



Real Estate Assets Department

SDC003

Driscoll Mission Bay LLC
P201RD - 015 - A02

Document Type

LEGAL DOCUMENTS



Sub - Category

SUBLEASES



~~31~~
35

June 1, 2023

Driscoll Mission Bay Boatyard & Marina
Attn: Tom and Karen Driscoll, COO's
1500 Quivira Way
San Diego, CA 92109

Subject: Lessee Driscoll Mission Bay LLC – Sublessee Aqua Adventures: Non-approved site uses lacking written City Consent

Mr. and Mrs. Driscoll:

Thank you for your time and the tour last week of the Driscoll Mission Bay Boatyard & Marina improvements and facilities.

It has come to our attention that your subtenant Aqua Adventures does not have written City Consent for aquatic craft activities such as six pack charters and boat rentals but may be operating as such.

As you are aware your lease with the City requires you to obtain written consent of the City Manager prior to subleasing a portion of the leasehold. Please refer to the following: Mission Bay Marina lease, 1979-IV. Covenants & Conditions, A.2: Right to Assign and Sublet, and C. Restrictive Conditions, 18. City Approval and Consent, as well as City's Consent to Assignment of Lease to Driscoll Mission Bay LLC in 1997, Clause 7.

When the City consented to Aqua Adventures as your sublessee on October 28, 2021, only the following activities were approved: **retail operation, kayak and paddleboard sales, rental and storage, watersport classroom and water-based educational activities.**

If you have any questions, please contact at roswithas@sanidiego.gov or at (619) 236-6721.

Sincerely,

Roswitha Sanchez

Roswitha Sanchez
Supervising Property Agent

cc: Matthew Ostlund, Program Manager, Department of Real Estate and Airport Management
Rick Strobel, Marine Safety Lieutenant, Fire-Rescue Department/Lifeguard Services Division

Encl.: Consent to Sublease

CONSENT TO SUBLEASE
(Driscoll Mission Bay: Aqua Adventures, a California Corporation)

THIS CONSENT TO SUBLEASE ("Consent") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("City"), and DRISCOLL MISSION BAY LLC, a California limited liability company ("Lessee"), to be effective upon the respective authorized representatives of City and Lessee all signing this Consent and the form of this Consent being approved by the San Diego City Attorney. This Consent is made and entered into in reference to the following facts:

RECITALS

- A. CITY and Lessee (as successor in interest to Mission Bay Marina) are parties to that certain CITY OF SAN DIEGO PERCENTAGE LEASE dated March 5, 1979, and filed in the Office of the City Clerk as Document No. 766042, as amended (hereinafter, collectively, the "Agreement"), relating to the CITY-owned property located in a portion of Mission Bay Park, in the City of San Diego, consisting of approximately 4.278 acres of land and 8.702 acres of water, commonly known as "Driscoll Mission Bay" and more particularly described in the Agreement ("Premises").
- B. Lessee now desires to sublease a portion of the Premises to Aqua Adventures, a California corporation ("Sublessee") for retail operation, kayak and paddleboard sales, rental and storage, watersport classroom and water-based educational activities within the area designated in the sublease agreement.
- C. The Agreement requires City's consent to the license or sublease of any portion of the Premises by Lessee.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, City and Lessee agree as follows:

- 1. City Consent to Sublease. Subject to the terms and conditions of this Consent and the Agreement, City consents to Lessee subleasing to Sublessee that certain portion of the Premises subject to the Sublease ("Sublease Premises"). All terms and conditions of the Agreement shall control and supersede all inconsistent or contrary provisions in the Sublease.
- 2. Sublessee Assumption of Lessee's Obligations. City's consent to the Sublease is conditioned upon Sublessee's written agreement in the Sublease to assume and perform all obligations of Lessee under the Agreement applicable to the Sublease Premises. Sublessee's failure to perform one or more of these assumed obligations shall be a material default and breach under the Agreement and may subject the Agreement to termination by City.
- 3. No Effect on Agreement. Notwithstanding any provision of this Consent to the contrary, this Consent does not release, discharge, or modify any obligation of Lessee under the Agreement.
- 4. Subsequent Subleasing. This Consent does not constitute City's consent to any subsequent assignment, sublease, or license and does not relieve Lessee or any person claiming under or

through Lessee of the obligation to obtain City's consent to any future assignment, sublease, or license pursuant to the Agreement.

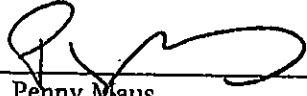
5. Processing Fees. Lessee agrees to pay City all applicable processing and/or administrative fee(s) charged by City for processing this Consent.
6. Brokerage Commissions or Finder's Fees. Lessee acknowledges and agrees that City will not be liable for any brokerage commission or finder's fee in connection with the consummation of the Sublease. Lessee agrees to protect, defend, indemnify, and hold City harmless from any brokerage commission or finder's fee in connection with the consummation of the Sublease or this Consent, and from any cost or expense (including attorney fees) incurred by City in resisting any claim for any such brokerage commission or finder's fee. The provisions of this Section 6 shall survive the expiration or earlier termination of the Agreement, the Sublease, or this Consent.
7. Consideration for Sublease: Lessee represents and warrants to City that a true, correct, and complete copy of the Sublease is attached to this Consent as Exhibit "A." Lessee further represents and warrants to City that there are no additional payments of rent or any other consideration of any type that has been paid or is payable by Sublessee or any other person to Lessee in connection with the Sublease or the Sublease Premises, other than as disclosed in the Sublease.
8. Subordination. The Sublease is subject to and subordinate to the covenants and conditions of the Agreement. The Sublease may only be in effect while the Agreement is in effect. Nothing in this Consent modifies the expiration date of the Agreement or Sublease. Lessee represents and warrants to City that Lessee provided Sublessee a true, correct, and complete copy of the Agreement before Sublessee entered into the Sublease. City does not release, discharge or modify Lessee's obligations to City under the Agreement. As set forth in applicable law, Lessee's obligations under the Agreement shall survive the Sublease and shall continue through the termination dates of the Agreement.
9. Lessee Estoppels. Lessee certifies the following to City as of the date of this Consent:
 - 9.1 Lessee has not assigned its interest in the Agreement or otherwise transferred its interest in the Agreement;
 - 9.2 City does not owe Lessee any money or other performance under the Agreement;
 - 9.3 City is not in default under the Agreement;
 - 9.4 The Agreement is in full force and effect, there have been no amendments, modifications, changes, or additions to the Agreement since its execution; and
 - 9.5 Lessee is not in default under the Agreement and no event has occurred that would constitute a default under the Agreement by Lessee, without regard for any requirement to give notice and/or for the passage of time.
10. No Fee Title Encumbrance. Nothing in this Consent or any document referenced in this Consent is intended to create or authorize the creation of any transfer, lien, or encumbrance affecting the fee title to the Premises.

**SIGNATURE PAGE
TO
CONSENT TO SUBLEASE
(Driscoll Mission Bay: Aqua Adventures, a California corporation)**

IN WITNESS WHEREOF, this Consent is made and entered into by and through the signatures of the respective authorized representative(s) of City, Lessee, and Sublessee, as set forth below:

THE CITY OF SAN DIEGO, a California
municipal corporation

Date: 8/11/2021

By: 
Penny Maus
Director
Real Estate Assets Department

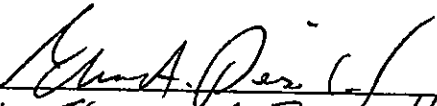
Approved as to form on October 28th,
2021

MARA W. ELLIOTT, City Attorney

By: 
Marco A. Verdugo
Deputy City Attorney

Driscoll Mission Bay, a California limited
liability company

Date: 10/1/2021

By: 
Name: Thomas A. Driscoll
Title: owner

From: Sanchez, Roswitha
To: Tom Driscoll
Cc: karendriscoll@cox.net
Subject: RE: Wellness Lounge
Date: Wednesday, February 8, 2023 4:20:00 PM

Hi Tom,

Thank you for your detailed explanation below. I spoke with Vladimir and he seems to remember that the City gave its consent to Wellness Lounge. I will search our electronic files further and let you know what I can come up with.

Also, I just left Karen a brief voice message.

Thanks,

Rose

From: Tom Driscoll <tom@driscollinc.com>
Sent: Wednesday, February 8, 2023 7:34 AM
To: Sanchez, Roswitha <RoswithaS@sandiego.gov>
Subject: [EXTERNAL] FW: Wellness Lounge

****This email came from an external source. Be cautious about clicking on any links in this email or opening attachments.****

Hi Roswitha,

It appears the original sublease was too large to send with this email. I will resend it later.

From: Tom Driscoll
Sent: Wednesday, February 8, 2023 7:27 AM
To: RoswithaS@sandiego.gov
Cc: Karen Driscoll <karen@driscollinc.com>; Jesse Graham <jgraham@driscollinc.com>
Subject: Wellness Lounge

Hi Roswitha,

I have attached some of the Wellness Lounge Documents. Of course there is a back story here so here is a brief outline their sublease history:

- in 2017 the Wellness Lounge approached us about subleasing some space. After negotiating a sublease they were given a city of San Diego questionnaire and submittal package to be completed and brought back to us.
- The original package had Aqua adventures as a 25% owner of the LLC that was being created

for Wellness lounge Mission Bay. the submittal was complete other than financial information that was required from Aqua adventures. the two principles of Wellness lounge informed us that Craig was not providing them financials. When I asked why Aqua was involved in the ownership they told us when they first walked up to the Driscoll Mission Bay site, Craig had approached him and represented himself as the property manager and that all subtenants would have to work through him and he would be a partner in their businesses. I informed them but this is not the case and if they wanted to go forward with the proposal on their own they could. They made all the necessary changes on this submittal package and presented it to us for submittal.

- In May of 2018 the complete submittal package was sent in to the City with the processing fee of \$990 dollars.
- Several months later we were notified by Vladimir that he could not approve the sublease. He did not believe it was an allowable use. He went on to say that if we wanted to proceed with an approval it would have done at a higher level. The owners of Wellness Lounge made a phone call to Lori Zapf, our City Council representative at the time. I sent everything to Lori and she called me back a short time later. She said that she had discussed the issue with City staff and instructed to add the words "Yacht Club" to the Use section of the sublease and send a corrected copy back to the City.
- In March of 2019 a new Sublease was signed and sent to the City

I cannot find an actual consent from the City in any of our files. I remember some discussion on this in 2020 there does not appear to be a consent document.

Please let me know what we need to do to get this corrected. I know Craig has had issues with Wellness after they went forward without him as a partner. Wellness does not rent out paddleboards to the general public as Ashleigh stated in her email. Their boards are used exclusively for Yoga class participants

As always, thank you for your support

Tom

**QUIVIRA BASIN STANDARD SUBLEASE
(MODIFIED GROSS)**

Between

DRISCOLL MISSION BAY LLC,
a California Limited Liability Company,

as Sublandlord,

and

WELLNESS LOUNGE MISSION BAY
a California Limited Liability Company,

as Subtenant,

for a portion of MISSION BAY MARINA
San Diego, California

Dated: JUNE 01,2018

TABLE OF CONTENTS

	<u>Page</u>
1. Sublease	1
2. Term	1
2.1 Primary Term	1
2.2 Right to Terminate	2
3. Rent	2
3.1 Base Rent	2
3.2 Additional Rent	2
3.3 Rent	2
3.4 Proration	3
4. Security Deposit	3
5. Master Premises	3
5.1 Obligation for Master Premises	3
6. Use	3
6.1 Use	3
6.2 Compliance with Law	4
6.3 Insurance Requirements	4
6.4 Key to Subleased Premises	4
6.5 Exterior Changes	4
6.6 Signs	4
6.7 Load Rating	5
6.8 Unlawful Purpose	5

6.9	Subtenant's Security Responsibilities	5
6.10	Energy Conservation; New Climate Measures; LEED.....	5
6.11	Recycling and Waste Management.....	6
6.12	Service Interruptions.....	6
6.13	Third Party Services.....	7
6.14	Utility Company Consent	7
6.15	Energy Disclosure.....	7
7.	Common Area.....	7
7.1	Common Area - Definition	7
7.2	Common Area - Rules and Regulations.....	8
7.3	Common Area Changes	8
7.4	Parking	8
8.	Condition of Subleased Premises.....	9
8.1	No Representation.....	9
8.2	Walk-Through Inspection	10
9.	Utilities and Services	10
9.1	Utilities Provided	10
9.2	Utilities and Services Not Provided.....	10
9.3	No Liability.....	10
9.4	No Increase in Requirements.....	11
10.	Repairs and Maintenance; Common Area	11
10.1	Structural and Mechanical Elements	11
10.2	Subtenant's Maintenance Obligations.....	11
10.3	No Liability of Sublandlord.....	12

Table of Contents

[Form – MAY 2018-1]

Quivira Basin Standard Sublease (Modified Gross)

Driscoll Mission Bay LLC / WELLNESS LOUNGE MISSION BAY LLC.

10.4	Damage or Destruction	12
11.	Alterations.....	12
11.1	No Alterations.....	12
11.2	Service Facilities	14
11.3	Compliance With Law	14
11.4	Prior Notice.....	14
11.5	Property of Sublandlord.....	14
11.6	Removal	14
11.7	Personal Property	14
12.	Liens.....	15
12.1	No Liens.....	15
12.2	Advance by Sublandlord.....	15
12.3	Financing Statements.....	15
13.	Indemnification and Exculpation.....	16
13.1	Indemnification by Subtenant.....	16
13.2	No Liability of Sublandlord.....	16
13.3	Assumption of Risk.....	16
13.4	Security Devices	17
14.	Insurance	17
14.1	Insurance on Master Premises	17
14.2	Liability Insurance	17
14.3	Additional Insureds.....	17
14.4	Fixtures and Other Items.....	18
14.5	Lender and Others.....	18

14.6	Waiver of Subrogation	18
14.7	Increases in Insurance	19
15.	Damage or Destruction	19
15.1	Destruction Due to Risk covered by Insurance.....	19
15.2	Destruction Due to Risk Not Covered by Insurance.....	20
15.3	Extent of Sublandlord's Obligation to Restore	20
15.4	Release	20
15.5	Abatement of Rent	20
15.6	Damage at End of Term	21
15.7	Action by the City	21
15.8	Sublandlord's Rights	21
16.	Eminent Domain	21
16.1	Taking	21
16.2	Restoration	21
16.3	Award.....	21
17.	Defaults and Remedies	22
17.1	Late Charge	22
17.2	No Waiver	22
17.3	Performance by Sublandlord.....	22
17.4	Events of Default	22
17.5	Remedies.....	23
17.6	Right of Re-Entry.....	24
17.7	Proceeds of Reletting	25
17.8	Remedies Non-Exclusive.....	25

Table of Contents

[Form – MAY 2018-1]

Quivira Basin Standard Sublease (Modified Gross)
Driscoll Mission Bay LLC / WELLNESS LOUNGE MISSION BAY LLC.

