

ATTACHMENT B

LEASE

(4919 Mountain Boulevard)

CITY OF OAKLAND

AS LANDLORD

and

OAKLAND UNIFIED SCHOOL DISTRICT

AS TENANT

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LEASE

(4919 Mountain Boulevard)

THIS LEASE (4919 Mountain Boulevard) (“**Lease**”) is entered into as of _____, 20__ (“**Effective Date**”) by and between the CITY OF OAKLAND, a municipal corporation (the “**Landlord**” or the “**City**”), and OAKLAND UNIFIED SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of California (“**Tenant**” or “**District**”).

RECITALS

This Lease is entered into upon the following facts, understandings and intentions of the Landlord and Tenant, sometimes collectively referred to herein as the “**Parties**,” and individually as a “**Party**”:

A. City hereby owns certain real property commonly known as 4919 Mountain Boulevard, Oakland, as more particularly described on Exhibit A and depicted on Exhibit B which are attached hereto and incorporated herein by this reference (“**Property**”).

B. The Parties acknowledge that Tenant has occupied and used the Property for educational purposes since at least 1995 and currently operates a Community Day School on the Property, which existing use falls within the State law exemption from City zoning and land use regulations.

C. Tenant’s Board of Education (“**Board**”) has determined that it is in the best interests of Tenant and the students it serves to continue to occupy and use the Property for educational purposes.

D. The City Council adopted Ordinance No. _____ C.M.S., which among other things, authorized this Lease.

E. Landlord, Tenant, Chabot JPA (as defined below), Chabot Space & Science Center Foundation, a California nonprofit public benefit corporation (the “**Foundation**”), East Bay Regional Park District, a California special district (“**EBRPD**”), and Eastbay Astronomical Society, a California nonprofit public benefit corporation, have each executed that certain Master Dissolution Agreement (Chabot Space and Science Center), dated as of _____, 2021 (the “**Master Dissolution Agreement**”), in order to restructure the management and operation of the Chabot Science Center (as defined below), as more particularly described therein, which will continue to be implemented after the Effective Date.

F. As contemplated in the Master Dissolution Agreement, Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises pursuant to the terms of this Lease.

G. Capitalized terms which are referred to and used throughout this Lease are defined in Article 1 of this Lease.

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

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions.

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

- (a) Access Easement: Defined in Section 2.1 hereof.
- (b) Additional Rent: Defined in Section 4.3 hereof.
- (c) Alterations: As defined in Section 7.3 hereof.
- (d) Casualty: As defined in Article 11 hereof.
- (e) Chabot JPA. The Chabot Space & Science Center Joint Powers Agency, to which the Landlord, Tenant, and EBRPD are parties, that operates the Chabot Science Center.
- (f) Chabot Science Center: That certain Chabot Space and Science Center, separate and apart from the Property, is located at 10000 Skyline Boulevard, Oakland, California 94519, with such real property owned by the Landlord.
- (g) City: The City of Oakland, a municipal corporation.
- (h) Development: The Improvements and Tenant's Estate.
- (i) Effective Date: The date set forth in the preamble above.
- (j) Event of Default: As described in Article 12 hereof.
- (k) Excluded Area: As defined in Section 2.1(a) hereof.
- (l) Future Change: As defined in Section 5.1 hereof.
- (m) Governmental Authorities: Any applicable federal, state or local governmental or quasi-governmental entities, subdivisions, agencies, authorities or instrumentalities having jurisdiction over the Premises, the Improvements, Landlord or Tenant.
- (n) Hazardous Materials: Any oil or any fraction thereof or petroleum products or "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14) or Section 25281(h) or 25316 of the California Health and Safety Code at such time; any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117,

25117.5 or 25501(j) of the California Health and Safety Code at such time; any other waste, substance or material designated or regulated in any way as “toxic” or “hazardous” in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) at such time; and any additional wastes, substances or material which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Premises, but excluding any substances or materials used in the construction, development, maintenance or operation of the Improvements or stored or used as part of normal household use, so long as the same are used in accordance with all applicable laws.

(o) Hazardous Materials Claims: As described in Section 9.2(a).

(p) Hazardous Materials Law: All federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Premises or any portion thereof.

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

(r) Improvements: The buildings and all other improvements on the Property as of the Effective Date, exclusive of the Excluded Area.

