incurred in securing any new tenants or other occupants, including all brokerage commissions, Legal Costs, and all other reasonable costs of preparing the Premises for reletting;

25.6.3 *Costs of Maintenance and Operation*. Third, to the extent that Landlord shall maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

25.6.4 *Residue*. Fourth, to pay to itself the remaining balance of Tenant's liability to Landlord.

25.7 Tenant's Late Payments; Administrative Charges. If Tenant fails to make any payment to Landlord required under this Lease when such payment is first due and payable, then in addition to the other remedies of Landlord, and without reducing or adversely affecting Landlord's other rights or remedies, Tenant shall pay five percent (5%) of the unpaid amount to Landlord as the reasonably estimated cost of the payment delay to Landlord. If any amount of such payment remains unpaid fifteen (15) days after such payment is first due and payable, then in addition to the other remedies of Landlord, and without reducing or adversely affecting Landlord's other rights or remedies, Tenant shall pay an additional five percent (5%) of the unpaid amount (a total of 10%) to Landlord as the reasonably estimated cost of the payment delay to Landlord. Notwithstanding anything to the contrary in the two immediately preceding sentences, the amount payable by Tenant to Landlord under either sentence shall be no less than $25. Nothing in this Section 25.7 is intended to affect or change Landlord's rights or remedies regarding a Default or Event of Default. This Section 25.7 only establishes Landlord's right to recover reasonably estimated costs of late payments, including compensating Landlord for staff time incurred by Landlord to handle the late or missed payment. Amounts payable by Tenant to Landlord under this Section 25.7 are not a penalty or compensation for use of funds and shall not be credited against any other obligation of Tenant under this Lease.

In the event Landlord's audit(s), if applicable, discloses that Tenant has underpaid Rent in the audited period in excess of five percent (5%) of the total required Rent, then Tenant shall pay Landlord the cost of the audit(s) plus ten percent (10%) per year on the amount said Rent was underpaid, in addition to the unpaid Rent as shown to be due Landlord, as compensation to Landlord for the administrative costs and loss of interest. In the event Landlord's audit(s) discloses that the unpaid Rent is less than five percent (5%) of the total Rent due, and should

Tenant fail to pay such unpaid Rent within thirty (30) days of Notice by Landlord, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate Landlord for costs and losses due to such nonpayment. Tenant agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that Landlord will incur from Tenant's late payment. Acceptance of late charges and any portion of late payment by Landlord shall in no event constitute a waiver of Tenant's default with respect to late payment, nor prevent Landlord from exercising any of the other rights and remedies granted to it under this Lease.

25.8 Landlord's Right to Cure. If Tenant, at any time, fails to make any payment or take any action this Lease requires, then Landlord, after five (5) Business Days' Notice to Tenant, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Tenant from any obligation or Default and without waiving Landlord's right to take such action as this Lease may permit following such Default, may (but need not) make such payment or take such action. Within ten (10) days after Notice of such payment amount, Tenant shall reimburse Landlord, as Additional Rent, for an amount equal to: (a) all reasonable monetary amounts paid (including Legal Costs) by Landlord in exercising its cure rights under this Section 25.8; plus (b) Default Interest on the monetary amounts described in clause "(a)" of this Section 25.8 from the date paid until the date of reimbursement to Landlord.

25.9 Accord and Satisfaction; Partial Payments. No payment by Tenant or receipt by Landlord of a lesser amount of money than the amount of money 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 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 the amount of money due to Landlord or pursue any other remedy for a Default or Event of Default.

25.10 Survival. No termination of this Lease and no taking possession of or reletting the Premises shall relieve Landlord or Tenant of their respective liabilities and obligations under this Lease that survive such expiration, termination, repossession, or reletting.

25.11 Multiple Suits. Landlord may sue to recover damages, or monetary amount(s) equal to any installment(s) of Rent payable by Tenant, from time to time, at Landlord's election in Landlord's sole and absolute discretion. Nothing in this Lease requires Landlord to await the Scheduled Expiration Date or any other Expiration Date to bring suit to remedy or recover damages after an Event of Default.

25.12 Landlord's Notice and Opportunity to Cure. Notwithstanding anything to the contrary in this Lease, before exercising any right or remedy under this Lease or applicable Law because of a Landlord Default or claiming a partial or total eviction (actual or constructive) because of a Landlord Default, Tenant shall give Landlord Notice of the Landlord Default and thirty (30) days following the effective date of such Notice to cure the Landlord Default. If Landlord cannot with due diligence cure a Landlord Default within thirty (30) days following the effective date of Notice of such Landlord Default, the cure period for the Landlord Default shall be extended for such further period as Landlord shall reasonably require to cure the Landlord

Default, provided that Landlord shall: (a) within thirty (30) days following the effective date of Notice to Landlord of the Landlord Default, advise Tenant of Landlord's intention to take all reasonable steps to cure such Landlord Default; and (b) within a reasonable time under the circumstances, commence such cure and diligently prosecute such cure to completion. Tenant acknowledges the independence of the covenants in this Lease and waives all right to terminate this Lease because of any Landlord Default.