17.9	No Relief.....	25
17.10	Sublandlord Default and Right to Cure	25
17.11	Lender's Right to Cure	26
17.12	Sublandlord's Lien	26
18.	Assignment	27
18.1	Assignment	27
18.2	Transfer Premium	28
18.3	Notice of Proposed Assignment.....	28
18.4	Unapproved Transfer Void	29
18.5	Further Assignment.....	29
18.6	No Waiver.....	29
18.7	Assignment Fee, Other Payments and Conditions.....	29
18.8	Sublandlord's Option to Recapture the Space	29
19.	Bankruptcy	30
20.	Subordination and Attornment.....	30
20.1	Subordination.....	30
20.2	Additional Instruments.....	30
20.3	Attornment	31
20.4	Corporation	31
21.	Surrender.....	31
21.1	No Release	31
21.2	Assignment	31
21.3	No Merger.....	31
22.	Holding Over	31

22.1	Holding Over with Consent	31
22.2	Holding Over without Consent	32
22.3	No Renewal	32
22.4	No Waiver	32
23.	Taxes on Subtenant's Property	32
23.1	Payment of Taxes	32
23.2	Advance by Sublandlord	32
24.	Hazardous Materials	32
24.1	Prohibition/Compliance	32
24.2	Termination of Sublease	33
24.3	Assignment	34
24.4	Sublandlord's Right to Perform Tests	34
24.5	Survival of Subtenant's Obligations	34
24.6	Definition of "Hazardous Material"	34
24.7	Binding on Parties Related to Subtenant	35
25.	Miscellaneous	35
25.1	Terms and Headings	35
25.2	Examination of Sublease	35
25.3	Time	35
25.4	Covenants and Conditions	35
25.5	Consents	35
25.6	Entire Agreement	35
25.7	Severability	36
25.8	Independent Counsel	36

25.9	Inurement	36
25.10	Force Majeure	36
25.11	Notices	36
25.12	Exhibits and Documents	37
25.13	Waiver and Modification	37
25.14	Periods of Time.....	37
25.15	Choice of Law.....	37
25.16	Merger.....	38
25.17	Real Estate Brokers; Finders.....	38
25.18	Attorneys' Fees.....	38
25.19	Waiver of Jury Trial and Counterclaims.....	38
25.20	Joint and Several Obligations	38
25.21	Definition of Sublandlord	39
25.22	Limitation of Sublandlord's Liability.....	39
25.23	Subleased Premises Control by Sublandlord	39
25.24	Quiet Enjoyment	40
25.25	No Recording	40
25.26	Quitclaim Deed	40
25.27	Estoppel Certificate.....	40
26.	Consent of the City of San Diego	40
27.	Master Lease	40
28.	Subtenant Representations, Warranties and Disclaimers.....	41
29.	Prohibited Persons	42
30.	Offer.....	42

QUIVIRA BASIN STANDARD SUBLEASE (MODIFIED GROSS)

THIS QUIVIRA BASIN STANDARD SUBLEASE ("**Sublease**"), dated for reference purposes only as of **June 01, 2018**, is entered into by and between **DRISCOLL MISSION BAY LLC**, a California limited liability company ("**Sublandlord**") and **WELLNESS LOUNGE MISSION BAY**, a California Limited Liability Company ("**Subtenant**"), with reference to the following facts:

A. Master Lease. Sublandlord is the successor "Lessee" under that certain Lease dated March 5, 1979, between the CITY OF SAN DIEGO, a municipal corporation ("**City**"), as Lessor, and MISSION BAY MARINA, a California limited partnership, as Lessee, the terms of which are incorporated herein by reference (as amended from time to time, the "**Master Lease**"), for certain leased premises in Quivira Basin at Mission Bay Park, San Diego, California, commonly known as "Mission Bay Marina" and more particularly described in the Master Lease (the "**Master Premises**").

B. Sublease. Sublandlord desires to sublease to Subtenant that portion of the Master Premises described on Exhibit A (the "**Subleased Premises**") and Subtenant desires to sublease the Subleased Premises from Sublandlord, on the terms and conditions provided in this Sublease. The Subleased Premises is located in a building ("**Building**") located on the Master Premises. The Subleased Premises and the Building are a part of the Master Premises.

NOW, THEREFORE, in consideration of the foregoing and the agreements contained herein, Sublandlord and Subtenant agree as follows:

1. Sublease. Sublandlord hereby subleases the Subleased Premises to Subtenant, and Subtenant hires and takes the Subleased Premises from Sublandlord, on the terms and conditions set forth in this Sublease. Sublandlord also grants to Subtenant, subject to the terms of this Sublease and on all the terms and conditions set forth herein, nonexclusive rights to use the driveways, parking areas and other common areas of the Master Premises (collectively, the "**Common Area**"). This Sublease shall be deemed and construed as a modified gross lease as that term is used in the real estate industry. Being a modified gross lease, the Subtenant shall be responsible for any and all obligation related to and to pay for all costs, expenses, charges, and/or fees associated with, arising from or related to (a) the interior of the Subleased Premises, (b) those specifically metered or charged service or utility that directly and only serve the Subleased Premises, and (c) Additional Rent (as described in Section 3.2 below). In the event of any inconsistency, ambiguity or conflict with any provision of the Sublease related to the payment of any cost, expense, charge, and/or fee under this Sublease the irrebuttable presumption is that Subtenant shall be fully responsible for that payment or reimbursement to the Sublandlord.

2. Term.

2.1 Primary Term. The term of this Sublease (the "**Term**") shall commence on **June 01, 2018** (the "**Commencement Date**") and shall expire at midnight five years (5) years

thereafter, on **May 31st, 2023** (the "**Expiration Date**"), subject to earlier termination as provided in this Sublease.

2.2 Rent Obligations After Turnover Date. After Subtenant vacates the Subleased Premises, properly tenders possession to the Sublandlord and leaves the Subleased Premises in the condition required pursuant to the terms of this Sublease (the "Turnover Date"), the future obligation to pay Rent of the Subtenant shall cease. Except for the cessation of the future obligation to pay Rent, the Subtenant shall remain responsible and liable for any obligations of the Subtenant that accrued prior to the Turnover Date. Unless the Sublandlord agrees in writing and accepts possession of the Subleased Premises prior to the Termination Date, the Subtenant June not vacate prior to the Termination Date. Any Rent due under this Sublease shall be prorated to the Turnover Date. The provision of this Section 2.2 shall control over any other Section of this Sublease in the event of any conflict, inconsistency or ambiguity.

2.3 Extension Option. Subtenant has the right to 2 five year extension of the lease, beginning on June 01, 2023, Subtenant must notify Sublandlord or its successor in interest in writing of the intent to exercise said option no later than 180 days prior to the expiration of the primary term of lease. If notice is not received 180 days prior to the expiration of the primary term of lease, then this extension option is null and void and Subtenant has no rights under this section.

3. Rent.

3.1 Base Rent. Subtenant agrees to pay Sublandlord monthly rent ("**Base Rent**") in advance according to the schedule set forth in Schedule 3.1 which is attached hereto and fully incorporated by this reference, beginning on the Commencement Date, and continuing on the first day of every month thereafter, during the Term of this Sublease. Rent is due on the first day of each month and there is a grace period of three (3) days for the payment of Rent. If the first day falls on a weekend or holiday in which the City closes its non-essential offices, the Rent shall be due on the preceding business day.

3.2 Additional Rent. In addition to Base Rent, Subtenant agrees to pay to Sublandlord as additional rent ("**Additional Rent**"), at times specified in this Sublease: any other amounts that Subtenant assumes or agrees to pay under the provisions of this Sublease that are owed to Sublandlord, including, without limitation, any and all other sums that June become due by reason of any Default of Subtenant or Subtenant's failure to comply with the agreements, terms, covenants and conditions of this Sublease to be performed by Subtenant. It is noted that any increase in the taxes, including any real property tax increase due to Subtenant's improvements to the Subleased Premises, or any supplemental assessment that is caused by the actions or inactions of the Subtenant shall be the sole obligation of the Subtenant as Additional Rent. If it is impractical or difficult for the Sublandlord to segment the expense, cost, assessment or tax to be the sole responsibility of Subtenant, Sublandlord shall reasonably determine such expense, cost, assessment or tax to be assessed to Subtenant as Additional Rent.

3.3 Percentage Rent. Subtenant acknowledges and agrees that Subtenant shall be subject to the timely payment of percentage rent that arises from Subtenant's operations and use of the Subleased Premises as set forth in the Master Lease (the "**Percentage Rent**"). The Percentage Rent is more expressly detailed in **Schedule 3.1 page 2** attached hereto and incorporated herein by this reference. In the event any part of **Schedule 3.1 page 2** conflicts with this Section, the terms of **Schedule 3.1 page 2** shall prevail and control. Subtenant further acknowledges and agrees that the City has the right and authority to increase the Percentage Rent from time to time as set forth in the Master Lease. In addition to the Base Rent and Additional Rent, Subtenant shall pay to the Sublandlord the Percentage Rent as part of the Rent at the same time the Base Rent is to be paid. Any negotiations or discussions of the Percentage Rent shall be solely between the City and Sublandlord. Subtenant has no right to participate in the foregoing discussions or to contact the City regarding Percentage Rent. The Percentage Rent due from Subtenant is solely an obligation of Subtenant, and Subtenant shall hold harmless, defend and indemnify the Sublandlord from any Percentage Rent obligation of Subtenant or liability created by Subtenant's failure to pay the Percentage Rent. The Tenant's obligation to pay the Percentage Rent shall survive the termination of this Sublease.

3.4 Rent. Base Rent Additional Rent and Percentage Rent shall together be referred to in this Sublease as "**Rent**." Rent shall be paid to Sublandlord in lawful money of the United States of America at the office of Sublandlord or to such other person or at such other place as Sublandlord June from time to time designate in writing. All Rent and other monetary obligations shall be paid by Subtenant without notice or demand and without set-off, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense. At the sole discretion of the Sublandlord, the Rent shall be paid via automated clearing house ("ACH") procedures to the account designated by the Sublandlord. Any ACH cost incurred by the Sublandlord due to or arising from the actions of the Subtenant or the processing of the Subtenant's account shall be reimbursed by the Subtenant to the Sublandlord upon demand and shall be deemed Additional Rent.

3.5 Proration. In the event that Rent commences with respect to the Subleased Premises on a day other than the first day of a calendar month, Rent shall be prorated with respect thereto on the basis of a thirty (30) day month and shall be due and payable for such prorated portion of the month on the date that Rent commences.

4. Security Deposit. On execution of this Sublease, Subtenant shall deposit with Sublandlord a cash "**Security Deposit**" in the amount of **Two Thousand Nine Hundred Fifty Two Dollars and Fifty Cents (\$ 2,952.50)**. The Security Deposit shall be held by Sublandlord as security for the timely and faithful performance by Subtenant of all of Subtenant's obligations under this Sublease.

(a) Sublandlord June apply all or part of the Security Deposit to any unpaid Rent or other charges due from Subtenant, to cure any other Subtenant Default(s) after expiration of any applicable cure period, or to clear or repair damages to the Subleased Premises upon expiration or earlier termination of this Sublease.

(b) If Sublandlord uses any part of the Security Deposit, Subtenant shall restore the Security Deposit to its full amount within ten (10) days after Sublandlord's written request.

(c) No interest shall be paid on the Security Deposit. Sublandlord shall not be required to keep the Security Deposit separate from its other accounts, and no trust relationship is created with respect to the Security Deposit.

(d) After both (i) the termination of this Sublease and (ii) Subtenant's vacation of the Subleased Premises, Sublandlord, within a reasonable time, shall refund or credit to Subtenant (or Subtenant's successor) the unused portion of the Security Deposit and any advance Rent or other advance payments made by Subtenant to Sublandlord after deduction for any purposes permitted by this Section 4.

5. Master Premises.

5.1 Obligation for Master Premises. Except as those costs and expenses specifically the obligating Subtenant as set forth herein in exchange for the full and timely payment by Subtenant of the Base Rent and the Additional Rent, Sublandlord shall pay the expenses associated with the operation and maintenance of the Master Premises.

6. Use.

6.1 Use. Subtenant shall use the Subleased Premises as a paddleboard yoga and water fitness studio and public yacht club and shall not use the Subleased Premises, or permit or suffer the Subleased Premises to be used, for any other purpose without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and unfettered discretion.

6.2 Compliance with Law. Subtenant shall use the Subleased Premises in full and complete compliance with all current or future federal, state and local laws and regulations, and all covenants, conditions and restrictions applicable to the Master Premises. Subtenant shall not use or occupy the Subleased Premises in violation of any law, regulation or covenant, condition or restriction applicable to the Master Premises, or the certificate of occupancy issued for the Building and shall, upon five (5) days written notice from Sublandlord, discontinue any use of the Subleased Premises which is declared by any governmental authority having jurisdiction to be a violation of law or of said certificate of occupancy. Subtenant shall, at its expense, comply with any direction of any governmental authority having jurisdiction which shall, by reason of the nature of Subtenant's use or occupancy of the Subleased Premises, impose any duty upon Subtenant or Sublandlord with respect to the Subleased Premises or with respect to the use or occupation thereof.

6.3 Insurance Requirements. The insurance to be initially carried by Sublandlord and Subtenant pursuant to the provisions of Article 14 below shall be consistent with the actual use of the Subleased Premises. Thereafter, if the use of the Subleased Premises changes to another use permitted under Section 6.1 above, such insurance, to the extent available, shall be consistent with such changed use. Subtenant shall not do or permit to be done anything which

will invalidate or increase the cost of any fire, extended coverage or any other insurance policy covering the Master Premises. Subtenant shall comply with all rules, orders, regulations and requirements of the insurers of the Master Premises. Subtenant shall promptly, upon demand, reimburse Sublandlord for any additional premium charged for any policy by reason of Subtenant's failure to comply with the provisions of this Section.

6.4 Key to Subleased Premises. Subtenant shall deliver to Sublandlord all keys to locks to doors in the Subleased Premises for the purpose of emergency access. Additionally, if requested by Sublandlord, or required by a government agency, Subtenant agrees to maintain a duplicate set of keys in a fire department controlled lock box located on the Subleased Premises or at a central location on the Master Premises as directed by Sublandlord. Sublandlord shall not be liable for the loss of any property on the Subleased Premises, and Subtenant shall take any and all precautions to safeguard any valuable property of the Subtenant located in the Subleased Premises.

6.5 Exterior Changes. Subtenant shall make no changes to the exterior of the Building without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and unfettered discretion. Subtenant acknowledges that all exterior changes are also subject to written approval of the City.

6.6 Signs. No sign, advertisement or notice which is visible outside the Subleased Premises shall be exhibited, painted or affixed by Subtenant or any part of the Subleased Premises, or on any part of the exterior of the Building, without the prior written consent of Sublandlord, which consent may be withheld. All such signage shall be in compliance with applicable laws and the Master Lease. Such signs shall be installed at Subtenant's sole cost, and the cost of removing such signs and repairing the Building at the end of the term of the Sublease shall be paid by Subtenant. Upon the termination of this Sublease for any reason, Subtenant shall remove any signage of Subtenant at Subtenant's sole expense and repair any damage caused thereby.

~~6.7 Load Rating. No equipment weighing in excess of the load per square foot which such floor was designed to carry, or which is allowed by law, shall be placed upon the Subleased Premises. Sublandlord shall determine the load per square foot for the Subleased Premises and such shall be done at any time during the Term. The requirement to remove equipment during the Term shall not provide Subtenant for any basis to terminate this Sublease, abate rent or change the use of the Subleased Premises.~~

6.8 Unlawful Purpose. Subtenant shall not allow the Subleased Premises to be used for unlawful purposes, nor shall Subtenant cause, maintain or permit any nuisance or waste in or on the Subleased Premises.

6.9 Subtenant's Security Responsibilities. Subtenant shall (1) lock the doors to the Subleased Premises and take other reasonable steps to secure the Subleased Premises and the personal property of the Subtenant and any of Subtenant's transferees, contractors or licensees in the Common Areas and parking facilities of the Building and Master Premises, from unlawful intrusion, theft, fire and other hazards; (2) keep and maintain in good working order all security

and safety devices installed in the Subleased Premises by or for the benefit of Subtenant (such as locks, smoke detectors, video systems and burglar alarms); and (3) fully cooperate with Sublandlord and other subtenants in the Building on Building safety matters. Subtenant acknowledges that Sublandlord is not obligated to provide security personnel or measures for the protection of Subtenant or Subtenant's employees, invitees or their property. Subtenant further acknowledges that any security or safety measures employed by Sublandlord are for the protection of Sublandlord's own interests; that Sublandlord is not a guarantor of or surety for the security or safety of the Subtenant or Subtenant's employees, invitees or their property; and that such security and safety matters are the sole responsibility of Subtenant and the local law enforcement authorities.

6.10 Energy Conservation; New Climate Measures; LEED.

(a) Subtenant shall not waste electricity, water, heat or air conditioning, or other utilities or services, and agrees to cooperate fully with Sublandlord and comply with any applicable laws to assure the most effective and energy efficient operation of the Subleased Premises, the Building, the Common Area and the Master Premises.

(b) Sublandlord and Subtenant acknowledge that it is likely that new laws will be enacted dealing with energy conservation, CO2 emissions, transportation and other matters related to global climate change ("**Climate Measures**") and that existing Climate Measures policies will be implemented through the adoption of governmental rules and regulations (such laws, rules and regulations being collectively referred to herein as "**New Climate Measures**") which could increase the obligations of, and restrictions on, Sublandlord related to the Subleased Premises, the Building, the Common Area and the Master Premises from those which existed on the date of this Sublease. Subtenant covenants to comply with the requirements of New Climate Measures applicable to Subtenant and to fully cooperate with Sublandlord in connection with satisfying Sublandlord's compliance requirements with respect to the climate measures and to any LEED measures implemented by Sublandlord, including, but not limited to, providing Sublandlord with monitoring data and reporting duties related to the Subleased Premises, provided that Subtenant is not required to incur materially greater costs, and is not otherwise materially adversely impacted in Subtenant's use and enjoyment of the Sublease Premises, in connection with such compliance measures.