(s) Insurance Requirements: The requirements, whether now or hereafter in force, of any insurer or insurance carrier, any board of fire underwriters or any other company, bureau, organization or entity performing the same or similar functions, applicable to the Premises and/or the Improvements, or any portion thereof, to the extent so applicable.

(t) Landlord: The City of Oakland, a municipal corporation. Any reference hereafter to the “Landlord” shall also be deemed to include any successors to or assigns of the City.

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

(v) Lease Year: A calendar year.

(w) Legal Requirements: All laws, statutes, codes, ordinances, orders, rules, regulations and requirements of all Governmental Authorities and the appropriate agencies, officers, departments, boards and commissions thereof, whether now or hereafter in force,

applicable to Landlord, Tenant, the Premises, the Improvements, or any portion thereof, to the extent so applicable.

(x) Master Dissolution Agreement: As defined in Recital E.

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

(z) Party or Parties: As defined above.

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

(bb) Premises: The Property and all Improvements, exclusive of the Excluded Area.

(cc) Property: As defined in Recital A and as more particularly described on Exhibit A attached hereto and made a part hereof, and depicted on the Site Plan, together with all and singular rights, easements, licenses, privileges and appurtenances thereunto attaching or in any way belonging thereto.

(dd) Rent: As described in Section 4.3 hereof.

(ee) Site Plan: That certain Site Plan depicting the Premises, attached hereto as Exhibit B.

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

(gg) Tenant: Oakland Unified School District. Any reference hereafter to the “Tenant” shall also be deemed to include any successors to or assigns of the District.

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

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

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

Section 1.2 Exhibits. The Exhibits referred to in this Lease and attached hereto are:

- Exhibit A: Legal Description of Premises
- Exhibit B: Site Plan
- Exhibit C: Excluded Area
- Exhibit D: Insurance Requirements

ARTICLE 2.
LEASE OF THE PREMISES

Section 2.1 Premises. Beginning on the Effective Date, Landlord does hereby lease the Premises to Tenant, and in consideration thereof, Tenant does hereby lease the Premises from Landlord more specifically described and depicted on Exhibits A and B, pursuant to the terms and conditions of this Lease hereinafter set forth and reserving therefrom a nonexclusive easement in, on, over, and across the existing roadways, as such may be modified from time to time, for pedestrian, vehicular, and emergency access to and from the Excluded Area, and for maintenance and repair, rehabilitation and adaptive reuse of the Excluded Area for Landlord, its employees, agents, contractors, together with users of the Excluded Area, if any (the “**Access Easement**”). Such Access Easement shall not include public access unless and until the Excluded Area is rehabilitated and reused such that the use of, and public access to, the Excluded Area is not incompatible with the Community Day School use and does not pose an undue safety risk for Tenant, its employees, or its students, or its agents and contractors engaged by Tenant for management and operation of the Community Day School. Upon request by either Landlord or Tenant, Landlord and Tenant shall meet and confer in good faith regarding concerns over such use and access. As of the Effective Date, the Access Easement is over a paved road, a portion of which runs through the center of a functioning school campus, including the school’s lunch area and basketball court.

(a) The Parties agree that the following enumerated portions of the Property, more specifically depicted on Exhibit C, are hereby exempt from the Tenant’s occupancy, use, rights, and responsibilities under this Lease (collectively, the “**Excluded Area**”): (i) the Observatory; (ii) the shed behind the Observatory; (iii) the area between the Observatory and the shed; and (iv) cell tower, together with a reasonable buffer around the structures, in order to perform maintenance and repairs. Landlord or its designee retains the right to rehabilitate and adaptively reuse the buildings within the Excluded Area and exterior Excluded Area in a manner that is not incompatible with the Community Day School use, and if public access is to be provided, subject to the foregoing requirements.

(b) The Parties acknowledge that the Excluded Area has been secured by the Landlord. The Parties hereby acknowledge that Landlord shall be responsible for any utilities, repair, maintenance, and insurance of the Excluded Area. The Parties hereby acknowledge that except as provided in 2.1(c) below, Tenant shall not be responsible for the utilities, repair, maintenance, insurance, or indemnification of any portion of the Excluded Area, except to the extent repairs are necessary due to damage caused by Tenant, or its employees, students, agents, or contractors.