26. **END OF TERM.**

26.1 Surrender. Upon any Expiration Date: (a) all Improvements(s) and 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 this Lease does not require Tenant to Restore; (c) Tenant shall surrender to Landlord all right, title, or interest in and to the Premises and deliver such written evidence and confirmation of such surrender as Landlord reasonably requires; (d) Tenant shall deliver the Premises free and clear of all liens, except liens that Landlord directly caused; (e) Tenant shall assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable warranties then in effect for the Premises; (f) the Parties shall cooperate to achieve an orderly transition of operation of the Premises from Tenant to Landlord (to the extent reasonably possible), without interruption, including delivery of such books and records (or copies thereof), as Landlord reasonably requires; and (g) the Parties shall adjust for 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 amount of money otherwise payable to Tenant shall first be applied to cure any Default), provided, however, that Tenant shall be responsible for applying to applicable taxing entities for a refund of any Real Estate Taxes paid by Tenant for periods after the Expiration Date (if any) and Landlord shall not be required to pay or credit Tenant for any such amount. Notwithstanding anything to the contrary in this Section 26.1, Tenant may remove from the Premises any FF&E owned by Tenant, but Tenant must do so, if at all, prior to the Expiration Date. Tenant shall immediately repair all damage to the Premises from removal of FF&E. Tenant's FF&E not removed before the Expiration Date shall be deemed abandoned.

26.2 Quitclaim of Tenant's Interests. Following any Expiration Date, Tenant shall sign, acknowledge, and deliver to Landlord a quitclaim deed acceptable to Landlord conveying all of Tenant's right, title, and interest in and to the Premises to Landlord, within thirty (30) days following Notice requesting such quitclaim deed (which Notice may be given thirty (30) days before any Expiration Date or later). If Tenant fails or refuses to sign, deliver, and record such quitclaim deed to Landlord within the provided thirty (30) day period, Tenant appoints Landlord as its attorney-in-fact to sign, deliver, and record such a quitclaim deed, which appointment is irrevocable and coupled with an interest.

27. **NOTICES**. All Notices submitted by a Party to the other Party under or as required by this Lease shall be sent by either messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.), or registered or certified first-class mail, postage prepaid, return receipt requested through the United States Postal Service, to the address of the recipient Party designated in **EXHIBIT F** attached to this Lease. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this

Section 27. Notice shall be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day the Notice is sent by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or three (3) days after the Notice is deposited with the United States Postal Service in accordance with this Section 27. Any attorney representing a Party may give any Notice on behalf of such Party. The Notice addresses for the Parties, as of the Commencement Date, are set forth in **EXHIBIT F**.

28. **REPLACEMENT OF STATUTORY NOTICE REQUIREMENTS**. When this Lease requires service of a Notice, that Notice shall replace, rather than supplement, any equivalent or similar Notice required by Law, including any Notices required by California Code of Civil Procedure section 1161 or any similar or successor Law. When a Law requires service of a Notice in a particular manner, service of that Notice (or a similar Notice required by this Lease) in the manner required by Section 27 shall replace and satisfy the service-of-notice procedures of such Law, including those required by California Code of Civil Procedure section 1162 or any similar or successor Law.

29. **NO BROKER**. Each Party: (a) represents and warrants to the other Party that it did not engage or deal with any broker or finder regarding this Lease and no Person is entitled to any commission or finder's fee regarding this Lease under any agreement or arrangement made by such Party; and (b) shall Indemnify the other Party against any breach of the representations or warranties in clause "(a)" of this Section 29.

30. **ESTOPPEL CERTIFICATES**. Each Party to this Lease ("**Requesting Party**") may require the other Party ("**Certifying Party**") to sign and deliver to the Requesting Party (or directly to a Third Person designated by the Requesting Party) up to four (4) original counterparts of an Estoppel Certificate. The Certifying Party shall sign and deliver such Estoppel Certificate, within fifteen (15) days after request, even if the Requesting Party is in Default or Landlord Default. If a Certifying Party fails to sign and deliver an Estoppel Certificate within the required fifteen (15) day period, then the Certifying Party shall pay the Requesting Party liquidated damages of two hundred fifty dollars ($250.00) per day for each day after the expiration of the fifteen (15) day period for delivery of an Estoppel Certificate until the date the Certifying Party delivers the Estoppel Certificate. A Requesting Party shall pay all the expenses (including Legal Costs) of the Certifying Party incurred in providing an Estoppel Certificate.

31. **HOLDOVER**. If Tenant continues to occupy the Premises after the Expiration Date, such occupancy shall not constitute a renewal or extension of this Lease under California Civil Code section 1945 or otherwise, nor give Tenant any right in or to the Premises after the Expiration Date. Tenant may not occupy the Premises after the Expiration Date without Landlord's consent, which may be given or withheld in Landlord's sole and absolute discretion. Tenant's occupancy of the Premises after the Expiration Date with Landlord's consent shall be a month-to-month tenancy and all other terms and conditions of this Lease shall continue in full force and effect, except that Landlord may then demand and receive Minimum Rent from Tenant equal to the greater of: a) per diem basis using the fair market rental rate for the Premises determined as of the Expiration Date by an appraiser selected by Landlord; or b) monthly rent equal to 150% of the monthly rent owed under this Lease for the month immediately prior to the commencement of the holdover tenancy. Landlord's acceptance of any Minimum Rent from

Tenant after the Expiration Date shall not constitute a renewal or extension of this Lease under California Civil Code section 1945 or otherwise.

32. MISCELLANEOUS.

32.1 Prior Agreement Termination. As of the Commencement Date, all leases, right-of-entry permits, or other agreements between Landlord and Tenant concerning Tenant's entry upon, use, occupancy, or operation of the Premises, other than this Lease, are terminated, except as to any payments, rights, or remedies accrued to either Party under those agreements prior to the Commencement Date. In addition, any and all prior leases concerning the Premises, including but not limited to that certain lease between Landlord (as landlord) and Billie A. Brown-Sciliano and Vincent J. Sciliano (together, as tenant), dated as of August 19, 2019, which expired by its own terms on August 19, 2022 (the "**Prior Lease**"), shall be of no further force or effect except as to any rentals and fees that may have accrued thereunder, and any rights and remedies accrued or granted thereunder and which by their nature or by agreement survive such termination.