(c) Subtenant acknowledges that the Building, the Common Area and the Master Premises June become in the future certified under the LEED rating system. Sublandlord's sustainability practices address whole-building operations and maintenance issues including chemical use; indoor air quality; energy efficiency; water efficiency; recycling programs; exterior maintenance programs; and systems upgrades to meet green building energy, water, indoor air quality, and lighting performance standards. Nothing contained in this Sublease shall require Sublandlord to build out the Subleased Premises' current configuration to LEED standards or ratings. Subtenant shall utilize commercially reasonable efforts to cooperate with Landlord in order to comply with Landlord's sustainability practices.

6.11 Recycling and Waste Management. Subtenant covenants and agrees, at Subtenant's sole cost and expense, to (1) comply with all present and future laws, orders and

regulations of the Federal, state, county municipal or other governing authorities, departments, commissions, agencies and boards regarding the collection, sorting, separation, and recycling of garbage, trash, rubbish and other refuse (collectively, "trash"); (2) comply with Sublandlord's recycling policy, if any, as part of Sublandlord's sustainability practices where it June be more stringent than applicable laws; (3) sort and separate Subtenant's trash and recycling into such categories as are provided by law or Sublandlord's sustainability practices, and/or (4) place each separately sorted category of trash and recycling in separate receptacles as directed by Sublandlord. Sublandlord reserves the right to refuse to collect or accept from Subtenant any trash and recycling that is not separated and sorted as required by law and to require Subtenant to arrange for such collection at Subtenant's sole cost and expense, utilizing a contractor approved by Sublandlord. Subtenant shall pay all costs, expenses, fines, penalties or damages that June be imposed on Sublandlord or Subtenant by reason of Subtenant's failure to comply with the provisions of this Section.

6.12 Service Interruptions. For purposes of this Sublease, a "Service Failure" shall mean any interruption, suspension or termination of services being provided to Subtenant by Sublandlord or by third-party providers, whether engaged by Subtenant or pursuant to arrangements by such providers with Sublandlord, which are due to (1) the application of laws; (2) the failure, interruption or malfunctioning of any electrical or mechanical equipment, utility or other service to the Subleased Premises, the Building, the Common Area or the Master Premises; (3) the performance of repairs, maintenance, improvements or alterations; or (4) the occurrence of any other event or cause whether or not within the reasonable control of Sublandlord. No Service Failure shall render Sublandlord liable to Subtenant, constitute a constructive eviction of Subtenant, give rise to an abatement of Rent, or relieve Subtenant from the obligation to fulfill any covenant or agreement. In no event shall Sublandlord be liable to Subtenant for any loss or damage, including the theft of Subtenant's or Subtenant's affiliates property, arising out of or in connection with any Service Failure or the failure of any Building, Common Area and Master Premises safety services, personnel or equipment.

6.13 Third Party Services. If Subtenant desires any service which Sublandlord has not specifically agreed to provide in this Sublease, such as private security systems, telecommunications services, wireless systems or separately metered electricity or other utilities serving only the Subleased Premises, Subtenant shall procure such service directly from a reputable third party service provider ("Provider") for Subtenant's own account and at Subtenant's sole expense. Subtenant shall require each Provider to comply with the Building's, Common Area and Master Premises rules and regulations, all laws, and Sublandlord's reasonable policies and practices for the Building, Common Area and Master Premises. Subtenant acknowledges Sublandlord's current policy that requires all Providers utilizing any area of the Common Area outside the Subleased Premises to be approved by Sublandlord and to enter into a written agreement acceptable to Sublandlord prior to gaining access to, or making any installations in or through, such area. Accordingly, Subtenant shall give Sublandlord written notice sufficient for such purposes.

6.14 Utility Company Action. Within five (5) business days of Sublandlord's written request at any time during the Term-Subtenant shall fully cooperate with Sublandlord in

order to enable Landlord to comply with any requirements under California Public Resources Code Section 25402.10 or any successor or replacement statute(s) thereto and applicable regulations issued in connection therewith.

CASp Disclosure. Sublandlord hereby advises subtenant that the Subleased Premises, the Buildings and the Master Premises have not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Sublease, Sublandlord shall have no liability or responsibility to make any repairs or modifications to the Subleased Premises, the Buildings or the Master Premises in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law.

"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 June 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." [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Master Premises with regard to such inspections and shall be subject to Sublandlord's prior written consent." [TD1]

7. Common Area.

7.1 Common Area - Definition. The term "Common Area" is defined as all areas and facilities outside the Subleased Premises and any other subtenant's premises and within the exterior boundary line of the Master Premises that are provided and designated by Sublandlord from time to time for the general nonexclusive use of Sublandlord, Subtenant and other subtenant(s) and their respective employees, suppliers, shippers, customers and invitees, including but not limited to common entrances, corridors, stairways and stairwells, public restrooms, mechanical and electrical rooms, parking areas to the extent not otherwise prohibited by this Sublease, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, ramps, parking areas, driveways, Docks and gangways used to access Docks, landscaped areas and decorative walls. Sublandlord shall have the right to exclude any portion of the Building and Master Premises other than the Subleased Premises from the Common Area under this Sublease.

7.2 Common Area - Rules and Regulations. Subtenant agrees to abide by and conform to the rules and regulations adopted by Sublandlord from time to time with respect to the

Building and Common Area, and to cause Subtenant's employees, suppliers, shippers, customers, and invitees to so abide and conform. Sublandlord or such other person(s) as Sublandlord June appoint shall have the exclusive control and management of the Common Area and the Master Premises, and shall have the right, from time to time, to modify, amend and enforce said rules and regulations. Sublandlord shall not be responsible to Subtenant for the non-compliance with said rules and regulations by other subtenants of the Master Premises, their agents, employees and invitees.

7.3 Common Area Changes. Sublandlord shall have the right, in Sublandlord's sole discretion, from time to time:

(a) To make changes to the interior and exterior of the Building and to the Common Area, including, without limitation, changes in the location of structures in Common Area, construction of additional buildings and other structures in the Common Area and changes to the size, shape, and appearance of the Common Area, including but not limited to the driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, decorative walls, landscaped areas and walkways.

(b) To close temporarily any of the Common Area for maintenance and repair and replacement purposes so long as reasonable access to the Subleased Premises remains available;

(c) To add additional improvements to the Common Area or to remove existing improvements;

(d) To use the Common Area while engaged in making additional improvements, repairs or alterations to the Master Premises, or any portion thereof; and,

(e) To do and perform such other acts and make such other changes in, to or with respect to the Common Area and Sublandlord shall, in the exercise of sound business judgment, deem to be appropriate.

7.4 Parking. As long as Subtenant is not in default or breach of this Sublease, Subtenant shall be entitled to the non-exclusive use of the non-reserved vehicle parking spaces, on a non-exclusive, unreserved and unassigned basis, on those portions of the Common Area designated by Sublandlord for parking purposes from time to time. Subtenant shall not use more parking spaces than specifically allotted to Subtenant hereunder. Subtenant shall not use more than five (5) parking spaces at any one time. Sublandlord may charge for parking, set up a parking control and/or validation system, restrict the use of parking and determine rules for parking.

(a) Parking spaces shall be used only for parking by vehicles no larger than full size passenger automobiles, SUVs or pickup trucks.

(b) Subtenant shall not permit or allow any vehicles that belong to or that are controlled by Subtenant or Subtenant's employees, suppliers, shippers, customers or invitees to be loaded, unloaded or parked in areas other than those designated by Sublandlord for

such activities if such designation exists, and as be reasonably amended from time to time by Sublandlord upon 14 days written notice.

(c) If Subtenant permits or allows any such activities other than in the spaces designated for the same, then Sublandlord shall have the right, without notice, and in addition to such other rights and remedies that it might have under this Sublease or at law, to remove or tow away the vehicle involved and charge the cost thereof to Subtenant, which cost shall be immediately payable upon demand by Sublandlord as Additional Rent.

(d) Sublandlord has made no representation or guaranty of any parking availability except as specifically set forth in this Sublease.

(c) Sublandlord assumes no liability or responsibility for any damage or loss to any vehicle parked in the Common Area or any off-site property.

8. Condition of Subleased Premises.

8.1 No Representation. Subtenant acknowledges that neither Sublandlord nor any agent of Sublandlord has made any representations or warranties, express or implied with respect to (i) the condition of the Subleased Premises, the Common Area, the Building or the Master Premises, (ii) the suitability of the Subleased Premises for Subtenant's purposes (iii) the location, use, design, merchantability, fitness for use for a particular purpose, condition or durability of the Subleased Premises, the Common Area or the Building, (iv) the prospect or ability to make a profit in the operation of a business in the Subleased Premises, (v) the existence of Hazardous Materials (as define in Section 24.6 below) in, on or adjoining the Building, the Common Area, or the Master Premises, (vi) the quality of the material or workmanship in the Building, the Common Area, or the Subleased Premises, (vii) the future use or uses of the Building, the Common Area, or the Master Premises, and/or (vii) the continuation of any current business or the prospect for new or additional businesses in the Building, in the Master Premises, or on properties adjacent to or near the Master Premises.

(a) All risks incidental to the use of the Subleased Premises shall be borne by Subtenant. Except as expressly provided in this Sublease, **IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE SUBLEASED PREMISES OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, SUBLANDLORD & SUBTENANT SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.**

(b) **SUBTENANT AGREES AND ACKNOWLEDGED THAT SUBTENANT IS TAKING THE SUBLEASED PREMISES IN AN "AS-IS, WHERE-IS" CONDITION WITH ALL FAULTS AND WITH ABSOLUTELY NO REPRESENTATIONS AND WARRANTIES.** Subtenant is making the foregoing statement based in part on Subtenant's full opportunity to inspect the Subleased Premises and after consultation with Subtenant's legal representatives.

8.2 Walk-Through Inspection. Subtenant acknowledges and agrees that at or before the signing of this Sublease, Subtenant inspected the Subleased Premises and, as set forth in Section 8.1 above, accepted the Subleased Premises in their then existing condition. On or before the Commencement Date, Sublandlord and Subtenant shall conduct a walk-through inspection of the Subleased Premises and prepare a list of those items relating to the Subleased Premises which are not then in substantially the same condition as existed at the time of the signing of the Sublease normal wear and tear excepted. The taking of possession of the Subleased Premises by Subtenant shall establish conclusively that the Subleased Premises existed on the Commencement Date in substantially the same condition as of the date of the signing of the Sublease, except for list items set forth in this list. Sublandlord shall perform any maintenance and repairs as are required to bring the items on the list to a condition substantially the same as existed at the time of the signing of the Sublease normal wear and tear excepted but is not required to do so or adjust the Rent unless the substantially different adverse condition is due solely to the intentional misconduct or gross negligence of the Sublandlord. The sole purpose of the inspection on the date of possession is only to note the condition as of such date for use when the Subleased Premises are returned to the Sublandlord.

9. Utilities and Services.

9.1 Utilities Provided Sublandlord shall furnish to the Subleased Premises reasonable quantities of water, sewer, and trash removal (the "Utilities") as required for Subtenant's reasonable use as part of the Base Rent.

(a) Notwithstanding the foregoing, Subtenant shall be responsible for the payment of any metered Utilities that service the Subleased Premises as Additional Rent. If there is more than one subtenant on the Utilities meter(s), the subtenants shall be allocated the percentage by which their subleased premises floor area bears to all of the subleased premises sharing the same Utilities meter. For example, if there are two (2) subtenants on a Utilities meter and one subtenant's subleased premises is equal to sixty percent (60%) of the total floor area of the subleased premises sharing the Utilities meter, that subtenant shall be responsible for sixty percent (60%) of the total monthly Utilities costs.

(b) Notwithstanding the foregoing, for Utilities not serviced by a meter, Subtenant shall be responsible for the payment of any Utilities as Additional Rent, if Sublandlord determines in Sublandlord's reasonable discretion that Subtenant is utilizing the Utilities in an inordinate or excess amount, Sublandlord shall charge the Subtenant Additional Rent in an amount reasonably determined by Sublandlord to cover the inordinate or excess usage. The Sublandlord determination shall be deemed to be reasonable if the Subtenant use of the Subleased Premises includes cold or other refrigerated storage, the use is not solely for standard business offices, or the Subtenant operations is based on the use of electronic hardware and/or computers.

(c) Notwithstanding the foregoing, for Utilities which are not separately metered, Subtenant shall be responsible for the payment of any Utilities not covered under the foregoing subsections (a) and (b) which shall be allocated as Additional Rent based upon the

percentage by which Subtenant's Subleased Premises floor area bears to all of the subleased premises floor area sharing the Building. For example, if there are three (3) subtenants and one subtenant's subleased premises floor area is equal to sixty percent (60%) of the total floor area of the Building, that subtenant shall be responsible for sixty percent (60%) of the total monthly costs of the non-metered Utilities for the Building.

(d) The Subleased Premises may or may not have existing air conditioning and/or a heating system. If the Subleased Premises has no air conditioning or heating system, the Subtenant may only install such upon the approval of the Sublandlord which approval shall not be unreasonably withheld. If Sublandlord grants permission, the installation shall be handled as Work under Section 11 below. Subtenant shall be responsible for all costs, fees and expenses related to the installation (including any permitting) and will fully hold harmless, defend and indemnify the Sublandlord and the CITY from any cost, expense, liability or obligation arising therefrom. The foregoing hold harmless, defense and indemnity shall survive the termination of this Sublease. The costs, fees and expenses of the permitting, installation, operation, repair, replacement and maintenance of the air conditioning and/or heating system including any electricity, shall be solely borne by the Subtenant.

(e) If the Subleased Premises has an existing air conditioner and/or heating system, the cost and expense of the operation, repair, replacement and maintenance of the air conditioning and/or heating system including any electricity, shall be solely borne by the Subtenant. Sublandlord shall reasonably allocate as Additional Rent and cost of the operating, repair, replacement and maintenance of the existing air conditioning and/or heating system not directly paid by Subtenant. If Subtenant shares an existing air conditioning and/or heating system with another subtenant(s) the cost shall be allocated among the subtenants as set forth in subsection (c) above.

(f) Nothing in this Sublease shall be interpreted or construed to require the Sublandlord to provide any Utilities, air conditioning, or heating system not existing on the Commencement Date. If Sublandlord is required by law or its lease with the City to install any Utilities or other system, the cost shall be borne entirely by Subtenant if the item only services the Subleased Premises, or if shared with another subtenant(s) the cost shall be allocated among the subtenants as set forth in subsection (c) above.

9.2 Utilities and Services Not Provided. Subtenant shall arrange, and pay the supplier directly, for all telephone, CATV, internet and (except as provided in Section 9.1 above) all other utilities and services supplied to the Subleased Premises, together with any connection charges and taxes thereon. Subtenant shall not install any antenna or dish-type receiver on the Building or the roof of the Building or in the Common Area without the express consent of the Sublandlord, which shall not be unreasonably withheld. Subtenant shall not install any wireless or remote receivers in the Subleased Premises that interfere with the wireless or remote systems of any other subtenant in the Master Premises or outside of the Master Premises. The foregoing restrictions shall not apply to Sublandlord or any subtenant who has a system approved by the Sublandlord. Any and all wiring, conduits and cables permitted to be placed upon the Subleased Premises shall be at the end of the Term the property of the Sublandlord unless the Sublandlord

notifies Subtenant to remove the same at the end of the Term. Any removal by Subtenant shall be at the sole cost and risk of Subtenant who shall hold harmless, defend and indemnify Sublandlord from any cost, claim, expense, liability or charge arising from or due to the removal of the wiring, conduits, or cables.

9.3 No Liability. Sublandlord shall not be liable for, nor shall any eviction of Subtenant result from, the failure of any such utility or service to be furnished to the Subleased Premises, whether such failure is caused by accident, breakage, repairs, strikes, lockouts or other labor disturbances or labor disputes of any character, governmental regulation, moratorium or other governmental action. In the event of such failure, Subtenant shall not be entitled to any abatement or reduction of Rent, nor shall Subtenant be relieved from the operation of any covenant or agreement of this Sublease.