(c) In the event that the Parties mutually require a legal description of the Excluded Area, Tenant shall maintain the Excluded Area, not including the cell tower, up to and until a licensed surveyor is procured and prepares a written legal description of the Excluded Area, but in no event shall Tenant maintain and be responsible to maintain the Excluded Area for more than six (6) months from the Effective Date. Upon preparation and provision of such legal description to both Parties or termination of such six (6) month period, the Parties acknowledge that Section 2.1(b) above shall immediately take effect, and any such maintenance responsibilities of the Tenant shall immediately cease.

Section 2.2 Delivery of Possession. This Lease shall be effective upon the Effective Date.

Section 2.3 Term. Unless sooner terminated pursuant to the provisions hereof, this Lease shall continue in full force and effect for a sixty (60) year term commencing on the Effective Date and expiring on the sixtieth (60th) anniversary of the Effective Date (“**Term**”).

Section 2.4 Use. Subject to the provisions of this Lease, Tenant shall, throughout the Term and in accordance with all Legal Requirements, continuously use the Premises and the Improvements solely for classroom facilities and other legally permissible educational purposes. The Parties acknowledge that the current use as a Community Day School, is such a permitted use. Under no circumstances shall Tenant use the Premises, or any portion thereof for nonclassroom facilities, including, but not limited to, warehouses, administrative buildings, and automotive storage and repair buildings. Further, the Tenant agrees with respect to the Premises, and Landlord agrees with respect to the Excluded Area:

(a) not to use or knowingly allow the Premises or Excluded Area to be used for any disorderly or unlawful purpose;

(b) not to use cause, maintain, or permit any nuisance or waste in, on, or about the Premises or Excluded Area;

(c) take all reasonable precautions to prevent the Premises or Excluded Area from being used for any unlawful purposes and to prevent any nuisance or waste, in, on, or about the Premises or Excluded Area.

(d) a Party, upon notice from the other Party, shall take reasonable action, if necessary, to abate any action that would cause the first Party to violate this Lease; and

(e) Tenant shall permit Landlord and its agents, upon not less than forty-eight (48) hours’ written notice, to inspect the Premises or any part thereof at any reasonable time during the Term. Landlord shall coordinate with the Tenant to minimize any disruption to school activities. Such inspection shall not otherwise impair the Tenant’s quiet enjoyment of the Premises.

ARTICLE 3.
RIGHT OF ENTRY

Section 3.1 Landlord Right of Entry.

(a) In order to protect the safety of students and staff, in accordance with Section 2.4(e), upon not less than forty-eight (48) hours written notice, Landlord reserves the right for any of its duly authorized representatives to enter the Premises at any reasonable time to inspect the Premises, but in so doing shall not interfere with the Tenant's use, operations, and school activities on the Premises.

(b) Landlord reserves the right for any of its duly authorized representatives to enter the Premises at any reasonable time to inspect the Excluded Area, to perform maintenance, make any repairs, improvements, or modifications necessary for the preservation thereof, or use the Excluded Area as provided herein, but in so doing shall not interfere with the Tenant's use, operations, and school activities on the Premises. Landlord shall coordinate with the Tenant to minimize any disruption to school activities, and except in the case of emergency, shall attempt to schedule any work. Such inspection, maintenance, repair, improvement, or modification shall not otherwise impair the Tenant's quiet enjoyment of the Premises.

ARTICLE 4.
CONSIDERATION; RENT

Section 4.1 Consideration. Under those certain Certificates of Participation, Lease Lease-Back Agreements, and subsequent Forbearance Agreements, between the Tenant and the Chabot JPA, prior to the Effective Date, the Chabot JPA owed to Tenant certain debt (collectively, the "**JPA Debt**"). As required by the Master Dissolution Agreement, in pertinent part, upon the mutual execution of this Lease, and in exchange for the Landlord's lease of the Premises to the Tenant, the Tenant shall fully discharge the JPA Debt owed to the Tenant by the Chabot JPA ("**Debt Discharge**").

Section 4.2 Annual Rent. Tenant shall pay to Landlord on the Effective Date of this Lease rent for the Term in the amount of One Dollar (\$1.00) annually ("**Annual Rent**").