32.2 Compliance with Landlord Standard Contract Provisions. Tenant shall comply with all Landlord standard contract provisions set forth in **EXHIBIT G** attached to this Lease.

32.3 Third-Party Beneficiaries. There are no third-party beneficiaries of this Lease. Nothing in this Lease is intended nor shall be deemed to confer upon any Person, other than Landlord and Tenant, any right to enforce this Lease.

32.4 Modification. Each Modification of this Lease must be in a writing signed by both Parties.

32.5 Successors and Assigns. This Lease shall bind and benefit Landlord and Tenant and their respective permitted successors and assigns, but this Section 32.5 shall not limit, supersede, or Modify any Transfer restrictions in this Lease.

32.6 Costs and Expenses; Legal Costs. In the event of any litigation or dispute 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 following 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 or Landlord Default.

32.7 No Waiver by Silence. All waivers of the provisions of this Lease must be in writing and signed by the Party making the waiver. Failure of either Party to complain of any act or omission of the other Party shall not be deemed a waiver by the non-complaining Party of any of its rights under this Lease. No waiver by either Party, at any time, express or implied, of any Default, Event of Default, or Landlord Default shall waive such Default, Event of Default, or Landlord Default at any other time or any other Default, Event of Default, or Landlord Default.

32.8 Performance Under Protest. If a dispute arises about performance of any obligation under this Lease, the Party against which such obligation is asserted shall have the right to perform the obligation 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 of money paid or the reasonable cost of otherwise complying with any such obligation, with interest at the Default Rate.

32.9 Survival. All rights and obligations that by their nature are to be performed after any Expiration Date shall survive any such Expiration Date.

32.10 Accessibility Assessment. Landlord discloses to Tenant that the Premises have not been inspected by a Certified Access Specialist (CASp). Landlord further states:

> A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

32.11 Unavoidable Delay.

32.11.1 *Notice*. Performance by either Party under this Lease shall not be in Default or Landlord Default where any such Default or Landlord Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of the Unavoidable Delay; and (b) within twenty (20) days after the Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay when Notice is timely given under this Section 32.11.1, shall commence on the date the condition causing the Unavoidable Delay commences. If Notice is not timely given under this Section 32.11.1, then the extension of time for the Unavoidable Delay shall commence on the effective date of the Notice of the Unavoidable Delay under this Section 32.11.1 and shall continue until the end of the condition causing the Unavoidable Delay. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise its reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

32.11.2 *Assumption of Economic Risks*. EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS LEASE SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF

EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS LEASE. ANYTHING IN THIS LEASE TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS, AGREEMENTS, AND REQUIREMENTS OF THIS LEASE. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE COMMENCEMENT DATE.

32.11.3

JR

INITIALS OF AUTHORIZED LANDLORD REPRESENTATIVE(S)

AG

INITIALS OF AUTHORIZED TENANT REPRESENTATIVE(S)

32.12 Captions. The captions of this Lease are for convenience of reference only and, in no way, affect this Lease.

32.13 Counterparts. This Lease may be signed in multiple counterpart originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

32.14 Warranty Against Payment of Consideration for Lease. Tenant represents and warrants that: (a) Tenant has not employed or retained any Person to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Tenant; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Tenant or any of its agents, employees or representatives to any elected or appointed official or employee of Landlord in an attempt to secure this Lease or favorable terms or conditions for this Lease. Breach of the representations or warranties of this Section 32.14 shall entitle Landlord to terminate this Lease, in Landlord's sole and absolute discretion, by Notice to Tenant. Upon any such termination of this Lease, Tenant shall immediately refund all payments made to or on behalf of Tenant by Landlord under this Lease or otherwise related to the Premises, prior to the date of any such termination.

32.15 Relationship of Parties. The Parties each intend and agree that Landlord and Tenant are independent contracting entities and do not intend by this Lease to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

32.16 Survival of Lease. All the provisions of this Lease shall be applicable to any dispute between the Parties arising from this Lease, whether prior to or following any Expiration Date, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Lease relating to dispute resolution or remedies shall survive any Expiration Date.

32.17 Non-liability of Officials, Employees and Agents. No Landlord Party (other than Landlord itself) shall be personally liable to Tenant, or any successor in interest of Tenant, in the event of any Landlord Default or breach by Landlord under this Lease or for any amount of money that may be or become due to Tenant or any successor in interest of Tenant, on any obligations under the terms or conditions of this Lease.

32.18 No Other Representations or Warranties. Except as expressly set forth in this Lease, no Party makes any representation or warranty material to this Lease to any other Party.

32.19 Tax Consequences. Tenant acknowledges and agrees that it shall bear all responsibilities, liabilities, costs, and expenses connected in any way with any tax consequences experienced by Tenant related to this Lease.

32.20 Time of the Essence. As to the performance of each obligation under this Lease of which time is a component, performance of such obligation within the time specified is of the essence.

32.21 Time Period Calculation. Unless otherwise specified, all references to time periods in this Lease measured in days shall be to consecutive calendar days, all references to time periods in this Lease measured in months shall be to consecutive calendar months and all references to time periods in this Lease measured in Lease Years shall be to consecutive Lease Years. All references to time periods in this Lease measured in Business Days shall be to consecutive Business Days.

32.22 Entire Agreement. This Lease (including the exhibits attached to this Lease) and the documents referenced in this Lease contain all the terms, covenants, and conditions between the Parties regarding 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.

32.23 Governing Law. This Lease, its interpretation and performance, the relationship between the Parties, and all 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 conflict of laws statutes or principles.