9.4 No Increase in Requirements. Subtenant shall not, without the prior written consent of Sublandlord, use any device in the Subleased Premises, including without limitation special equipment or machines, which will in any way unreasonably increase the amount of electricity or water used in or other services provided to the Subleased Premises over that provided to the Subleased Premises at the Commencement Date. Subtenant shall pay to Sublandlord as Additional Rent an amount equal to all costs incurred by Sublandlord to provide such excess services and utilities, which payment shall be made by Subtenant within ten (10) days of the date of the invoice for these costs. The foregoing is in addition to Section 9.1 above and not in lieu of.

10. Repairs and Maintenance; Common Area. Sublandlord shall maintain the Master Premises in the condition as required in the Master Lease, ordinary wear and tear excepted.

10.1 Structural and Mechanical Elements. Sublandlord shall repair and maintain the exterior of the Building and the Building's foundation and the unexposed electrical, plumbing, and sewage systems, the structural components of the exterior walls and the structural components of the roof of the Building. The costs for repair and maintenance of these elements shall be an obligation of the Sublandlord. Notwithstanding the foregoing to the contrary, if the loss, damage or cost is due to the actions of Subtenant or an invitee, agent or employee of Subtenant, Subtenant shall be allocated the cost or expense as Additional Rent due with the next due installment of Rent. Sublandlord in performing any maintenance shall not be required to incur any undue expense (i.e. overtime, work only after normal business hours, etc.) to undertake such action. In doing any maintenance Sublandlord shall not be liable for any inconvenience or loss of any type or nature to the Subtenant arising from the work. Subtenant shall cooperate and assist Subtenant in a full and timely manner when Sublandlord makes any repairs or maintains any portion of the Master Premises, including allowing the Sublandlord to enter the Subleased Premises at any time to undertake any and all necessary work. Nothing in this Section shall serve in any way to excuse Subtenant from any liability caused in any way by the actions of the Subtenant or the Subtenant's agents to any item or system which is the Sublandlord's obligation to repair or maintain.

10.2 Subtenant's Maintenance Obligations. Except for Sublandlord's obligations pursuant to Section 10.1 above, Subtenant shall, at Subtenant's sole cost and expense, keep the interior of the Subleased Premises and every part thereof in good order, condition and

repair, and in compliance with all applicable laws, ordinary wear and tear excepted and regardless of the condition of the Subleased Premises on the Commencement Date (except for Sublandlord's obligations to repair under Section 8.2 above, if any).

(a) Subtenant shall, upon the expiration or sooner termination of the Term, surrender the Subleased Premises to Sublandlord in good order, condition and repair and in compliance with all applicable laws. Subtenant's obligations shall include restorations, replacements or renewals, including capital expenditures for restorations, replacements or renewals which will have a useful life beyond the expiration of the Term, when necessary to keep the Building and the Subleased Premises and all improvements thereon or a part thereof in good order, condition and repair and in compliance with all applicable laws.

(b) Except as expressly set forth in this Sublease, it is intended by the parties hereto that Sublandlord shall have no obligation, in any manner whatsoever, to repair or maintain the interior of the Subleased Premises, including the improvements or equipment located therein, whether structural or nonstructural, all of which obligations are intended to be the sole expense of Subtenant, whether or not such repairs, maintenance or restoration shall have a useful life extending beyond the expiration of the Term.

(c) Any repairs and alterations shall become the property of Sublandlord upon the expiration or earlier termination of this Sublease. Sublease shall fully warrant any repairs and alterations made by Subtenant for a period that is two (2) years beyond the end of the Term and if in doing the repairs and alteration, a third party provides Subtenant with any warranty or representation, the same shall be assigned to Sublandlord.

10.3 No Liability of Sublandlord. Sublandlord shall not be liable for any failure to make any repairs or to perform any maintenance which is an obligation of Sublandlord unless such failure shall persist for an unreasonable time (not to exceed 10 days) after written notice of the need of such repairs or maintenance is given to Sublandlord by Subtenant. There shall be no abatement of Rent and no liability of Sublandlord by reason of any injury to or interference with Subtenant's operations arising from the making of any repairs, alterations or improvements in or to any portion of the Building, the Common Area, the Master Premises, or the Subleased Premises or in or to fixtures, appurtenances and equipment therein unless such injury or interference is substantially unreasonable. Subtenant waives any rights under Sections 1941 and 1942 of the California CIVIL CODE or under any law, statute or ordinance now or hereafter in effect to make repairs at Sublandlord's expense. In the event Sublandlord has any liability or obligation, under no circumstances or situation shall the Sublandlord be liable for any consequential or punitive damages.

10.4 Damage or Destruction. Notwithstanding any of the foregoing, in the event of fire, earthquake, flood, war or similar cause of damage or destruction, this Article 10 shall not be applicable and the provisions of Article 15 below entitled "Damage or Destruction" shall apply and control.

11. Alterations.

11.1 No Alterations. Without Sublandlord's prior written consent, which consent shall not be unreasonably withheld, Subtenant shall make no alterations, additions or improvements in or to the Subleased Premises (the "Work"). Sublandlord shall be deemed acting in a reasonable manner if the approval is denied if the Work (i) requires other upgrades to the Building or the Common Area, (ii) mandates that the Building or the Common Area be modified for ADA or any other governmental standards, (iii) results in the Subleased Premises to be made difficult to re-lease, reconfigure or repurposed at the end of the Term, (iv) creates a different use of the Subleased Premises other than the approved use, or (vi) leads to the reasonable belief of the Sublandlord that the Work will increase or complicate the future maintenance or repair expense of the Subleased Premises or Common Area after the end of the Term.

(a) All such alterations, additions or improvements shall be made only by licensed and qualified contractors or mechanics and with all required permits.

(b) Subtenant shall deliver to Sublandlord all plans and specifications (initial, as-built and as filed with the building authority) in both hard copies and CAD format.

(c) Subtenant shall maintain all costs records for the Subtenant's improvements for a minimum of four (4) years no matter the length of the Term.

(d) To the extent that Subtenant receives a warranty regarding the work of improvement, Subtenant shall warrant any Subtenant improvement for the period of the warranty after the date of installation no matter the length of the Term less ordinary wear and tear. Any warranty received by Subtenant for any Subtenant improvement shall be assigned by Subtenant to Sublandlord and the party providing the warranty shall specifically name Sublandlord as a covered party under the warranty. Specifically omitted from any warranty provided by Subtenant shall include the intentional acts or omissions of third parties who acted (or failed to act) on the improvements described in this section. Should an intentional act or omission from a third party occur to the warranted improvement, said warranty shall be irrevocably voided.

(e) Sublandlord at Sublandlord's option may require bonds for completion as Sublandlord deems reasonably appropriate.

(f) Any contractor for performing any alterations, additions or improvements shall be subject to Sublandlord's reasonable approval and shall maintain appropriate insurance as reasonably required and approved by Sublandlord naming Sublandlord and the City as additional named insureds. In approving any contractors used by the Subtenant for any alterations or any other work on or at the Subleased Premises, the Sublandlord is not being unreasonable to disapprove any contractor, worker, agent, consultant or other person who shall come on the Master Premises if the Sublandlord reasonably believes or if the presence of such person or group shall cause labor disharmony, unrest, protest or otherwise disturb the general peace, harmony and calm of the Master Premises. If Sublandlord is found by a court of law to have acted unreasonably, the sole remedy of Subtenant is to be allowed to use the person or group to service Subtenant and/or the Subleased Premises.

(g) The Sublandlord in the Sublandlord's reasonable discretion may set working place rules and conditions for the Work, including but not limited to the hours allowed to do the Work, site clean-up, parking for workers, safety and other matter relevant to a construction project and site.

(h) Subtenant acknowledges that any such alterations and repairs may also require the approval of the City and that the City June have other conditions and requirements.

(i) Sublandlord is to incur absolutely no cost concerning relating to or regarding any installation of, repair to or maintenance of any Subtenant improvement and shall be reimbursed immediately as Additional Rent for any cost or expenses incurred based on paid invoices.

11.2 Service Facilities. Subtenant agrees that there shall be no construction of partitions or other obstructions which might interfere with free access to mechanical installations or service facilities of the Building or interfere with the moving of Sublandlord's equipment to or from the enclosures containing said installations or facilities in the Building. Furthermore, any work by Subtenant shall be accomplished in such a manner as to permit any fire sprinkler system and fire water supply lines to remain fully operable at all times.

11.3 Compliance With Law. Subtenant covenants and agrees that all work done by Subtenant shall be performed in full compliance with all laws, rules, orders, ordinances, directions, regulations and requirements of all governmental agencies, offices, departments, bureaus and boards having jurisdiction and in full compliance with the rules, orders, directions, regulations and requirements of any applicable fire rating bureau. Subtenant shall provide Sublandlord with "as-built" plans showing any material changes in the Subleased Premises.

11.4 Prior Notice. Before commencing any material work, Subtenant shall give Sublandlord at least fifteen (15) days prior written notice of the proposed commencement of the Work.

11.5 Property of Sublandlord. All alterations, decorations, fixtures, equipment, additions and improvements attached to or built into the Subleased Premises, made by either party, shall, unless Sublandlord elects otherwise at the expiration or earlier termination of the Term, become the property of Sublandlord. If Sublandlord elects to have such alterations removed, Subtenant shall do so and shall repair and restore the Subleased Premises to the condition they were in prior to such alterations, all at Subtenant's sole cost prior to the end of the Term.

11.6 Removal. Subtenant shall repair any damage to the Subleased Premises caused by Subtenant's removal of any property from the Subleased Premises; and Subtenant shall only be entitled to remove property from the Subleased Premises as expressly provided in this Sublease. During any such restoration period, Subtenant shall pay Rent to Sublandlord as provided herein as if said space were otherwise occupied by Subtenant and without any offset, credit or delay.

11.7 Personal Property. All articles of Subtenant's personal property, including, but not limited to, detachable machinery and equipment, furniture, fixtures and movable partitions, which are owned by Subtenant and installed by Subtenant at Subtenant's own expense in the Subleased Premises, shall be and remain the property of Subtenant and shall be removed by Subtenant at any time during the term of this Sublease.

(a) If Subtenant shall fail to remove all of its personal property from the Subleased Premises at the expiration or earlier termination of the Term, then Sublandlord shall, at Sublandlord's option, remove the same in any manner that Sublandlord may deem appropriate and store this personal property without liability to Subtenant for loss thereof or damage thereto. Subtenant agrees to pay Sublandlord, upon demand, any expenses incurred in such removal and storage or Sublandlord may, at Sublandlord's option, without notice, sell this personal property or any of it, at a public or private sale and without legal process, for such price as Sublandlord may obtain; and Sublandlord may apply the proceeds of such sale against any amounts due under this Sublease from Subtenant to Sublandlord and against any expenses incident to the removal, storage and sale of this personal property, with any balance of the sales proceeds delivered to Subtenant.

(b) Subtenant agrees that this Sublease constitutes a "security agreement" under the provisions of Section 9203 of the Uniform Commercial Code - Secured Transactions, or any successor statute and, as such, Subtenant grants to Sublandlord a security interest in all tenant improvements made to the Subleased Premises pursuant to this Article 11. Subtenant acknowledges and agrees that Sublandlord may file a notice of the foregoing interest in the public records of the County of San Diego and the State of California.

12. Liens.

12.1 No Liens. Subtenant shall keep the Subleased Premises and the Master Premises free from any liens arising out of work performed, materials furnished and obligations incurred by Subtenant. Subtenant covenants and agrees that any mechanic's lien or lien of any other type filed against the Subleased Premises or any part of the Master Premises for work claimed to have been done for, or materials claimed to have been furnished to Subtenant, will be discharged by Subtenant, by bond or otherwise, within thirty (30) days after the filing thereof, at the cost and expense of Subtenant. Subtenant shall be responsible for any cost or expense of Sublandlord created by the existence of a lien and such cost or expense shall be immediately due from Subtenant as Additional Rent.

12.2 Advance by Sublandlord. Should Subtenant fail to discharge any such lien, Sublandlord may, at Sublandlord's election, pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against title, and the cost thereof shall be immediately due from Subtenant as Additional Rent.

12.3 Financing Statements. In the event Subtenant shall lease or finance the acquisition of equipment, furnishings or other personal property of a removable nature utilized by Subtenant, Subtenant warrants that any Uniform Commercial Code Financing Statement executed by Subtenant or Subtenant's secured party/holder will, upon its face or by exhibit thereto, indicate that the personal property listed on any such Financing Statement is located solely within the

Subleased Premises. In no event shall the address of the Building be furnished on the statement without qualifying language as to applicability of the lien only to Subtenant's removable personal property.

(a) Should any holder of a Financing Statement executed by Subtenant or Subtenant's secured party/holder record or place of record a Financing Statement which appears to constitute a lien against any interest of Sublandlord or against equipment which shall be located other than within the Subleased Premises, Subtenant shall, within ten (10) days after the filing of such Financing Statement, cause (i) copies of the Security Agreement or other documents to which the Financing Statement pertains to be furnished to Sublandlord to show that such lien is not applicable to Sublandlord's interest, and (ii) its lender to amend documents of record so as to clarify that such lien is not applicable to any interest of Sublandlord in the Subleased Premises.

(b) Sublandlord shall execute such documents as are reasonably required by Subtenant or Subtenant's lenders or equipment lessors provided the same do not in any way alter the rights of Sublandlord under this Sublease. The foregoing is subject to the right to file such a lien by a third party being allowed by the City and the terms of the Master Lease.

13. Indemnification and Exculpation.

13.1 Indemnification by Subtenant. Subtenant agrees to indemnify the City and Sublandlord and Sublandlord's lenders, partners, members, shareholders, directors, officers, attorneys, managers, agents and employees, and their successors and assigns (collectively "**Sublandlord's Indemnified Parties**") or individually a "**Sublandlord's Indemnified Party**") against, and to protect, defend and save them harmless from, all liability, demands, claims, causes of action or judgments, and all reasonable expenses incurred in investigating or resisting the same (including reasonable professional fees, including without limitation, fees for attorneys, architects, engineers, and environmental consultants), arising out of the death of, or injury to, any person or damage to property (i) occurring in, upon or about the Subleased Premises or Master Premises, (ii) occurring in, upon or about the Common Area is caused in any manner by the Subtenant or the Subtenant's invitees, employees or agents, (iii) arising from or out of Subtenant's or Subtenant's invitees, employees or agents use and occupancy of the Subleased Premises, or use of the Common Area, or (iv) arising from or out of any act or omission of Subtenant, its agents, contractors, employees, servants and tenants, except if such death or injury, or damage to property is caused solely by the intentional misconduct or gross negligence of Sublandlord or Sublandlord's Indemnified Parties. The foregoing indemnity and obligation to hold harmless and defend shall be interpreted in the broadest possible manner and shall have no limitation in scope or duration. A Sublandlord's Indemnified Party shall not have to incur any cost or expense to have the right to enforce the terms of this Section. The rights of the Sublandlord's Indemnified Parties set forth in this Section shall survive the Term.

13.2 No Liability of Sublandlord. Sublandlord shall not be liable to Subtenant or any other party, and Subtenant assumes all risk of damage to personal property including loss of records kept within the Subleased Premises. Subtenant further waives any claim for injury to

Subtenant's operations or loss of income relating to any such damage or destruction of personal property, including any loss of records.

13.3 Assumption of Risk. Additionally, Sublandlord shall not be liable to Subtenant or any other party, and Subtenant assumes all risk of damage and liability in case of misuse (other than as may be covered by insurance or by a third party), resulting from any defect or malfunction of any Building system, any component of a Building system or any system on the Master Premises or Common Area (such as ventilation, mechanical, plumbing, electrical, waste disposal, or sewer) unless, Sublandlord shall have been notified of a defect as required in Paragraph 10.3, above.

13.4 Security Devices. Security devices and services provided for the Building and Master Premises, if any, while intended to deter crime, shall not in given instances prevent theft or other criminal acts, and it is agreed that Sublandlord shall not be liable for injuries or losses caused by criminal acts of third parties. The risk that any security device shall malfunction or otherwise be circumvented by a criminal is assumed by Subtenant. Subtenant shall, at Subtenant's cost, obtain applicable insurance coverages to the extent Subtenant desires protection against such criminal acts. Sublandlord shall have no continuing obligation to repair, maintain or replace any existing security devices, if any, and shall remove any such existing security devices, if any, at any time. Subtenant shall be solely responsible, at Subtenant's sole expense, to provide a safe and secure environment within the Subleased Premises for its employees, customers, invitees and guests.