Section 4.3 Additional Rent. The term "**Additional Rent**" shall include all other payments, charges and other amounts, if any, due and payable by Tenant to Landlord, to the extent expressly set forth in this Lease. As used in this Lease, the term "**Rent**" shall include Annual Rent and Additional Rent.

Section 4.4 Payments. All Rent or other sums, if any, due Landlord under this Lease shall be paid by Tenant to Landlord at the address of Landlord set forth hereinafter for notices, or to such other person and/or at such other address as Landlord may direct by written notice to Tenant.

ARTICLE 5.
IMPOSITIONS AND UTILITIES

Section 5.1 Payment of Impositions. The Parties acknowledge that as of the Effective Date both Parties are Governmental Authorities and as such are not subject to payment of Impositions. The following provisions are included solely for purposes of addressing future change, such as, for example, assignment of this Lease to a non-Governmental Authority, or changes in Legal Requirements that impose payment of Impositions by Governmental Authorities (“**Future Change**”).

(a) Tenant will pay to the relevant Governmental Authority as the same become due, before delinquency, all Impositions that may be assessed, levied, confirmed, imposed or become a lien upon the Premises or any part thereof that become payable due to the occurrence of a Future Change.

(b) If such a Future Change occurs, it shall be Tenant’s responsibility to apply for and obtain any exemption from any such Impositions that may be imposed, which Tenant shall pay if necessary and which shall be at no expense to Landlord. However, Landlord agrees to cooperate with Tenant’s reasonable requests to assist in any such application for exemption.

(c) Tenant, at its sole cost and expense, in its own name or in the name of Landlord, may contest the validity or amount of any such Imposition relating to all or any portion of the Premises, in which event the payment thereof may be deferred during the pendency of such contest, if diligently prosecuted. As may be necessary or desirable, Landlord or Tenant, as applicable, upon the request of the other party, shall use its reasonable efforts to assist in any such proceeding to contest the validity or amount of any Imposition. Nothing contained in this Section 5.1, however, shall be construed to allow any such contested Imposition to remain unpaid for a length of time which shall permit the Premises, or any part thereof, to be sold by any Governmental Authorities for the non-payment of such Imposition.

(d) If Tenant shall fail to pay any Impositions before the same become delinquent, or as otherwise required pursuant to Section 5.2 hereof, Landlord, at its election, may pay such Impositions (but shall not be obligated to pay same), together with any interest and penalties due thereon, and the amount so paid by Landlord shall be repayable to Landlord by Tenant within forty five (45) days.

Section 5.2 Utilities. Tenant shall pay all utilities used, rendered or supplied upon or in connection with the Premises including, but not limited to, all charges for gas, electricity, light, heat or power, all telephone and other communications services, all water rents and sewer service charges, and all sanitation fees or charges levied or charged against the Premises during the Term. Landlord shall have no responsibility for the payment of utility costs for the Premises.

ARTICLE 6.
INSURANCE; INDEMNIFICATION

Section 6.1 Tenant's Insurance. During the Term, Tenant shall keep and maintain in force, at no cost or expense to Landlord, insurance in accordance with the Insurance Requirements of Exhibit D.

Section 6.2 Indemnification.

(a) Landlord's Indemnification of Tenant. Landlord hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Tenant) Tenant, its Board members, officers, agents, employees, and contractors (collectively, "**Tenant's Indemnitees**"), from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and expenses (collectively, "**Claims**"), to the extent arising from or relating to Landlord's obligations under this Lease, or Landlord or Landlord's entry onto the Property, onto the Premises, or into the Excluded Area, except to the extent arising from or relating to the sole gross negligence or willful misconduct of the Tenant or Tenant's Indemnitees. The Landlord's obligations under this Section 6.2(a) shall survive the expiration of the Term or earlier termination of this Lease, and shall remain in full force and effect.

(b) Tenant's Indemnification of Landlord. Tenant hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Landlord) Landlord, its commissioners, councilmembers, officers, directors, affiliates, agents and employees (collectively, "**Landlord's Indemnitees**"), from and against any and all Claims, to the extent arising from or relating to Tenant's obligations under this Lease, the use and operation of the Improvements or Premises, or construction of Alterations, or entry into the Excluded Area, except to the extent arising from or relating to the sole gross negligence or willful misconduct of Landlord or Landlord's Indemnitees. The Tenant's obligations under this Section 6.2(b) shall survive expiration of the Term or other termination of this Lease, and shall remain in full force and effect.