32.24 Partial Invalidity. If any term or provision of this Lease or its application to any Person 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 other than 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.

32.25 Interpretation Principles. No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this Lease. The Parties both participated substantially in negotiation, drafting, and revision of this Lease, with advice from legal counsel and other advisers of their own selection. A term defined in the singular in this Lease 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 collective noun used in this Lease shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. 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 violating this Lease), and includes all exhibits, schedules, and riders to such document. The word "or" includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar governmental requirement refers to each as amended, modified, renumbered, superseded, or succeeded, from time to time.

32.26 Survival of Conditions to Approval. Whenever this Lease requires certain conditions to be satisfied prior to or concurrent with the issuance of any consent or approval by Landlord or Landlord reasonably imposes any conditions to any Landlord consent or approval under this Lease, or where this Lease allows Tenant to take any action without Landlord's prior consent or approval, subject to the satisfaction of certain conditions, the intent and requirement of this Lease is that Tenant shall cause all such conditions to remain satisfied at all times following the granting of such consent or approval by Landlord or the taking of an action by Tenant without Landlord's consent or approval, for the duration of the matter or activity that is subject to such conditions.

32.27 Reasonableness. Wherever this Lease states that a Party shall not unreasonably withhold any consent or approval or a matter is reasonably acceptable to a Party or some other similar phrase, then: (a) such consent or approval shall not be unreasonably withheld, delayed or conditioned; (b) no withholding of consent or approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and (if reasonably possible) indicating specific reasonable changes in the proposal under consideration that would make it acceptable (if any); and (c) if a Party grants its consent or approval (or fails to object) to any matter, this shall not waive its right to require such consent or approval for any further or similar matter.

32.28 Electronic Signatures. The Parties agree: (a) to deliver and accept signatures on or under this Lease by e-mail or electronic means (including digital signatures); and (b) that signatures delivered by e-mail or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

32.29 Subject to Federal Aviation Administration (FAA) Regulations. Tenant acknowledges and agrees, in addition to the foregoing terms and conditions of this Lease, that Tenant shall strictly adhere to, and at all times be subject to, the Federal Aviation Administration Lease and Use Agreement Provisions set forth in the attached **EXHIBIT H – Federal Aviation Administration Lease and Use Agreement Provisions,** which by this reference is made a part of this Lease. Failure to strictly adhere to the Federal Aviation Administration Lease and Use

Agreement Provisions shall subject this Lease to immediate termination with no liability to CITY.

32.30 Exhibits. All the exhibits attached to this Lease are incorporated into this Lease by reference and described as follows:

EXHIBIT A	Premises
EXHIBIT B-1	Parking Lot
EXHIBIT B-2	Parking Rules and Regulations
EXHIBIT C	Schedule of Days and Hours of Operation
EXHIBIT D	Description and Listing of City-owned Property
EXHIBIT E	Insurance Requirements
EXHIBIT F	Notice Addresses
EXHIBIT G	Landlord Standard Contract Provisions
EXHIBIT H	Federal Aviation Administration Lease and Use Agreement Provisions
EXHIBIT I	Prevailing Wage Requirements

[***Remainder of page intentionally blank. Signatures appear on the immediately following page.***]

SIGNATURE PAGE
TO
PERCENTAGE LEASE
(The Landing Strip, 1424 Continental Street, Suite D, San Diego, CA 92154)

Landlord and Tenant sign and enter into this Lease by and through the signatures of their respective authorized representative(s) set forth below, as of the Commencement Date.

LANDLORD:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____
Jorge Rubio, Deputy Director, Airport Management
Department of Real Estate and Airport Management

Approved as to form on
April 26, 2024.

MARA W. ELLIOTT,
City Attorney

By: _____
Brian W. Byun
Deputy City Attorney

TENANT:

GRACIELA GONZALEZ, an individual

By: _____

ALEXIS GONZALEZ, an individual

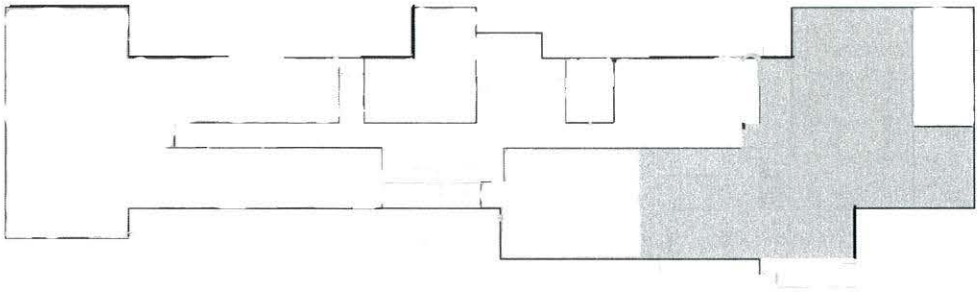
By: _____

EXHIBIT A
TO
PERCENTAGE LEASE
(The Landing Strip, 1424 Continental Street, Suite D, San Diego, CA 92154)

PREMISES

BROWN FIELD AIRPORT BUILDING

TOTAL EXTERIOR BUILDING AREA: 12081.8' SQ. FT.



RESTAURANT / BAR AREA	
AREA	SQ. FT.
	3,070

NOTE:
ALL AREA SQUARE FOOTAGE TOTALS (INCLUDING EXTERIOR BUILDING) ARE MEASURED TO STRUCTURAL BUILDING WALLS AND EXCLUDE ALL EXTERIOR PATIOS AND ROOF FEATURES.