14. Insurance.

14.1 Insurance on Master Premises. Sublandlord shall carry insurance on the Building and the Master Premises as required in the Master Lease, including the Subleased Premises and its improvements, to the extent such is insurable as part of the Master Premises (excluding improvements made to the Subleased Premises made by Subtenant).

14.2 Liability Insurance. Subtenant, at Subtenant's own cost, shall procure and continue in effect, from the Commencement Date or the at such time as Subtenant occupies the Subleased Premises, whichever first occurs, and continuing throughout the Term and thereafter until Subtenant has fully and finally surrendered the Subleased Premises to Sublandlord, comprehensive public liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for death, bodily injury or property damage with respect to the Subleased Premises and insurance on all of its personal property. The deductible amounts of such policy of insurance shall not exceed Five Thousand Dollars (\$5,000). Subtenant shall provide Sublandlord a full copy of the insurance policy(ies) obtained by Subtenant. The form and contents of the insurance policy(ies) are subject to Sublandlord's approval. Furthermore, it is specifically noted that if the Subleased Premises sell any alcoholic beverages that the Subtenant at the Subtenant's own cost shall obtain and carry liquor liability insurance coverage in the form and amount acceptable to Sublandlord. It is further agreed by Subtenant that the City of San Diego June impose additional insurance requirement for the Master Premises and therefore the Subtenant shall acquire any additional coverage required by the City of San Diego.

14.3 Additional Insureds. The aforesaid insurance required of Subtenant shall name as additional named insureds the City of San Diego, Sublandlord and the Sublandlord's members, managers, officers, and lenders, and Sublandlord's property manager, agents and representatives for the Subleased Premises.

(a) The Subtenant's insurance shall be with companies having a policyholder rating of not less than A+ and financial category rating of Class IX in "Best's Insurance Guide." Subtenant shall cause any insurance companies issuing policies to Subtenant to furnish certificates evidencing such coverage to Sublandlord. No such policies shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days prior written notice to Sublandlord from the insurer.

(b) All such policies shall be written as primary policies, not contributing with and not in excess of the coverage which Sublandlord June carry.

(c) Any of Subtenant's policies shall be in the nature of a "blanket policy" which specifically provides that the amount of insurance shall not be prejudiced by other losses covered by the policy.

(d) Subtenant shall, at least twenty (20) days prior to the expiration of any such policies, furnish Sublandlord with renewals or binders.

(e) Subtenant agrees that if Subtenant fails to procure and maintain such insurance, Sublandlord shall (but shall not be required to) procure said insurance on Subtenant's behalf and charge Subtenant the premiums for any such policies, together with a ten percent (10%) handling charge, payable upon demand.

14.4 Fixtures and Other Items. Subtenant assumes the risk of damage to improvements made to the Subleased Premises by Subtenant (even if made with the consent and approval of Sublandlord), as well as any fixtures, goods inventory, merchandise, equipment, and personal property of any kind owned or leased by Subtenant and maintained in the Subleased Premises. Sublandlord shall not be liable for injury to Subtenant's operations or any loss of income therefrom relative to damage to such items, all as more particularly set forth herein. Subtenant, at Subtenant's cost, shall carry such insurance as Subtenant desires for Subtenant's protection with respect to the foregoing personal property and tenant improvements, as well as business interruption losses and other loss of income.

14.5 Lender and Others. If any policy of insurance is to name Sublandlord as additional named insured, Subtenant shall, upon written request of Sublandlord, also designate as an additional named insured, and furnish certificates evidencing Sublandlord as an additional insured to, (i) any lender to Sublandlord holding a security interest in the Building and/or (ii) the City of San Diego.

14.6 Waiver of Subrogation. Sublandlord and Subtenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, on account of loss or damage occasioned to such waiving party or its

property or the property of others under its control to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either party have in force at the time of such loss or damage, such waivers to continue as long as their respective insurers to permit. Any termination of such a waiver shall be by written notice of circumstances as hereinafter set forth. Sublandlord and Subtenant, upon obtaining the policies of insurance required or permitted under this Sublease, shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Sublease. If such policies are unobtainable with such waiver or obtainable only at a premium over that chargeable without such waiver, the party seeking such policy shall notify the other thereof, and the latter shall have ten (10) days thereafter to either (i) procure such insurance in companies reasonably satisfactory to the other party or (ii) agree to pay such additional premium. If neither (i) nor (ii) are done, this Section 14.6 shall have no effect during such time as such policies are unobtainable or the party in whose favor a waiver of subrogation is desired shall refuse to pay the additional premium. If such policies shall at any time be unobtainable, but subsequently shall be obtainable, neither party shall be subsequently liable for a failure to obtain such insurance until a reasonable time after notification thereof by the other party. If the release of either Sublandlord or Subtenant, as set forth in the first sentence of this Section 14.6 shall contravene any law with respect to exculpatory agreements, the liability of the party in questions shall be deemed not released but shall be secondary to the other's insurer.

14.7 Increases in Insurance. At reasonable times or if required under the Master Lease or by the City of San Diego, Sublandlord shall require insurance policy limits of the Subtenant's insurance to be raised to conform with reasonable requirements of Sublandlord's lender and/or the City of San Diego, or to bring coverage limits to the level then being required of similar tenants of similar properties; provided, however, that Sublandlord, in any event, shall require insurance policy limits of the Subtenant's insurance to be increased in proportion to any increase in the Consumer Price Index from the date of this Sublease to the date of the requested adjustments or if there is a change in the law, statutory or case law, that shall make changes reasonably necessary.

15. Damage or Destruction.

15.1 Destruction Due to Risk covered by Insurance.

(a) If, during the Term unless Sublandlord elects to terminate the Sublease as allowed herein, the Subleased Premises or the Building are totally or partially destroyed from a risk covered by the insurance described in Section 14.1 above, rendering the Subleased Premises totally or partially inaccessible or unusable, Sublandlord shall restore the Subleased Premises or the Building to substantially the same condition as they were in immediately before destruction, but not including any leasehold improvements made by Subtenant. Such destruction shall not terminate this Sublease. If the existing laws do not permit restoration and repair of the Building or the Subleased Premises, either party can terminate this Sublease immediately by giving notice to the other party.

(b) If the cost of the restoration exceeds the amount of proceeds received from the insurance required under Section 14.1 above, Sublandlord shall elect to terminate this Sublease by giving notice to Subtenant within fifteen (15) days after determining that the restoration cost will exceed the insurance proceeds. In the case of destruction to the Subleased Premises only, if Sublandlord elects to terminate this Sublease, Subtenant, within fifteen (15) days after receiving Sublandlord's notice to terminate, can elect to pay to Sublandlord, at the time Subtenant notifies Sublandlord of its election, the difference between the amount of insurance proceeds and the cost of restoration, in which case Sublandlord shall restore the Subleased Premises. Sublandlord shall give Subtenant reasonably satisfactory evidence that all sums contributed by Subtenant as provided in this Section 15.1 have been expended by Sublandlord in paying the cost of restoration.

(c) If Sublandlord elects to terminate this Sublease and Subtenant does not elect to contribute toward the cost of restoration as provided in this Section 15.1, this Sublease shall terminate.

15.2 Destruction Due to Risk Not Covered by Insurance.

(a) If, during the Term, unless the Sublandlord does not elect to terminate the Sublease as allowed herein, the Subleased Premises or the Building are totally or partially destroyed from a risk not covered by the insurance described in Section 14.1 above, rendering the Subleased Premises totally or partially inaccessible or unusable, Sublandlord shall restore the Subleased Premises or the Building to substantially the same condition as they were in immediately before destruction. Such destruction shall not terminate this Sublease. If the existing laws do not permit the restoration, either party can terminate this Sublease immediately by giving notice to the other party.

(b) The provisions of Section 15.2(a) above notwithstanding, if the cost of restoration exceeds five percent (5%) of the then replacement value of the Subleased Premises or the Building that are destroyed, Sublandlord can elect to terminate this Sublease by giving notice to the Subtenant within fifteen (15) days after determining the restoration cost and replacement value.

(c) In the case of destruction to the Subleased Premises only, if Sublandlord elects to terminate this Sublease, Subtenant, within fifteen (15) days after receiving Sublandlord's notice to terminate, can elect to pay to Sublandlord, at the time Subtenant notifies Sublandlord of its election, the difference between the then replacement value of the Subleased Premises and the actual cost of restoration, in which case Sublandlord shall restore the Subleased Premises. Sublandlord shall give Subtenant reasonably satisfactory evidence that all sums contributed by Subtenant as approved in this Section 15.2 have been expended by Sublandlord in paying the cost of restoration.

(d) If Sublandlord elects to terminate this Sublease and Subtenant does not elect to perform the restoration or contribute toward the cost of restoration as provided in this Section 15.2, this Sublease shall terminate.

15.3 Extent of Sublandlord's Obligation to Restore. If Sublandlord is obligated to or elects to repair or restore as herein provided, Sublandlord shall be obligated to repair or restore only those portions of the Building and the Subleased Premises as existed on the Commencement Date and for which insurance proceeds are available to pay the costs to repair or restore; the repair and restoration of Subtenant's special tenant improvements or tenant's personal property shall be the obligation and sole expense of Subtenant.

15.4 Release. Upon any termination of this Sublease under any of the provisions of this Article 15, the parties each shall be released from further obligation to the other under this Sublease for Rent and other claims arising from and after the date of termination. However, termination of this Sublease shall not relieve either party from any obligation to the other existing prior to the date of termination, which obligations shall remain in full force and effect.

15.5 Abatement of Rent. In the event of repair, reconstruction or restoration as herein provided, Base Rent to be paid under this Sublease shall be abated as of the date of damage or destruction until the completion of the repairs and the restoration, but only to the extent to which Subtenant's use of the Subleased Premises is materially impaired during the period of such repair, reconstruction or restoration. If Sublandlord provides Subtenant with other space during the period of repair which is reasonably suitable for the temporary conduct of Subtenant's operations, the Base Rent shall not be abated. Subtenant shall not be entitled to any compensation or damages from Sublandlord occasioned by any such damage, repair, construction or restoration.

15.6 Damage at End of Term. Notwithstanding anything to the contrary contained in this Article, Sublandlord shall have no obligation whatsoever to repair, reconstruct or restore the Subleased Premises when the damage resulting from any casualty covered under this Article occurs during the last six (6) months of the Term, as extended by exercised options. In the event Sublandlord elects not to repair, reconstruct or restore the Subleased Premises when the damage resulting from any casualty covered under this Article occurs during the last six (6) months of the term of this Sublease, as extended by exercised options, Subtenant may, by written notice delivered to Sublandlord within ten (10) days after receipt by Subtenant of Sublandlord's notice of its election not to repair, reconstruct or restore the Subleased Premises, elect to terminate this Sublease.

15.7 Action by the City. Notwithstanding any other provision of this Article, if the City takes action contra to or incompatible with the actions to be taken by the parties hereto as allowed under the Master Lease, then the action of the City shall supersede the actions of the parties.

15.8 Sublandlord's Rights. Nothing in this Article 15 shall limit, restrict or modify the Sublandlord's right to terminate this Sublease pursuant to Section 2.2 above.

16. Eminent Domain.

16.1 Taking. If the Subleased Premises or any material portion of the Subleased Premises are taken under the power of eminent domain or similar governmental action, Sublandlord party June terminate this Sublease effective as of the date possession is required to

be surrendered to the condemning authority. If the Subleased Premises are subject to power of eminent domain or similar government action, and the result is that the Subleased Premises are totally made unusable for the stated use of the Subtenant in this Sublease, the Subtenant June terminate this Sublease effective as of the date of the possession is required to be surrender to the condemning authority.

16.2 Restoration. Upon any taking, if this Sublease is not terminated pursuant to Section 16.1 above, then Sublandlord promptly shall proceed to restore the Subleased Premises to substantially their same condition, to the extent reasonably possible, prior to such partial taking. If such restoration has been completed, thereafter Base Rent shall be abated proportionately based on the percentage of the rental value of the Subleased Premises after such taking as compared to the rental value of the Subleased Premises prior to such taking.

16.3 Award. Subtenant shall be entitled to any award which is specifically and solely awarded as compensation for the taking of Subtenant's personal property and fixtures, including excess tenant improvements which were installed at Subtenant's expense and for costs of Subtenant moving to a new location. All other compensation awarded for such taking shall belong to Sublandlord. Subtenant hereby waives any claim for any award due to Sublandlord and releases any claims thereto.

17. Defaults and Remedies.

17.1 Late Charge. Late payment by Subtenant to Sublandlord of Rent or other sums due will cause Sublandlord to incur costs not contemplated by this Sublease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, attorneys' charges, and/or late payment charges on a mortgage, payment due under the Master Lease and so forth.

(a) In the event that Subtenant shall be in Default for late payment under Section 17.1 above for more than three (3) days after the Rent is due, Subtenant shall pay to Sublandlord a late charge in an amount equal to ten percent (10%) of the unpaid Rent for each month that an installment of Rent remains unpaid, which Sublandlord and Subtenant agree is not a penalty but is a reasonable estimate of the expenses Sublandlord June incur as a result of such late payment.

17.2 No Waiver. No payment by Subtenant or receipt by Sublandlord of a lesser amount than that due shall be deemed to be other than on account of the amount due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Sublandlord shall accept such check or payment without prejudice to Sublandlord's right to recover the balance or pursue any other remedy provided.

17.3 Performance by Sublandlord. If Subtenant fails to perform any other act on its part to be performed hereunder, Sublandlord, after ten (1) days written notice to Subtenant to cure, the Sublandlord may, without waiving or releasing Subtenant from any obligations of Subtenant, perform such act on behalf of Subtenant. Any costs incurred by Sublandlord in

performing the obligations of Subtenant under this Section 17.3 shall be paid by Subtenant as Additional Rent within ten (10) days of the date of an invoice for such costs.

17.4 Events of Default. The occurrence of anyone or more of the following events shall constitute a "Default" hereunder by Subtenant:

(a) The failure by Subtenant to make any payment of Rent, as and when due without set-off or deduction unless expressly authorized in writing by the Sublandlord; or

(b) The failure by Subtenant to fully and completely observe or perform any obligation other than described in Section 17.4(a) above, to be performed by Subtenant where such failure shall continue for a period of thirty (30) days after written notice thereof from Sublandlord to Subtenant unless such cure is noted to be of an emergency nature and such is to be done immediately and in not less than twenty-four (24) hours. Such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure 1161; provided that, if the nature of Subtenant's Default is such that it reasonably requires more than thirty (30) days to cure, then Subtenant shall not be deemed to be in Default if Subtenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute the same to completion, subject to weekly written reports to Sublandlord detailing Subtenant's actions and expenditures; or

(c) Violation of any law or ordinance; or

(d) Violation of any term, condition or provision of the Master Lease;
or

(e) Subtenant makes a voluntary assignment for the benefit of creditors;
or

(f) A receiver, non-bankruptcy trustee or custodian is appointed to, or does, take title, possession or control of all, or substantially all, of Subtenant's assets, and such or receiver, non-bankruptcy trustee or custodian is not dismissed within thirty (30) days; or

(g) Subtenant's interest in this Sublease is attached, executed upon or otherwise judicially seized and such action is not released within thirty (30) days of the action; or

(h) Subtenant fails to comply fully with all provisions of Article 24 below, concerning Hazardous Materials; or

(i) Subtenant fails to pay Rent, fails to pay any other monetary obligation arising under this Sublease, or fails to perform any obligation or duty under any other agreement with the Sublandlord or an affiliate of the Sublandlord.

Notices given under this Section 17.4 shall specify the alleged Default and shall demand that Subtenant perform the provisions of this Sublease within the applicable period of time, or quit the Subleased Premises. No such notice shall be deemed a forfeiture or a termination

of this Sublease unless Sublandlord elects otherwise in such notice. Once the time for any cure, if there is any expressed time to cure, by the Subtenant has passed and Sublandlord has provided any notice or termination, Subtenant shall have no right of cure, and any action of the Subtenant shall be only to mitigate damages and not serve to reinstate or continue the Sublease. Time is expressly of the essence in all of the performances of the Subtenant to cure any Default.