ARTICLE 7.
MAINTENANCE, ALTERATIONS, REPAIRS AND REPLACEMENTS

Section 7.1 Maintenance of Premises. During the Term, at Tenant's sole cost and expense, Tenant shall keep and maintain the Premises, all Improvements, and all related appurtenances, in good and safe order, condition and repair and in compliance with all Legal Requirements affecting the Premises, including; custodial services; preventative maintenance; maintenance of any damage caused by theft or vandalism; repair and replacement of lights, exterior doors and windows, landscaping, fixtures, equipment, and any other necessary items; and shall pay the wages and salaries of Tenant's employees, contractors and consultants performing services at the Premises. Tenant shall be responsible for the cost of repairing or replacing any Improvements damaged in connection with Tenant's use of the Premises under this Lease, notwithstanding ordinary wear and tear. Tenant must make such repairs with materials as

originally installed, or, if not commercially available or if cost prohibitive, with materials, apparatus and facilities substantially similar in quality, appearance and durability to the materials, apparatus and facilities repaired, replaced or maintained.

Section 7.2 Maintenance of Excluded Area. Tenant shall promptly report to the Landlord any Excluded Area maintenance issues, of which it becomes aware. Tenant shall promptly notify Landlord of any damage to, or need for repairs of, any Excluded Area, of which it becomes aware. A failure by the Tenant to comply with this provision shall not constitute an Event of Default.

Section 7.3 Alterations to Premises. Tenant may make additions, alterations or changes (sometimes collectively referred to herein as “**Alterations**”) in or to the Improvements, subject, however, to the following conditions:

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

(b) No Alterations of the Premises or new construction shall be undertaken, or the demolition of any portion thereof, without Tenant first presenting to Landlord complete plans and specifications therefor and obtaining Landlord’s prior written consent thereto (which consent shall not unreasonably be withheld so long as such Alterations will not violate the Legal Requirements or terms of this Lease or impair the value of the Improvements); provided, however, that Tenant may proceed with such Alterations or demolition to the extent needed to address a hazardous or emergency condition resulting from an event of Casualty, so long as Tenant informs Landlord of the work undertaken as soon as reasonably practicable thereafter; and

(c) No Alterations shall be undertaken until Tenant shall have procured, to the extent the same may be required from time to time, all permits and authorizations of all applicable Governmental Authorities and the consent of Landlord if required pursuant to Section 7.3(b) above. Landlord shall join in the application for such permits or authorizations whenever such action is necessary or helpful and is requested by Tenant, and shall use reasonable efforts to obtain such permits or authorizations; and

(d) Any Alterations shall be performed in good and workmanlike manner using new materials of the same or better quality as the original Improvements, or, if not commercially available or if cost prohibitive, with materials substantially similar in quality, appearance and durability to the materials originally installed, and in compliance with all applicable Legal Requirements and all applicable Insurance Requirements.

ARTICLE 8. MORTGAGES

Section 8.1 Mortgages. Tenant hereby agrees not to encumber, through a mortgage, deed of trust, security agreement, or collateral assignment, Tenant’s right, title, and interest in the Premises.

ARTICLE 9.
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 9.1 Representations, Warranties and Covenants of Tenant. As an inducement to Landlord to enter into and to proceed under this Lease, Tenant warrants and represents to Landlord as follows, which warranties, representations and covenants are true and correct as of the Effective Date:

(a) Upon approval by Tenant's Governing Board, Tenant has the right, power and authority to enter into this Lease and the right, power and authority to comply with the terms, obligations, provisions and conditions contained in this Lease.

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

(c) Tenant: (i) shall not knowingly cause or permit any Hazardous Materials to be placed, held, located or disposed of on, under or at the Premises or any part thereof, except in commercially reasonable amounts used in the construction and operation of the Improvements and in accordance with Legal Requirements; and (ii) during the Term of the Lease, shall not knowingly cause or permit any Hazardous Materials contamination of the Premises or any part thereof.

(d) The use of the Premises by the Tenant, as contemplated in this Lease, is consistent with applicable Legal Requirements and Tenant is in compliance with all Legal Requirements applicable to the Premises.