SCALE: 1" = 8'



EXHIBIT A
Premises

EXHIBIT B-1
TO
PERCENTAGE LEASE
(The Landing Strip, 1424 Continental Street, Suite D, San Diego, CA 92154)

PARKING LOT



PARKING AREA

EXHIBIT B-2
TO
PERCENTAGE LEASE
(The Landing Strip, 1424 Continental Street, Suite D, San Diego, CA 92154)

PARKING RULES AND REGULATIONS

These Rules shall apply to the asphalt surface lot at the front or rear of the terminal building.

1. Parking areas shall be used only for parking of vehicles that are no longer the full size passenger automobiles, herein called "Permitted Size Vehicles." Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles."

2. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded or parked in areas other than those designated by Landlord for such activities.

3. Landlord reserves the right to refuse the sale of identification devices to any person or entity that willfully refuses to comply with the applicable rules, regulations, laws and/or agreements.

4. Landlord reserves the right to relocate all or part of parking spaces and/or to reasonably adjacent offsite locations and to reasonably allocate them between compact and standard size spaces, as long as the same complies with applicable laws, ordinances and regulations.

5. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking.

6. Unless otherwise instructed, every person using the parking area is required to park and lock his/her own vehicle. Landlord will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which risks are assumed by the party using the parking area.

7. The maintenance, washing, waxing or cleaning of vehicles in the parking area is strictly prohibited.

8. Landlord reserves the right to modify these rules and/or adopt such other reasonable and non-discriminatory rules and regulations as it may deem necessary for the proper operation of the parking area.

9. RESERVED.

10. Smoking is prohibited within 25 feet of any retail space entrance.

11. Vehicles shall only drive through lots as indicated by directional markings. Cutting corners and driving through vacant stalls is prohibited.

12. Vehicles shall not travel faster than 5 miles per hour.

13. Tenants and Tenant's employees are strictly prohibited from parking in Visitor Parking at ANY TIME.

14. Overnight parking, defined herein as between the hours of 11 p.m. and 4 a.m., is prohibited unless otherwise specified in your Lease agreement.

15. Vehicles MUST be parked within the marked lines. Vehicles parked over the line or taking up more than one space will be towed away at the vehicle owner's expense.

16. Landlord reserves the right to have any vehicle that violates any of these rules removed from the parking area at the vehicle owner's expense.

17. Vehicles parked on-site must display a valid state registration sticker.

18. In compliance with California statutes all drivers must carry Liability insurance.

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EXHIBIT C

TO

PERCENTAGE LEASE

(The Landing Strip, 1424 Continental Street, Suite D, San Diego, CA 92154)

Schedule of Days and Hours of Operation

Monday	7:00 AM to 12:00 AM
Tuesday	7:00 AM to 10:00 PM
Wednesday	7:00 AM to 10:00 PM
Thursday	7:00 AM to 10:00 PM
Friday	7:00 AM to 2:00 AM
Saturday	7:00 AM to 2:00 AM
Sunday	7:00 AM to 12:00 AM

EXHIBIT D

TO

PERCENTAGE LEASE
(The Landing Strip, 1424 Continental Street, Suite D, San Diego, CA 92154)

Description and Listing of City-owned Property

1	Stainless-steel sink and water server
1	"L" shaped counter and 3 sinks w/ledge and in sink disposal
1	"L" shaped stainless-steel shelf
1	Combined under GI hood, all equipment including deep-fat fryer, 2 range hoods and 4-burner cook top
1	Low heavy-duty U.S. range burner
1	Walk-in double room cooler with racks
1	Montague double over (commercial)
1	4-burner warmer range
1	Small utility table
3	Short bar stools
18	Tube-type ceiling light fixtures
46	Plastic formed chairs
8	Sets, salt and pepper cellars
12	Double face napkin holders (stainless steel)
1	8-foot stainless steel counter cabinet
15	Dining tables
1	GI range hood
1	Table height counter bars

EXHIBIT E
TO
PERCENTAGE LEASE
(The Landing Strip, 1424 Continental Street, Suite D, San Diego, CA 92154)

INSURANCE REQUIREMENTS

1. **Required Insurance Coverage.**

1.1. *Automobile Liability Insurance*. Insurance coverage against claims of personal injury (including bodily injury and death), and property damage covering all owned, leased, hired, and non-owned vehicles used by Tenant, with minimum limits for bodily injury and property damage of Two Million Dollars ($2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by Landlord, which pre-approval shall not be unreasonably withheld.

1.2. *Liability Insurance*. Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in or about the Premises or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars ($2,000,000) for any one occurrence and Four Million Dollars ($4,000,000) aggregate. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to the Premises.

1.3. *Property Insurance*. Insurance providing coverage for the Premises and all improvements on or to the Premises against loss, damage, or destruction by fire or other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the Premises, an "increased cost of construction" endorsement and an endorsement covering demolition and cost of debris removal.

1.4. *Workers Compensation Insurance*. Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One

Million Dollars ($1,000,000) per accident for bodily injury, or disease, covering all employees of Tenant.

2. **Nature of Insurance**. The contents of this EXHIBIT E are sometimes referred to as the "**Insurance Requirements**." All Liability Insurance, Automobile Liability Insurance, Property Insurance, and Workers Compensation Insurance policies required by these Insurance Requirements shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Tenant may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Premises, which amount(s) shall equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Insurance Requirements.

3. **Policy Requirements and Endorsements**. All insurance policies required by these Insurance Requirements shall contain (by endorsement or otherwise) the following provisions:

1.1. *Insured.* Liability Insurance policies shall name the Landlord Parties as "additional insured." The coverage afforded to the Landlord Parties shall be at least as broad as that afforded to Tenant regarding the Premises and may not contain any terms, conditions, exclusions, or limitations applicable to the Landlord Parties that do not apply to Tenant.