17.5 Remedies. In the event of a Default by Subtenant, and at any time thereafter, with or without notice or demand and without limiting Sublandlord in the exercise of any right or remedy which Sublandlord may have, Sublandlord shall be entitled to terminate Subtenant's right to possession of the Subleased Premises by any lawful means, in which case this Sublease shall terminate and Subtenant shall immediately surrender possession of the Subleased Premises to Sublandlord. In such event, Sublandlord shall have the immediate right to re-enter and remove all persons and property, and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Subtenant, all without service of notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. In the event that Sublandlord shall elect to so terminate this Sublease, then Sublandlord shall be entitled to recover from Subtenant all damages incurred by Sublandlord by reason of Subtenant's Default, including:

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

(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 that portion of such rental loss which Subtenant proves could have been reasonably avoided; plus

(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 which Subtenant proves could have been reasonably avoided; plus

(d) Any other amount necessary to compensate Sublandlord for all the detriment proximately caused by Subtenant's failure to perform Subtenant's obligations under this Sublease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of restoring the Subleased Premises to the condition required under the terms of this Sublease; plus

(e) At Sublandlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in Sections 17.5(a) and 17.5(b) above, "worth at the time of award" shall be computed by allowing interest at the rate specified in Section 17.1 above. As used in Section 17.5(c) above, the "worth at the time of award" shall be computed by determining the present value of such amount using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percentage point.

Subtenant in exchange for valid consideration, hereby waives any and all rights conferred by California Civil Code Section 3275 and by California Code of Civil Procedures Sections 1174(c) and 1179 and any and all other laws and rules of law from time to time in effect during the Term providing that Subtenant has any right to redeem, reinstate or restore this Sublease following the termination by reason of Subtenant's breach. Also, to the extent allowed by law, Subtenant and Sublandlord, waive the right to trial by jury arising out of or related to this Sublease. Additionally, Subtenant specifically waives all rights to pursuant to any law to contest any taxes or other levies or protest appraisal values or receive notice of reappraisal regarding the Master Premises irrespective whether Sublandlord contests the same.

17.6 Right of Re-Entry. In the event of a Default by Subtenant, and at any time thereafter, with or without terminating this Sublease, and with or without notice or demand and without limiting Sublandlord in the exercise of any right or remedy which Sublandlord June have, Sublandlord shall have the immediate right to re-enter and remove all persons and property, and such property June be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Subtenant, all without service of notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which June be occasioned thereby. No such re-entry shall be considered or construed to be a forcible entry by Sublandlord or be a reason or cause for Subtenant to claim damages, Subtenant expressly waives any such right or claim. If Sublandlord does not elect to terminate this Sublease as provided in this Section, then Sublandlord June, from time to time, recover all Rent as it becomes due under this Sublease pursuant to California Civil Code Section 1951.4. At any time thereafter, Sublandlord June elect to terminate this Sublease and to recover damages to which Sublandlord is entitled. Entry by the Sublandlord or the City as allowed in this Section or for any purpose allowed under the terms of this Sublease shall not constitute a constructive eviction or entitle Subtenant to an abatement or reduction of Rent.

17.7 Proceeds of Reletting. In the event Sublandlord elects to terminate this Sublease and relent the Subleased Premises, Sublandlord may execute any new lease in Sublandlord's own name. Subtenant hereunder shall have no right or authority whatsoever to collect any Rent or other sums from such tenant. The proceeds of any such reletting shall be applied as follows:

(a) First, to the payment of any indebtedness other than Rent due hereunder from Subtenant to Sublandlord, including but not limited to storage charges or brokerage commissions owing from Subtenant to Sublandlord as the result of such reletting; then

(b) Second, to the payment of the costs and expenses of reletting the Subleased Premises, including alterations and repairs which Sublandlord deems reasonably necessary and advisable, and reasonable attorneys' fees and other costs incurred by Sublandlord in connection with the retaking of the Subleased Premises and such reletting; then

(c) Third, to the payment of Rent and other charges due and unpaid hereunder; and then

(d) Fourth, to the payment of future Rent and other damages payable by Subtenant under this Sublease.

17.8 Remedies Non-Exclusive. All rights, options and remedies of Sublandlord contained in this Sublease shall be construed and held to be nonexclusive and cumulative. Sublandlord shall have the right to pursue any or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Sublease. No waiver of any Default of Subtenant hereunder shall be implied from the acceptance by Sublandlord of any Rent or other payments due hereunder or any omission by Sublandlord to take any action on account of such Default if such Default persists or is repeated, and no express waiver shall affect Defaults other than as specified in said waiver.

17.9 No Relief. Termination of this Sublease or Subtenant's right to possession by Sublandlord shall not relieve Subtenant from any liability to Sublandlord which has theretofore accrued or shall arise based upon events which occurred prior to the later of (i) the date of Sublease termination, or (ii) the date possession of Subleased Premises is surrendered to Sublandlord.

17.10 Sublandlord Default and Right to Cure. Sublandlord shall not be in default hereunder unless Sublandlord fails to perform a material obligation required of Sublandlord within a reasonable time, but in no event later than sixty (60) days after written notice by Subtenant specifically identifying the obligation Sublandlord has failed to perform; provided, however, that if the nature of Sublandlord's obligation is such that more than sixty (60) days are required for performance, then Sublandlord shall not be in default if Sublandlord commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Notwithstanding any other provision of this Sublease, the sole source of any recovery against Sublandlord shall be the assets related to Sublandlord's interest in the Master Premises and from no other source. No member or manager of Sublandlord shall have any personal obligation under this Sublease or to Subtenant. Any damage found to be owed by Sublandlord after a final judgment that is non-appealable, shall only be for actual monetary damages suffered by the Subtenant and not of any form or type of consequential or punitive damages. Under no circumstances shall Subtenant have any recourse against the City for any actions of the Sublandlord and hereby waives and releases any rights thereto. Notwithstanding any applicable statute of limitations, since the sole source of recovery of the Subtenant is the Sublandlord's interest in the Master Premises, the Sublandlord's liability for any refund, deposit or credit shall cease immediately upon the sale, termination of the Master Lease, foreclosure of Sublandlord's interest in the Master Premises, receivership of Sublandlord or Sublandlord's interest in the Master Premises or any other action that divests Sublandlord of any interest in the Master Premises to the greatest extent possible so long as this provision is not in violation of California Civil Code Section 1950.7.

17.11 Lender's Right to Cure. In the event of any default on the part of Sublandlord, Subtenant shall give notice, by registered or certified mail, at any address provided to Subtenant, to any beneficiary of a deed of trust or mortgagee of a mortgage covering the Building or Subleased Premises whose address shall have been furnished to Subtenant and

Subtenant shall offer such beneficiary or mortgagee a reasonable opportunity to cure the default, not to exceed Sublandlord's cure period plus sixty (60) days.

17.12 Sublandlord's Lien. To secure Subtenant's obligations under this Sublease, Subtenant grants Sublandlord a contractual security interest on all of Subtenant's inventory, goods, consumer goods and equipment now or hereafter situated in the Subleased Premises which are owned by Subtenant and all proceeds therefrom, including insurance proceeds (collectively, "Collateral"). No Collateral shall be removed from the Subleased Premises without Sublandlord's prior written consent until all of Subtenant's obligations are fully satisfied (except in the ordinary course of business and then only if replaced with items of same or greater value and quality). Upon any event of Default, Sublandlord June, to the fullest extent permitted by law and in addition to any other remedies provided herein, enter upon the Subleased Premises and take possession of any Collateral without being held liable for trespass or conversion, and sell the same at public or private sale, after giving Subtenant at least ten (10) days written notice (or more if required by law) of the time and place of such sale, time expressly being of the essence. Such notice is to be sent as provided herein for the delivery of notice to a party. Unless prohibited by law, the Sublandlord or any affiliate of the Sublandlord June purchase any Collateral at such sale. Subject to applicable law, the proceeds from such sale, less Sublandlord's expenses, including reasonable attorneys' fees and other expenses, shall be credited against Subtenant's obligations. Any surplus shall be paid to Subtenant (or as otherwise required by law) and any deficiency shall be paid by Subtenant to Sublandlord upon demand. Subtenant hereby authorizes Sublandlord to file a financing statement sufficient to perfect the foregoing security interest, or to file a copy of this Sublease as a financing statement, as permitted under Law.

18. Assignment.

18.1 Assignment. Except as expressly provided in this Article 18, Subtenant shall not, either voluntarily or by operation of law, assign, sell, hypothecate or transfer this Sublease or permit all or any part of the Subleased Premises to be used or occupied as work space, storage space, mailing privileges, concession or otherwise by anyone other than Subtenant or Subtenant's employees (all of these events collectively referred to as an "Assignment"), without the prior written consent of Sublandlord in each instance, which consent shall not be unreasonably withheld.

(a) A transfer of more than fifty-one percent (51%) of the equity ownership of Subtenant during any two-year period to a non-affiliated party shall also constitute a prohibited Assignment; provided, however, this provision shall not be applicable if such transfers occurred on a public stock exchange. If Sublandlord consents to an Assignment, Subtenant and its successors and assigns, and any guarantors of Subtenant's obligations under this Sublease, shall not be released from liability under this Sublease. Subtenant acknowledges that an Assignment must be approved by the City.

(b) As a condition of Sublandlord's consent to an Assignment, the assignee and Subtenant shall execute an agreement in favor of Sublandlord and in a form acceptable to Sublandlord, pursuant to which the assignee shall agree to faithfully perform and

assume and be bound by all of the terms, covenants, conditions, provisions and agreements of this Sublease. As used in this Article 18, the term "assignee" shall include the person or entity who is the transferee in any form of Assignment, as defined above.

(c) In addition, Subtenant and the assignee shall, upon not less than three (3) days prior written notice from Sublandlord, execute, acknowledge and deliver to Sublandlord a statement in writing (i) certifying that this Sublease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease as so modified is in full force and effect), and the date to which the Rent and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Subtenant's and the assignee's knowledge, any uncured defaults under this Sublease on the part of Sublandlord or Subtenant, or specifying such defaults if any are claimed; (iii) setting forth the Commencement Date and Expiration Date; and (iv) certifying as to such other matters as Sublandlord may reasonably request.

(d) Any guarantor of this Sublease shall execute a reaffirmation of such guarantee in a form reasonably acceptable to Sublandlord agreeing to continue to be a guarantor of the terms and conditions of this Sublease following an Assignment. Furthermore, any Assignment shall be subject to the assignee obtaining third party guarantors for the Sublease who are acceptable to Sublandlord in Sublandlord's sole and absolute discretion.

18.2 Notice of Proposed Assignment. In the event Subtenant desires Landlord to review and approve an Assignment, then at least thirty (30) days, but not more than forty-five (45) days, prior to the date when Subtenant desires the Assignment to be effective (the "Assignment Date"), Subtenant shall give Sublandlord written notice (the "Assignment Notice") which shall set forth the name, address and business of the proposed assignee, a certified financial statement of the proposed assignee and its principals if it is an entity, information (including references) concerning the business experience and financial reputation of the proposed assignee, the Assignment Date, any ownership or commercial relationship between Subtenant and the proposed assignee or sublessee. Additionally, Subtenant shall furnish to Sublandlord a copy of the audited financial statements for the most recently past fiscal year, as well as the most recent unaudited quarterly financial statements for both Subtenant and the proposed assignee. Sublandlord has no duty to review any request until all required documents are submitted in legible condition.

18.3 Unapproved Transfer Void. Any Assignment not in compliance with the provisions of this Article 18 shall be void, and shall, at the option of Sublandlord, be a breach of this Sublease.

18.4 Further Assignment. The consent by Sublandlord to an Assignment shall not relieve Subtenant or any assignee of this Sublease or sub-sublessee of the Subleased Premises from obtaining the consent of Sublandlord to any further Assignment or release Subtenant or any assignee or sub-sublessee of Subtenant from full and primary liability under this Sublease.

18.5 No Waiver. Notwithstanding any Assignment, Subtenant shall remain fully and primarily liable for the payment of all Rent and other sums due, or to become due,

hereunder, and for the full performance of all other terms, conditions and covenants to be kept and performed by Subtenant hereunder. The acceptance of Rent or any other sum due hereunder, or the acceptance of performance of any other term, covenant or condition hereof, from any other person or entity shall not be deemed to be a waiver of any of the provisions of this Sublease or a consent to any Assignment of the Subleased Premises.

18.6 Assignment Fee, Other Payments and Conditions. The Assignment Notice shall be accompanied by a "Transfer Fee" in the amount of \$500.00 payable to Sublandlord upon the submission of the information on the proposed assignee. No application shall be considered without the Transfer Fee. The Transfer Fee shall be deemed earned when received and is non-refundable and shall not be returned for any reason. The Transfer Fee is in addition to and not in lieu of any Transfer Premium.

In addition to the Transfer Fee the Subtenant shall reimburse the Sublandlord for any attorney's fees or other professional costs incurred, not to exceed \$2,000.

(a) Any approved Assignment is conditioned on the principals of the assignee executing, in a form acceptable to Sublandlord in Sublandlord's sole and unfettered discretion of a personal guaranty of the Sublease.

(b) All payment shall be a pre-condition to the effectiveness of any approval of any Assignment.

18.7 Sublandlord's Option to Recapture the Space. Despite any other provision of this Article 18, Sublandlord has the option to recapture the Subleased Premises, by written notice to Subtenant ("Recapture Notice") within thirty (30) days after receiving an Assignment Notice from Subtenant. A timely Recapture Notice terminates this Sublease and Subtenant's obligations regarding the Subleased Premises for the remaining Term and as of the Assignment Date. The Recapture Notice shall be void, however, if Subtenant notifies Sublandlord, within ten (10) days after receipt of the Recapture Notice, that Subtenant withdraws the Assignment Notice. If Sublandlord declines or fails timely to elect to recapture the Subleased Premises, Sublandlord shall have no further right to the Subleased Premises under this Section 18.8 unless it becomes available again in connection with any subsequently proposed Assignment.

19. Bankruptcy. In the event a debtor, trustee or debtor-in-possession under the Bankruptcy Code, or other person with similar rights, duties and powers under any other law, proposes to cure any Default of Subtenant under this Sublease or to assume or assign this Sublease and is obliged to provide adequate assurance to Sublandlord that (i) a Default will be cured, (ii) Sublandlord will be compensated for its damages arising from any breach of this Sublease, or (iii) future performance under this Sublease will occur, then adequate assurance shall include any or all of the following, as determined by Sublandlord:

a. Those acts specified in the Bankruptcy Code or other laws as included within the meaning of adequate assurance, even if this Sublease does not concern a facility described in such laws;

b. A prompt cash payment to compensate Sublandlord for any monetary Defaults or damages arising from a breach of this Sublease;

c. A cash deposit in an amount at least equal to the Security Deposit, if any, originally required at time of execution of this Sublease;

d. The creditworthiness and desirability, as a tenant, of the person assuming this Sublease or receiving an assignment of this Sublease, at least equal to Sublandlord's customary and usual creditworthiness requirements and desirability standards in effect at the time of the assumption or assignment; and

e. The assumption or assignment of all of Subtenant's interest and obligations under this Sublease.

20. Subordination and Attornment.

20.1 Subordination. This Sublease shall be subject and subordinate to the lien of any mortgage, deed of trust or lease in which Sublandlord is the Lessee or tenant (including the Master Lease), now or hereafter in force against the Subleased Premises, and to all advances made or hereafter to be made upon the security thereof without the necessity of the execution and delivery of any further instruments on the part of Subtenant to effectuate such subordination; provided, however, that for the lien of any mortgage, deed of trust or lease executed by Sublandlord after the date of this Sublease to be subordinate to this Sublease, the holder of any such mortgage, deed of trust or lease shall execute, acknowledge and deliver to Subtenant a non-disturbance agreement in a form acceptable to the holder providing that so long as Subtenant performs all of Subtenant's obligations under the Sublease, Subtenant's quiet enjoyment and use of the Subleased Premises shall not be disturbed.

20.2 Additional Instruments. Notwithstanding the foregoing, Subtenant shall execute and deliver upon demand a subordination agreement in the form requested by Sublandlord, the City and/or Sublandlord's lender or such further instrument or instruments evidencing such subordination of the Sublease to the lien of any such mortgages, deeds of trust or leases in which Sublandlord has an interest. The Subtenant shall execute (and notarize if required) and return the instrument within ten (10) days of presentation. Failure by the Subtenant to comply is a material and non-curable Default. However, if any such mortgagee, beneficiary or landlord under a lease wherein Sublandlord is tenant so elects, this Sublease shall be deemed prior in lien to any such lease, mortgage or deed of trust upon or including the Subleased Premises, regardless of date, and Subtenant shall execute a statement in writing to such effect at Sublandlord's request.