1.2. *Primary Coverage*. Any insurance or self-insurance maintained by the Landlord Parties shall be excess of all insurance required to be maintained by Tenant under these Insurance Requirements and shall not contribute with any insurance required to be maintained by Tenant under these Insurance Requirements.

1.3. *Contractual Liability*. Liability Insurance policies shall contain contractual liability coverage for Tenant's Indemnity obligations under this Lease. Tenant's obtaining or failing to obtain such contractual liability coverage shall not relieve Tenant from nor satisfy any Indemnity obligation of Tenant under this Lease.

1.4. *Deliveries to Landlord.* Evidence of Tenant's maintenance of all insurance policies required by these Insurance Requirements shall be delivered to Landlord before the Commencement Date. No later than thirty (30) days before any insurance required by these Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, Tenant shall deliver to Landlord evidence of Tenant's maintenance of all insurance required by these Insurance Requirements. Each insurance policy required by these Insurance Requirements shall be endorsed to state that coverage shall not be cancelled, suspended, voided,

reduced in coverage or in limits, except after sixty (60) days' advance Notice of such action to Landlord. Phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the Landlord Parties under these Insurance Requirements.

1.5. *Waiver of Certain Claims*. Tenant shall cause each insurance carrier providing any Liability Insurance, Worker's Compensation Insurance, or Automobile Liability Insurance coverage under these Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the Landlord Parties, if not originally in the policy. To the extent Tenant obtains an insurance policy covering both the Tenant Parties and the Landlord Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. "**Waiver of Subrogation**" means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the Landlord Parties for any loss such insurance policy covers.

1.6. *No Representation*. No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.

1.7. *No Claims Made Coverage*. None of the insurance coverage required by these Insurance Requirements may be written on a claims-made basis.

1.8. *Fully Paid and Non-Assessable*. All insurance obtained and maintained by Tenant in satisfaction of these Insurance Requirements shall be fully paid for and non-assessable.

1.9. *Separation of Insured*. All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Tenant and the Landlord Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but shall not exclude suits between named insured Persons and additional insured Persons.

1.10. *Deductibles and Self-Insured Retentions*. All deductibles or self-insured retentions under insurance policies required by these Insurance Requirements shall be declared to and approved by Landlord. Tenant shall pay all such deductibles or self-insured retentions regarding the Landlord Parties. Each insurance policy issued in satisfaction of these Insurance Requirements shall provide that, to the extent Tenant fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, Landlord may pay the unpaid portion of such self-insured retention, in Landlord's sole and absolute discretion. All amounts of money paid by Landlord toward self-insured retentions regarding

insurance policies covering the Landlord Parties under these Insurance Requirements shall be reimbursed to Landlord by Tenant in the same manner that insurance costs are reimbursable to Landlord from Tenant under Section 5 of these Insurance Requirements.

1.11. *No Separate Insurance*. Tenant shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with insurance coverage required by these Insurance Requirements unless the Landlord Parties are made additional insured under such insurance coverage.

4. **Insurance Independent of Indemnification**. These Insurance Requirements, are independent of the Parties' Indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Lease, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor shall the provision of such insurance preclude Landlord from taking such other actions as are available to Landlord under any other provision of this Lease or otherwise at law or in equity.

5. **Landlord Option to Obtain Coverage**. During the continuance of an Event of Default arising from the failure of Tenant to carry any insurance coverage required by these Insurance Requirements, Landlord may, in Landlord's sole and absolute discretion, purchase such required insurance coverage. Landlord shall be entitled to immediate payment from Tenant of all premiums and associated reasonable costs paid by Landlord to obtain such insurance coverage. Each amount of money becoming due and payable to Landlord under this Section 5 that is not paid within fifteen (15) days after Notice from Landlord with an explanation of the amount owed, will accrue Default Interest from the date incurred until paid. Election by Landlord to purchase or not to purchase insurance coverage otherwise required by these Insurance Requirements to be carried by Tenant shall not relieve Tenant of any Default or Event of Default or Tenant's obligation to obtain and maintain any insurance coverage required by these Insurance Requirements.

EXHIBIT F
TO
PERCENTAGE LEASE
(The Landing Strip, 1424 Continental Street, Suite D, San Diego, CA 92154)

NOTICE ADDRESSES

Tenant:

Graciela Gonzalez and Alexis Gonzalez
4748 Falconhurst Terrace
San Diego, CA 92154
(619) 405-9805
(619) 508-0429

Landlord:

The City of San Diego
Attention: Director, Department of Real Estate and Airport Management
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

And

City of San Diego
Airport Management
Attention: Deputy Director
3750 John J. Montgomery Drive
San Diego, CA 92123
Telephone: (858) 573-1441
E-Mail: JERubio@sandiego.gov

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EXHIBIT G
TO
PERCENTAGE LEASE
(The Landing Strip, 1424 Continental Street, Suite D, San Diego, CA 92154)

LANDLORD STANDARD CONTRACT PROVISIONS

1. **Tenant Certifications of Compliance**. By signing this Lease, Tenant agrees and certifies that Tenant is aware of, and will comply with, all the following requirements in performance of this Lease:

1.1 Tenant Certification for Americans with Disabilities Act ("**ADA**") and State Access Laws and Regulations. Tenant shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Tenant shall comply with the most restrictive requirement (i.e., that which provides the most access). Tenant also shall comply with the Landlord's ADA Compliance/Landlord Contractors requirements set forth in Council Policy 100-04, which is incorporated into this Lease by reference. Tenant warrants and certifies compliance with all Federal and State access laws and regulations and further certifies that all subcontracts relating to this Lease or the Premises will contain the subcontractor's agreement to abide by the provisions of Council Policy 100-04 and all applicable Federal and State access laws and regulations.

1.2 Compliance with Landlord's Equal Opportunity Contracting Program ("**EOCP**"). Tenant shall comply with all EOCP requirements. Tenant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Tenant shall provide equal opportunity in all employment practices. Tenant shall ensure that its subcontractors comply with the EOCP. Nothing in this Section 1.2 shall be interpreted to hold Tenant liable for any discriminatory practice of its subcontractors. Prior to commencing the Permitted Use on the Premises, Tenant shall contact the EOCP staff to determine compliance with all applicable rules and regulations.

1.3 Equal Benefits Ordinance Certification. Unless an exception applies, Tenant shall comply with the Equal Benefits Ordinance codified in SDMC section 22.4308.

1.4 Equal Pay Ordinance. Unless an exception applies, Tenant shall comply with the "Equal Pay Ordinance" codified in SDMC sections 22.4801 through 22.4809. Tenant shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of Tenant to the same extent as it would apply to Tenant. Tenant shall require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts.

1.5 Product Endorsement. Tenant shall comply with Council Policy 000-41 concerning product endorsement requiring that any advertisement referring to Landlord as a user of a good or service must have the prior written approval of the Mayor.

1.6 Business Tax Certificate. Unless Landlord's City Treasurer determines in writing that Tenant is exempt from the payment of business tax, Tenant is required to obtain a Landlord

business tax certificate and provide a copy of such certificate to Landlord before commencing the Permitted Use.

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EXHIBIT H
TO
PERCENTAGE LEASE
(The Landing Strip, 1424 Continental Street, Suite D, San Diego, CA 92154)

FEDERAL AVIATION ADMINISTRATION LEASE AND USE PROVISIONS

Tenant shall adhere to the following terms and conditions during the entirety of the time period covered by this Exhibit. If any term and or condition contained in this Exhibit conflicts with any provision contained in the main body of the Lease, the terms and conditions contained in the main body of the Lease shall prevail.

Definitions: (For information purposes only)

Aeronautical Activities: Any activity that involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. Activities within this definition include but are not limited to air taxi and charter operations, scheduled and nonscheduled air carrier services, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, aircraft sales and services, aircraft storage, sale of aviation petroleum products, repair and maintenance of aircraft, sale of aircraft parts, parachute, glider, balloon or ultralight activities and any other activities which, because of their direct relationship to the operation of aircraft, can appropriately be regarded as aeronautical activities.

Nonaeronautical activities: These include but are not limited to ground transportation (taxis, car rentals, limousines), restaurants, barber shops, auto parking lots, non-aviation businesses, recreational facilities and any other commodities, services, or accommodations made available to the general public that are of a nonaeronautical nature.

Assurance: A provision contained in a federal grant agreement with which the recipient of federal airport development assistance has voluntarily agreed to comply in consideration of the assistance provided.

Exclusive Right: A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.

Federal Obligation: Used in the context of a federal grant program, federal airport development assistance, land transfers, or other federal aid. It refers to an airport sponsor's legal duty and responsibility to comply with the terms of conveyance instruments and grant agreements.

Minimum Standards: The qualifications or criteria which may be established by an airport owner as the minimum requirements that must be met by businesses engaged in on airport aeronautical activities for the right to conduct those activities.

Revenue Diversion: The use of airport revenue for purposes other than the capital or operating cost of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

Self-Sustaining: The requirement to maintain a schedule of charges for use of the airport, which will make the airport as self-sustaining as possible under the circumstances existing at the airport.

a) For aeronautical users, reasonable rates and charges that reflect the sponsor's cost of providing aeronautical services and facilities are satisfactory.

b) For nonaeronautical users, rates and charges must be based on the fair market value of the services and facilities provided.

PROVISIONS:

1. The Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Tenant transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/Landlord).
This provision obligates the Tenant for the period during which the property is owned, used or possessed by the Tenant and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

A. The Tenant for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

I. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to lease, in the event of breach of any of the above Nondiscrimination covenants, the Landlord will have the right to terminate the

lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.

C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the Landlord will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Landlord and its assigns.

D. The Tenant for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (I) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

E. With respect to the lease, in the event of breach of any of the above nondiscrimination covenants, the Landlord will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.*

F. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, the Landlord will there upon revert to and vest in and become the absolute property of the Landlord and its assigns.*

(Additional information regarding civil rights and disadvantaged business enterprise obligations can be obtained from the FAA Civil Rights Office or https://www.faa.gov/DREAM/aip/procurement/federal_contract_provisions/.)

2. The airport owner/sponsor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or views of the Tenant and without interference or hindrance.

3. The airport owner/sponsor reserves the right, but shall not be obligated to the Tenant, to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of the Tenant in this regard.

4. This lease shall be subordinate to the provisions and requirements of any existing or future agreement between the airport owner/sponsor and the United States, relative to the development, operation, or maintenance of the airport. Failure of the Tenant or any occupant to

comply with the requirements of any existing or future agreement between the Landlord and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Tenant's rights hereunder.

5. There is reserved to the airport owner/sponsor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the leased premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operating on the airport premises.

6. The Tenant agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased premises or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises. This requires the submission of FAA Form 7460-1, *Notice of Construction or Alteration* to the FAA.

7. The Tenant by accepting this lease agreement expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or building nor permit object of natural growth or other obstruction on the land leased hereunder above a height as determined by the application of the requirements of Title 14 CPR Part 77. In the event the aforesaid covenants are breached, the owner reserves the right to enter upon the land hereunder and to remove the offending structure or object or cut the offending natural growth, all of which shall be at the expense of the Tenant.