20.3 Attornment. In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust covering the Subleased Premises, Subtenant shall, at the election of purchaser at such foreclosure or sale, attorn to such purchaser and recognize such purchaser at the Sublandlord under this Sublease.

20.4 Corporation. If Sublandlord obtains a loan commitment from a lender for the financing or refinancing of the Subleased Premises, and said loan commitment requires some

amendments to this Sublease, then Subtenant shall cooperate fully with Sublandlord for no consideration to Subtenant in executing said amendments, so long as the amendments do not materially adversely affect any of the material rights or obligations of Subtenant under this Sublease.

21. Surrender.

21.1 No Release. No surrender of possession of any part of the Subleased Premises shall release Subtenant from any of its obligations hereunder unless accepted by Sublandlord.

21.2 Assignment. The voluntary or other surrender of this Sublease by Subtenant shall not work a merger, unless Sublandlord consents, and shall, at the option of Sublandlord, operate as an assignment to it of any or all subleases or sub tenancies.

21.3 No Merger. The voluntary or other surrender of any ground or underlying lease that now exists or June hereafter be executed affecting the Building or Subleased Premises or a mutual cancellation thereof or of Sublandlord's interest therein, shall not work a merger and shall, at the option of the successor of Sublandlord's interest in the Building or Subleased Premises, operate as an assignment of this Sublease.

22. Holding Over.

22.1 Holding Over with Consent. If Subtenant remains in possession of all or any part of the Subleased Premises after the expiration or earlier termination of this Sublease, with Sublandlord's prior written consent, Subtenant shall be deemed a month-to-month tenant upon the date of such expiration or earlier termination and, in such case, Subtenant shall continue to pay the Base Rent (as adjusted from time to time as set forth in this Sublease) and any other amount of Rent due Sublandlord pursuant to the terms of this Sublease, and such month-to-month tenancy shall be subject to every other term, covenant and agreement contained herein.

22.2 Holding Over without Consent. If Subtenant remains in possession of the Subleased Premises after the expiration or earlier termination of the Term hereof without the express written consent of Sublandlord, Subtenant shall become a tenant at sufferance upon all the terms of this Sublease applicable to a tenant at sufferance, except that the monthly installments of Base Rent shall be equal to one hundred fifty percent (150%) of the monthly installment of the Base Rent in effect during the immediately preceding thirty (30) days.

22.3 No Renewal. Acceptance by Sublandlord of Rent after such expiration or earlier termination of this Sublease shall not result in a renewal or reinstatement of this Sublease.

22.4 No Waiver. The foregoing provisions of this Article are in addition to and do not affect Sublandlord's right to re-entry or any other rights of Sublandlord hereunder or as otherwise provided by law.

23. Taxes on Subtenant's Property.

23.1 Payment of Taxes. Subtenant shall pay not less than ten (10) days before delinquency, all taxes levied against any personal property or trade fixtures in or about the Subleased Premises.

23.2 Advance by Sublandlord. If any such taxes on Subtenant's personal property or trade fixtures are levied against Sublandlord or Sublandlord's property or, if the assessed valuation of the Building is increased by the inclusion therein of a value attributable to Subtenant's personal property or trade fixtures, and if Sublandlord, after written notice to Subtenant, elects to pay the taxes based upon such increase in assessed value, then Subtenant shall, upon demand, repay to Sublandlord the taxes so levied against Sublandlord. Time is of the essence in the payment by Subtenant to Sublandlord.

24. Hazardous Materials.

24.1 Prohibition/Compliance. Subtenant, at Subtenant's sole cost, shall comply with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release and disposal of any Hazardous Material as defined in this Article 24 in or about the Subleased Premises or the Building or Common Area. Subtenant shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Subleased Premises by Subtenant, Subtenant's agents, employees, contractors or invitees in a manner or for a purpose prohibited by any federal, state or local law, rule or regulation.

(a) The disposal of Hazardous Material shall be in approved containers and removed from the Subleased Premises by duly licensed carriers.

(b) Subtenant shall immediately provide Sublandlord with telephonic notice, which shall promptly be confirmed by written notice, of any and all spillage, discharge, release and disposal of Hazardous Materials onto or within the Subleased Premises, the Master Premises, the Building, or the Common Area, which by law must be reported to any federal, state or local agency, and any injuries or damages resulting directly or indirectly therefrom. A failure of Subtenant to give to Sublandlord the notices required in this Section 24.1 shall constitute a Default under this Sublease.

(c) Subtenant shall deliver to Sublandlord each and every notice or order received from any federal, state or local agency concerning Hazardous Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order.

(d) Subtenant shall be responsible for and shall indemnify, protect, defend, and hold harmless the City, Sublandlord and Sublandlord's agents, employees, representatives, directors and officers, and Sublandlord's lender(s) from any and all claims, costs, penalties, fines, liability and losses, including without limitation, (i) temporary or permanent diminution in value of the Subleased Premises, the Master Premises, the Building, or the Common Area, (ii) damages for the temporary or permanent loss of restriction on use of rentable or usable space or of any amenity of the Subleased Premises, the Master Premises, the Building, or the Common Area, and (iii) sums paid in settlement of claims, consultant fees and expert fees,

liabilities, attorneys' fees, damages, injuries, causes of action, judgments and expenses, which arise during or after the Term of this Sublease and which (a) result from Subtenant's use and occupancy of the Subleased Premises, the Master Premises, the Building, or the Common Area, or (b) result from Subtenant's receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Materials in, upon or about the Subleased Premises, the Master Premises, the Building, or the Common Area. The indemnifications of Sublandlord and indemnities by Subtenant above include, to the extent Subtenant is responsible for such costs and expenses under the provisions above, without limiting the generalities thereof, reasonable costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work lawfully required by any federal, state or local governmental agency or political subdivision because of any Hazardous Materials present in the soil, subsoil, ground water, or elsewhere at, on or under the Subleased Premises or the Building or the Common Area. The foregoing indemnification shall survive the end of the Term.

24.2 Termination of Sublease. Notwithstanding the provisions of this Article 24, Sublandlord shall have the right to terminate the Sublease in the event that (i) Subtenant uses the Subleased Premises or any portion of the Master Premises for the generation, storage, use, treatment or disposal of Hazardous Material in a manner or for a purpose prohibited by applicable law (unless Subtenant is diligently pursuing compliance therewith), (ii) Subtenant has been required by any governmental authority to take remedial action in connection with Hazardous Material contaminating the Subleased Premises, the Master Premises, the Building, or the Common Area if the contamination resulted from Subtenant's action or use of the Subleased Premises or any portion of the Master Premises and such remedial action has a material adverse effect on Sublandlord, the Subleased Premises, the Master Premises, the Building, or the Common Area, or (iii) Subtenant is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material on the Subleased Premises or any portion of the Master Premises and such enforcement order has a material adverse effect on Sublandlord, the Subleased Premises, the Master Premises, or the Building. Each of the foregoing events shall be deemed to be a material Default by Subtenant under this Sublease.

24.3 Assignment. Notwithstanding the provisions of Article 18 above, if (i) any anticipated use of the Subleased Premises or any portion of the Master Premises by any proposed assignee involves the generation or storage, use, treatment or disposal of Hazardous Material in any manner or for a purpose prohibited hereunder or by any applicable law, (ii) the proposed assignee has been required by any governmental authority to take remedial action in connection with a Hazardous Material if the contamination resulted from such party's action or use of the property in question and has failed to take such action, or (iii) the proposed assignee is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material of a type such proposed assignee intends to use in, on or at the Subleased Premises and the proposed assignee has failed to fully comply with such enforcement order, it shall not be unreasonable for Sublandlord to withhold its consent to an Assignment.

24.4 Sublandlord's Right to Perform Tests.

(a) At any time prior to the expiration of the Term of this Sublease, Sublandlord shall have the right to enter upon the Subleased Premises at all reasonable times, and at reasonable intervals, upon forty-eight (48) hours prior notice, and accompanied by an authorized representative of Subtenant, if Subtenant so elects, in order to conduct appropriate tests to determine whether contamination in excess of permissible levels has occurred as a result of Subtenant's use of the Subleased Premises. Sublandlord shall deliver to Subtenant written notice of the results of such tests. Subtenant shall pay the reasonable costs of any test conducted pursuant to this Section which demonstrates that contamination in excess of legally permissible levels has occurred and such contamination was caused by Subtenant's use of the Subleased Premises. Additionally, Subtenant shall pay for all costs necessary to clean up or remedy any contamination caused by Subtenant's use of the Subleased Premises.

24.5 Survival of Subtenant's Obligations. Subtenant's obligations under this Article 24 shall survive the termination of this Sublease. During any period of time employed by Subtenant after the termination of this Sublease to complete the removal from the Subleased Premises or the Building of any such Hazardous Materials, Subtenant shall continue to pay the full Rent in accordance with this Sublease.

24.6 Definition of "Hazardous Material". As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, the County of San Diego or the United States of America. The term "Hazardous Materials" shall also mean toxic or hazardous substances, including without limitation, asbestos or any substance containing asbestos and deemed hazardous under any Hazardous Material Law (defined below), the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic waste, materials or substances under any law relating to environmental conditions and industrial hygiene, including without limitation, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 - 9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 6901, et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 741 et seq., the Clean Water Act, 33 U.S.C. § 7401, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 -2629; the Safe Drinking Water Act, 42 U.S.C. §§ 300f - 300j; the Carpenter-Presley- Tanner Hazardous Substances Account Act; the Hazardous Waste Control Act; the Porter-Cologne Water Quality Control Act; and all similar federal, state and local environmental statutes, ordinances, and the regulations, orders, decrees now or hereafter promulgated thereunder (collectively the "**Hazardous Material Laws**").

24.7 Binding on Parties Related to Subtenant. For the purposes of this Article 24, the term "Subtenant" shall include Subtenant and Subtenant's agents, employees, invitees, sub-subtenants, assigns, and guests, as well as their successors and assigns.

25. Miscellaneous.

25.1 Terms and Headings. Where applicable in this Sublease, the singular includes the plural and the masculine or neuter includes the masculine, feminine and neuter. The headings used in this Sublease are not a part hereof and shall have no effect upon the construction or interpretation of any part hereof.

25.2 Examination of Sublease. Submission of this Sublease for examination or signature by Subtenant does not constitute a reservation of, or offer, or option for, sublease, nor is it effective as a sublease or otherwise until execution by, and delivery to, both Sublandlord and Subtenant.

25.3 Time. Time is of the essence with respect to the performance of every provision of this Sublease in which item of performance is a factor.

25.4 Covenants and Conditions. Each provision of this Sublease performable by Sublandlord or Subtenant shall be deemed both a covenant and a condition.

25.5 Consents. Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval, except as June be expressly set forth to the contrary.

25.6 Entire Agreement. This Sublease (together with its exhibits and addendum) and the Master Lease are intended by the parties as a final expression of their agreement with respect to the terms as are included herein, and all prior agreements, understandings, representations and statements, oral or written, are merged herein, excepting only for written agreements signed contemporaneously with or after the signing of this Sublease.

25.7 Severability. Any provision of this Sublease which shall be deemed or prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and all such other provisions shall remain in full force and effect.

25.8 Independent Counsel. Subtenant acknowledges that: (i) Subtenant has had the opportunity to be represented by independent counsel in connection with this Sublease; and (ii) this Sublease, is the result of negotiations occurred between Sublandlord and Subtenant. The fact that this Sublease was prepared by Sublandlord's counsel, only in the event that Subtenant's counsel's changes were incorporated into the Sublease, then the presumption that the document would be construed against the drafter shall be disregarded.

25.9 Inurement. Each of the covenants, conditions and agreements herein contained shall inure to the benefit of and shall apply to and be binding upon the parties hereto and their respective heirs, legatees, devisees, executors, administrators, successors, assigns, sublessees or any person who June come into possession of said Subleased Premises or any part thereof in any manner whatsoever. Nothing contained in this Section 25.9 shall in any way alter the provisions against Assignment provided in this Sublease.

25.10 Force Majeure. If Sublandlord cannot perform any of Sublandlord's obligations hereunder due to events beyond Sublandlord's control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events and a reasonable time thereafter. Events beyond Sublandlord's control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction and weather conditions. It is specifically noted that Sublandlord has no control over the City and therefore any action required by the City is not within the control of Sublandlord and Sublandlord shall have no responsibility therefor.

25.11 Notices. Any notice, consent, demand, bill, statement or other communication required or permitted to be given hereunder shall be in writing and shall be deemed duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, return receipt requested, or upon the next business day if delivered by a next day courier or similar next day delivery system such as FedEx or UPS, addressed to Subtenant at the Subleased Premises or to Subtenant or Sublandlord at the following address:

For Rent Payment and
Notices to Sublandlord:

Driscoll Mission Bay
1500 Quivira Way
San Diego, California 92109
Attention: Melissa Tollifson

For Notices to Subtenant:

WELLNESS LOUNGE MISSION BAY
1548 Quivira Way
San Diego, CA 92109
Attention: April Walker & Austin Abbruscato

Either party may, by notice to the other pursuant to this Section, specify additional or different addresses for notice purposes. Subtenant may not add more than one other location then as noted above. If Subtenant elects to have notice delivered to another physical location than the Subleased Premises, the Sublandlord shall also elect, but is not required to do so, to provide an additional notice to the Subleased Premises. If the Subtenant does not accept or receive service of notice at the Subleased Premises, such will be a the sole risk of the Subtenant and any attempted delivery at the Subleased Premises shall be deemed to be valid delivery and shall commence the running of the notice period. If after the Term has ended and Subtenant has not provided Sublandlord with a new location to deliver notice, a mailing to the Subleased Premises shall be deemed notice as Subtenant is deemed to have taken the precaution to have any and all mail forwarded. It is specifically noted that any monthly mailing of any Rent statement or of general information circulated to all subtenants is not governed by the provisions of this Section.

Subtenant shall provide to Sublandlord the name of an on-site contact person. The on-site contact person shall provide the Sublandlord with a seven (7) day a week, twenty-four (24) hours a day contact information including a current phone number, electronic mail delivery address or other current form of instant communications. If the contact person does not respond to any

contact within twenty-four (24) hours for a non-emergency matter or within thirty (30) minutes for an emergency matter the Sublandlord may take any action which is reasonable under the circumstances and shall be held harmless and indemnified by the Subtenant.

25.12 Exhibits and Documents. All exhibits, addenda, and schedules referred to herein and attached hereto are a part hereof, and incorporated herein by this reference. The Sublandlord June scan and destroy the original of the Sublease. The Sublandlord need never produce an original counterpart unless expressly required by law.

25.13 Waiver and Modification. No provision of this Sublease shall be modified, amended or added to except by an agreement in writing executed by Sublandlord and Subtenant and approved by the City, if required. The waiver by Sublandlord or Subtenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

25.14 Periods of Time. All periods of time referred to in this Sublease shall include all Saturdays, Sundays and state or United States holidays recognized by the City, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice with respect to this Sublease shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday, or state or national holiday.

25.15 Choice of Law. This Sublease shall be construed and enforced in accordance with the laws of the State of California, and venue for any legal action under this sublease shall be in the City of San Diego, San Diego County, California.

25.16 Merger. There shall be no merger of the leasehold estate created by this Sublease with the fee interest in any of the Subleased Premises by reason of the fact that the same person may acquire or hold or own, directly or indirectly, (a) the leasehold estate created hereby or any part thereof or interest therein, and (b) the fee estate in any of the Subleased Premises or any part thereof or interest therein.

25.17 Real Estate Brokers; Finders. Subtenant and Sublandlord each represent to the other that they have not entered into any agreement or incurred any obligation in connection with this transaction that might result in the obligation to pay a brokerage commission or finder's fee to any broker, finder or other person. Each party agrees to defend, indemnify and hold the other party harmless from and against any liability, damages, claim or demand by any other broker or other person for bringing about this Sublease who claims to have dealt with such indemnifying party, including any expenses (including reasonable attorney fees) incurred in defending any such claim or demand. At any time during the final twelve (12) months of the Term Sublandlord June advertise the Subleased Premise for rent and June upon reasonable notice (not to exceed two (2) days) to Subtenant show or inspect the Subleased Premises for any reason including any LEED qualification or maintenance. Failure to allow the Sublandlord to show or inspect the Subleased Premises is a material non-curable Default.