8. The Tenant by accepting this lease agrees for itself, its successors and assigns that it will not make use of the leased premises in any manner which might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the Tenant.

9. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of U.S. Code 40103(e) and 47107(a)(4).

10. This lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or nonexclusive use of the airport by the United States during the time of war or national emergency.

11. The Tenant will furnish services on a reasonable and not unjustly discriminatory basis to all users, and charge reasonable and not unjustly discriminatory prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

12. The Tenant will conform to airport and Federal Aviation Administration safety and security rules and regulations regarding use of the airport operations area including runways,

taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered or required by the airport; and will be subject to penalties as prescribed by the airport for violations of the airport safety and security requirements.

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EXHIBIT I
TO
PERCENTAGE LEASE
(The Landing Strip, 1424 Continental Street, Suite D, San Diego, CA 92154)

PREVAILING WAGE REQUIREMENTS

1. **PREVAILING WAGES.** Under San Diego Municipal Code section 22.3019, construction work performed or funded under this Lease cumulatively exceeding $25,000 and alteration, demolition, repair and maintenance work performed, or funded under this Lease cumulatively exceeding $15,000 is subject to the State prevailing wage law set forth in State Labor Code sections 1720 through 1862, and in undertaking any and all such work, Tenant and Tenant's contractors and subcontractors shall comply with State Labor Code sections 1720 through 1862 and the requirements set forth in this **0** (collectively, "**Prevailing Wage Law**"). This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay "living wage" under San Diego Municipal Code sections 22.4201 through 22.4245 ("**LWO**"). If both Prevailing Wage Law and the LWO are applicable to particular work, Tenant and Tenant's contractors and subcontractors must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

1.1 Compliance with Prevailing Wage Requirements. Under Prevailing Wage Law, Tenant and Tenant's contractors and subcontractors shall all ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations ("**DIR**"), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.

1.1.1 Copies of the prevailing rate of per diem wages are on file with Landlord and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Tenant and Tenant's contractors and subcontractors shall all post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to all interested Persons upon request. Tenant and Tenant's contractors and subcontractors shall all deliver evidence of the required job site posting to Landlord, within five (5) days after such posting.

1.1.2 The wage rates determined by DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the Term. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with DIR, such predetermined wage rate shall become effective on the date following the expiration date of the previous wage rate and shall apply to this Lease in the same manner as if it had been published. If the predetermined wage

rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the Term, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expire during the Term, such wage rate shall apply to the balance of the Term.

1.2 Penalties for Violations. Tenant and Tenant's contractors and subcontractors shall all comply with State Labor Code section 1775, in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. Compliance with State Labor Code section 1775 shall be in addition to all other applicable penalties allowed under State Labor Code sections 1720-1861.

1.3 Payroll Records. Tenant and Tenant's contractors and subcontractors shall all comply with State Labor Code section 1776, which generally requires keeping accurate payroll records, verifying, and certifying payroll records, and making them available for inspection. Tenant and Tenant's contractors and subcontractors shall all comply with State Labor Code section 1776, including having provisions requiring such compliance in all contracts with subcontractors. Any requirement to submit certified payroll records to DIR shall include submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR. Further, Tenant and Tenant's contractors and subcontractors shall all furnish the records specified in State Labor Code section 1776 directly to the State Labor Commissioner in the manner required in State Labor Code section 1771.4. Tenant is responsible for ensuring that Tenant's contractors and subcontractors submit certified payroll records to Landlord, the State Labor Commissioner, and DIR.

1.4 Apprentices. Tenant and Tenant's contractors and subcontractors shall all comply with State Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Tenant shall be held responsible for its compliance and the compliance of Tenant's contractors and subcontractors with State Labor Code sections 1777.5, 1777.6, and 1777.7.

1.5 Working Hours. Tenant and Tenant's contractors and subcontractors shall all comply with State Labor Code sections 1810 through 1815, including: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals, contractors, and subcontractors of $25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of State Labor Code sections 1810 through 1815.

1.6 Required Provisions for Subcontracts. Tenant shall include, at a minimum, a copy of the following provisions in any contract it enters into with a contractor or subcontractor: State Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

1.7 Labor Code Section 1861 Certification. In accordance with State Labor Code section 3700, Tenant and Tenant's contractors and subcontractors are all required to secure the payment of compensation of their respective employees and by signing this Lease or any contract or subcontract, respectively, Tenant and Tenant's contractors and subcontractors all certify that

"I am aware of the provisions of section 3700 of the State Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Tenant shall include this certification in all contracts with each contractor or subcontractor.

1.8 Registration Requirements. All work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of State Public Contract Code section 4104 or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work under State Labor Code section 1725.5. In accordance with State Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the State Business and Professions Code or by section 10164 or 2103.5 of the State Public Contract Code, provided the contractor is registered to perform public work under section 1725.5 at the time the contract is awarded."

1.8.1 A contractor's inadvertent error in listing a subcontractor who is not registered under State Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in State Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor under State Public Contract Code section 4107.

1.8.2 A contract entered into with any contractor or subcontractor in violation of State Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of State Labor Code section 1725.5.

1.8.3 By entering into this Lease, Tenant is certifying that it has verified or will verify that all contractors and subcontractors used on work subject to Prevailing Wage Law are registered with DIR in compliance with State Labor Code sections 1771.1 and 1725.5 and shall provide proof of such registration to Landlord.

1.9 Filing of Form PWC-100. Tenant shall timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed form to Landlord.

1.10 Filing of Notice of Completion. Tenant shall record a notice of completion in accordance with State Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of such recorded notice of completion to Landlord.