25.18 Attorneys' Fees. If either party hereto becomes a party to any litigation concerning this Sublease (including any bankruptcy proceeding, administrative hearing/appeal or appellate action), the Subleased Premises, the Master Premises, the Building, or the Common Area, by reason of any act or omission of the other party or its authorized representatives, and not by any act or omission of the party that becomes a party to that litigation or any act or omission of its authorized representatives, the party that causes the other party to become involved in the litigation shall be liable to that party for reasonable attorneys' fees and court costs incurred by it in the litigation. If either party hereto commences an action against the other party arising out of or in connection with this Sublease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

25.19 Waiver of Jury Trial and Counterclaims. To the extent allowed by law, the parties hereto shall and do hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Sublease, the relationship of Sublandlord and Subtenant, Subtenant's use or occupancy of the Subleased Premises or any claim of injury or damage.

25.20 Joint and Several Obligations. If more than one person executes this Sublease as Subtenant, (a) each of them is jointly and severally liable for the keeping, observing and performing of all of the terms, covenants, conditions, provisions and agreements of this Sublease to be kept, observed and performed by Subtenant; and (b) the term "Subtenant" shall mean and include each of them jointly and severally. The act of, notice from, notice to, refund to or the signature of anyone or more of them, with respect to this Sublease, including but not limited to any renewal, extension, expiration, termination or modification of this Sublease, shall be binding upon each and all of the persons executing this Sublease as Subtenant with the same force and effect as if each and all of them had so acted so given, or received such notice or refund or so signed.

25.21 Definition of Sublandlord. The term "Sublandlord" as used in this Sublease, so far as covenants or obligations on the part of Sublandlord are concerned, shall be limited to mean and include only Sublandlord or the successor-in-interest of Sublandlord under this Sublease at the time in question. In the event of any transfer, assignment or the conveyance of Sublandlord's title or leasehold, the Sublandlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment or conveyance of all liability for the performance of any covenants or obligations contained in this Sublease thereafter to be performed by Sublandlord and, without further agreement, the transferee of such title or leasehold shall be deemed to have assumed and agreed to observe and perform any and all obligations of Sublandlord hereunder during its ownership or ground lease of the Subleased Premises. Sublandlord June transfer Sublandlord's interest in the Subleased Premises or this Sublease without the consent of or notice to Subtenant, and such transfer, or a subsequent transfer shall not be deemed a violation on the part of Sublandlord or the then grantor of any of the terms or conditions of this Sublease.

25.22 Limitation of Sublandlord's Liability.

(a) If Sublandlord is a limited partnership or joint venture, neither the general partner or any limited partner(s) of such partnership shall not be personally liable and no general partner or limited partner of Sublandlord shall be sued individually or named individually as a party in any suit or action or service or process be made against any limited partner of Sublandlord.

(b) If Sublandlord is a corporation, the shareholders, directors, officers, employees and/or agents of such corporation shall not be personally liable and no shareholder, director, officer, employee or agent of Sublandlord shall be sued or named as a party in any suit or action or service of process be made against any shareholder, director, officer, employee or agent of Sublandlord.

(c) If Sublandlord is a limited liability company, the members, managers, employees and/or agents of such limited liability company shall not be personally liable and no member, manager, employee or agent of Sublandlord shall be sued or named as a party in any suit or action or service of process be made against any member, manager, employee or agent of Sublandlord.

(d) No general partner, limited partner, shareholder, director, officer, member, manager, employee or agent, of Sublandlord shall be required to answer or otherwise plead to any service of process and no judgment will be taken or writ of execution levied against any general partner, limited partner, shareholder, director, officer, member, manager, employee or agent of Sublandlord.

(c) Each of the covenants and agreements of this Section 25.22 shall be applicable to any covenant or agreement either expressly contained in this Sublease or imposed by statute or by common law. Subtenant expressly understands the limitations imposed by this Section and agrees to the same.

25.23 Subleased Premises Control by Sublandlord. Sublandlord reserves full control over the Master Premises, the Building, Subleased Premises and the Common Areas to the extent not inconsistent with Subtenant's quiet enjoyment and use of Subleased Premises. This reservation includes but is not limited to right of Sublandlord to grant easements and licenses to others, provided any grant of an easement by Sublandlord does not interfere with Subtenant's quiet enjoyment and use of the Subleased Premises, except to the extent the grant of any such easement is approved by Subtenant, required by law, or permitted pursuant to the terms of this Sublease. The covenant of quiet enjoyment reference in this Section shall not apply or be in effect during any time the Subtenant is in Default of this Sublease.

25.24 Quiet Enjoyment. So long as Subtenant is not in Default hereunder, Sublandlord covenants that Sublandlord or anyone acting through or under Sublandlord will not disturb Subtenant's occupancy of the Subleased Premises, except as permitted by the provisions of this Sublease. In this regard, however, Subtenant acknowledges that the Subleased Premises are a portion of the Master Premises described under the Master Lease and that the Master Premises are used for a multitude of business operations including marine repair, equipment storage, and are adjacent to maintenance areas, docking, loading and other facilities which can

cause nuisances, sounds and odors which June disturb the quiet enjoyment of Subtenant on the Subleased Premises.

25.25 No Recording. Subtenant shall not for any reason record this Sublease or a memorandum of this Sublease. Sublandlord, at the option of the Sublandlord, may record a memorandum of this Sublease, but the recording shall not change the terms of this Sublease.

25.26 Quitclaim Deed. Subtenant shall execute and deliver to Sublandlord on the expiration or termination of this Sublease, immediately upon Sublandlord's request, a quitclaim deed to the Subleased Premises or other document in recordable form suitable to evidence of record termination of this Sublease.

25.27 Estoppel Certificate. From time to time as reasonably requested by Sublandlord, Subtenant, within ten (10) days of written notice from Sublandlord, shall execute, acknowledge, and deliver to Sublandlord a statement in writing in a form reasonably requested by a proposed lender or purchaser (i) certifying that this Sublease is unmodified and in full force and effect, (or, if modified, stating the nature of such modification and certifying that this Sublease as so modified is in full force and effect) and the dates to which the Rent and other charges are paid in advance, if any, (ii) acknowledging that there are not, to Subtenant's knowledge, any uncured defaults on the part of Sublandlord hereunder or specifying such defaults if any are claimed, and (iii) setting forth such further reasonable information with respect to this Sublease or the Subleased Premises as June be requested thereon. Any such statement June be relied upon by any prospective purchaser or encumbrance of all or any portion of the Subleased Premises.

26. Consent of the City of San Diego. This Sublease and the tenancy of Subtenant are subject to the written consent of the City. If this Sublease is not consented to by the City it shall be void and of no force or effect.

27. Master Lease. This Sublease shall be, and remain, subject and subordinate to the terms, covenants, and conditions of the Master Lease, and furthermore, in the event of any conflict or inconsistency between the Sublease and the Master Lease, the provisions of the Master Lease shall govern and prevail. If the Master Lease should terminate for any reason, this Sublease shall likewise terminate with no liability to Sublandlord. In the event the Master Lease is materially modified or replaced by the City and Sublandlord and Subtenant cannot agree to modify this Sublease to maintain substantially the same conditions and economic terms set forth in this Sublease within thirty (30) days of the notice from the City of the proposed modifications to the terms and conditions or the replacement of the Master Lease, this Sublease shall terminate thirty (30) days prior to the effective date of the new Master Lease or the amendment/modification thereto. Subtenant and Sublandlord agree that the terms and conditions of the Master Lease are incorporated herein by reference, and shall, as between Sublandlord and Subtenant, constitute the terms, covenants, conditions, and provisions of this Sublease, except to the extent that they are inapplicable to, inconsistent with, or modified by the provisions of this Sublease. Subtenant shall strictly comply with each term and condition of the Master Lease. Any breach by Subtenant of any terms of the Master Lease shall be a deemed breach under this Sublease. It is expressly noted that the term of the Master Lease is not the same as the Term of this Sublease. The foregoing does

not provide to Subtenant any rights to extend the Term of the Sublease, to only pay the rents due to the City from the Sublandlord, to contact the City or claim privity with the City regarding this Sublease or the Master Lease, or to take the benefit of any provision of the Master Lease enjoyed by the Sublandlord for any reason, including any alleged default by the Sublandlord. The Subtenant expressly waives any right to contest any provision of the Master Lease in existence as of the commencement of the Term of any time during the Term or any modification to the Master Lease. Subtenant shall not commence any litigation or file any claim against the City without the express prior approval of the Sublandlord with any approval subject to the sole and absolute discretion of the Sublandlord. Even if the Sublandlord grants consent, the Subtenant shall hold harmless, defend and indemnify the Sublandlord from any claim, expense, liability or action of the City regarding the claim of Subtenant.

28. Subtenant Representations, Warranties and Disclaimers. Subtenant as an integral part of this Sublease, the absence thereof would have prevented Sublandlord from entering into this Sublease represents, warrants and acknowledges as follows:

(a) Subtenant has an obligation of continuous operations of the Subleased Premises during regular business hours. Failure to maintain operations by the Subtenant shall substantially damage Sublandlord and shall be a Default of this Sublease.

(b) Subtenant is not relying on the tenancy of any other subtenant or that the Master Premises shall have any level of occupancy or any particular type of subtenant.

(c) Subtenant acknowledges that neither Sublandlord nor anyone acting on the behalf of Sublandlord has made any promises or inducements related to the amount of business or other benefits that Subtenant shall enjoy or recognize as a result of the occupancy of the Subleased Premises.

(d) Subtenant acknowledges that in the event Subtenant leases, utilizes or hires any other portion of the Master Premises that there will be separate lease, license and/or agreement and that the other lease, license and/or agreement shall not merge with this Sublease and shall be limited strictly to its own terms and conditions.

(e) Subtenant acknowledges that the Master Premises are part of a marina and that a marina setting creates potential of injury and accidents which are not associated with other type of commercial properties. Therefore, Subtenant assumes the risk of loss, damage and injury by electing to hire real property in a nautical and maritime related property.

(f) Subtenant acknowledges that although Subtenant is required to maintain the confidentiality of this Sublease, subject to any requirement of the City to make its terms public record, Sublandlord may share at the sole election of the Sublandlord information related to the Subtenant in the possession of the Sublandlord and that Subtenant waives any claim to privacy or confidentiality. In executing this Sublease, Subtenant hereby gives to Sublandlord the continuing license and right to inquire upon the credit and financial standing of the Subtenant, which inquiry includes but is not limited to credit checks and other investigations related to the Subtenant.

29. **Prohibited Persons.** Neither Subtenant nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Buyer) is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("EO13224"), (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list June be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>), (iii) who commits, threatens to commit or supports "terrorism," as that term is defined in EO13224, (iv) is subject to sanctions of the United States government or is in violation of any federal, state, municipal or local laws, statutes, codes, ordinances, orders, decrees, rules or regulations relating to terrorism or money laundering, including, without limitation, EO13224 and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, or (v) who is otherwise affiliated with any entity or person listed above (any and all parties described in clauses (i) – (v) above are herein referred to as a "**Prohibited Person**"). Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Subtenant) shall (aa) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (bb) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. The provisions of this Section shall survive the Term or termination of this Sublease.

30. **Offer.** The presentation of this Sublease to Subtenant shall not be deemed an offer by Sublandlord but is merely a part of negotiation. No part of this Sublease shall be binding on Sublandlord until it is signed by both Sublandlord and Subtenant.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the dates set forth below next to their respective signatures:

Sublandlord:

DRISCOLL MISSION BAY LLC,
a California Limited Liability Company

Date of Execution: 3/5, 2019 By: [Signature]
Name: Thomas A. Driscoll, a Member

Subtenant:

WELLNESS LOUNGE MISSION BAY LLC,
a California Limited Liability Company

Date of Execution: 3/5, 2019 By: [Signature]
Name: April Walker, a Partner.

Date of Execution: 3/5, 2019 By: [Signature]
Name: Austin Abbruscato, a Partner.

Exhibit and Schedule List

Exhibit A.....Subleased Premises
Schedule 3.1.....Base Rent

EXHIBIT A

Subleased Premises

A portion of 1548-2nd floor Quivira Way San Diego, CA 92109 Described as follows:

1548-2nd floor 1,189 sq. ft. of office space with 330 sq. ft. of deck space.

1548-4 1st floor 208 sq. ft. of office space and 480 sq. ft. of patio space 24 sq. ft. x 20 sq. ft. directly in front of office window.

SCHEDULE 3.1

BASE RENT

The Base Rent shall be as follows:

Year 1 April 01, 2019 to March 31, 2020 the Based Rent shall be:

1,189 Square Feet Office space 1548-2 nd floor Quivira Way x \$1.50/Square Foot	1,783.50
330 Square Feet for Deck 1548-2 nd floor 1548 Quivira Way x \$1.00/Square Foot	330.00
208 Square Feet for Office Space 1548-4B Quivira Way x \$1.50/Square Foot	312.00
32 Square Feet for Storage space 1548-4 1 st floor x \$1.00/Square Foot	32.00
480 Square Feet for Patio space 1548-4 1 st floor x \$.75/Square Foot	<u>360.00</u>

\$2,817.50

Two Thousand Eight Hundred and Seventeen Dollars & Fifty Cents (\$2,817.50) per month without setoff or credit. Each year the rent will increase by 3%. Resulting in the following schedule.

Year 2 April 01, 2020 – March 31, 2021 monthly rent payment	\$ 2907.81
Year 3 April 01, 2021 – March 31, 2022 monthly rent payment	\$ 2938.67
Year 4 April 01, 2022 – March 31, 2023 monthly rent payment	\$ 2998.12
Year 5 April 01, 2023 – March 31, 2024 monthly rent payment	\$ 3088.43

If the option is exercised by subtenant, rent in years 6-10 will continue to increase at the rate of 3%, in the same fashion as the years above.

If the option is exercised by subtenant, rent in years 11-15 will continue to increase at the rate of 3%, in the same fashion as the years above.

If the option is exercised by subtenant, rent in years 16-20 will continue to increase at the rate of 3%, in the same fashion as the years above.

The first cash payment of rent to sublandlord will be due on April 01, 2019. If applicable, any gross sales prior to that time will be subject to percentage rent put out by the city and payable to the sublandlord no later than the 15th of the following month according to the attached schedule:

Schedule 3.1

[Form – MAY 2018]

Quivira Basin Standard Sublease (Modified Gross)
Driscoll Mission Bay LLC / WELLNESS LOUNGE MISSION BAY LLC.

Page 1

The Percentage Rent as of 07/01/17 put out by the city and calculated on gross sales shall be as follows:

Sales of food & beverage	3%
Sales of alcoholic beverages	6%
Yacht club membership dues	7%
Office space	7%
Telephone commission	50%
Boat show admission	7%
Tool & space rental	4%
Marine retail shop	4%
All other	10%
Boat repair, parts & hardware	4%
New or used boat sales	2%
New or used boat brokerage	5%
Marina slips	25%
Dry Storage	20%
Charters & marine/boat equipment rental	10%
Coin machine/no lessee equity	25%

Any changes to the percentage rent charged by the City will be the sole responsibility of the subtenant.

It is expressly acknowledged by Subtenant that the City has the right to adjust the rents amounts paid by Sublandlord for the Master Premises from time to time in regards and relating to the minimum rent due under the Master Lease. If at any time during the Term the City, as allowed under the provisions of the Master Lease, increases the minimum rent of Sublandlord, Sublandlord has the right to increase the Base Rent on a commensurate basis so that the Based Rent paid to Sublandlord by Subtenant remains on an equal basis and that Sublandlord's rental differential is maintained. By way of illustration, but not for any limitation or restriction, if the City raises the minimum rent to Sublandlord by five percent (5%), the then existing Base Rent shall increase by five percent (5%).

If the change to the minimum rent under the Master Lease is retroactively applied by the City, the Base Rent under the Sublease modified pursuant to this provision shall also be subject to the same retroactive increase and relate back to the time of the increase applied by the City. Subtenant shall have no right to contest any adjustment made to the Sublease pursuant to this Section unless a material mathematical error in the calculation of the new Base Rent is present. If there is any overpayment of the Base Rent due to the finding of a material mathematical error, any overpayment shall be credited against the next due installment of Rent and such material mathematical error shall not be deemed a default or breach of the Sublease by Sublandlord.

Schedule 3.1

Quivira Basin Standard Sublease (Modified Gross)
Driscoll Mission Bay LLC / WELLNESS LOUNGE MISSION BAY LLC.