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

(f) Tenant is not aware of any litigation, action, suit, proceeding, judgment, order, decree, or governmental investigation of any kind currently pending or threatened regarding the Premises, which would affect the Premises or the occupancy, use, or enjoyment thereof by Tenant.

(g) Tenant's use of the Premises does not fall under the jurisdiction of the Division of the State Architect, on the grounds that Tenant does not anticipate making, requesting, or otherwise requiring any modifications, design, or construction at the Premises.

Section 9.2 Hazardous Materials. The Parties agree as follows:

(a) Certain Covenants and Agreements. The Tenant hereby covenants and agrees that at all times during the Term:

(1) The Tenant shall not knowingly permit the Premises or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials in violation of any applicable Hazardous Materials Laws or

otherwise knowingly permit the presence of Hazardous Materials in, on or under the Premises in violation of any applicable law;

(2) The Tenant shall keep and maintain the Premises and each portion thereof in compliance with, and shall not cause or permit the Premises or any portion thereof to be in violation of, any applicable Hazardous Materials Laws;

(3) Upon receiving actual knowledge of the following, the Tenant shall immediately advise the Landlord in writing of:

(A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Tenant or the Premises pursuant to any applicable Hazardous Materials Laws, to the extent such regulatory actions were initiated following the Effective Date;

(B) any and all claims made or threatened by any third party against the Tenant or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as “**Hazardous Materials Claims**”); or

(C) the presence of any Hazardous Materials in, on or under the Premises in such quantities which require reporting to a government agency.

(4) If the Landlord reasonably determines that the Tenant is not adequately responding to a Hazardous Material Claim or any condition in Sections 9.2(a)(3), the Landlord shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any such Hazardous Materials Claims.

(5) Unless otherwise required by applicable Legal Requirements, without the Landlord’s prior written consent, which shall not be unreasonably withheld or delayed, the Tenant shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Premises, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(b) Indemnity. Without limiting the generality of the indemnification set forth above, the Tenant hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Landlord) the Landlord and Landlord’s Indemnitees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgements, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorneys’ fees and expenses), to the extent arising directly or indirectly, in whole or in part, out of:

(1) the failure of the Tenant, or its employees, agents, or contractors, on or after the Effective Date to comply with any Hazardous Materials Law or Governmental Authority directive relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Premises;

(2) any release or discharge of any Hazardous Materials by the Tenant, or its employees, agents, or contractors, into, on, under or from the Premises, first arising on or after the Effective Date, or the presence in, on, or under the Premises of any Hazardous Materials that occurs on the Premises after the Effective Date; or

(3) any activity or omission of activity carried on or undertaken on or off the Premises, on or after the Effective Date, and whether by the Tenant or any employees, agents, contractors or subcontractors of the Tenant or any successor in title that is related to the Tenant occupying or present on the Premises, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials located or present on or under the Premises.

With respect to any residual contamination, the foregoing indemnity shall apply only to residual contamination first arising on or after the Effective Date on or under the Premises, or affecting any natural resources, and to any contamination of any property or natural resources first arising after the Effective Date in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials during the Term, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this subsection shall survive expiration of the Term or other termination of this Lease, and shall remain in full force and effect, but only with respect to the extent that the residual contamination was present prior to the expiration of the Term or other termination of this Lease. This indemnity obligation shall not extend to any claim arising solely from the Landlord's negligence or willful misconduct or from any Indemnitee's negligence or willful misconduct.

Section 9.3 As-Is Conveyance.

(a) Unless otherwise stated herein, this Lease is made "AS IS", with no warranties or representations by the Landlord concerning the condition of the Premises, including the presence or absence of any Hazardous Materials. Tenant hereby agrees and acknowledges that except in the event of any fraud, misrepresentation, or withholding of information by Landlord, (i) neither Landlord, nor anyone acting for or on behalf of Landlord, has made any representation, statement, warranty or promise to Tenant concerning the development potential or condition of the Premises; (ii) in entering into this Lease, Tenant has not relied on any representation, statement or warranty of Landlord, or anyone acting for or on behalf of Landlord, other than as may expressly be contained in writing in this Lease; (iii) all matters concerning the Premises have been or shall be independently verified by Tenant and that Tenant shall lease the Premises on Tenant's own prior examination thereof; and (iv) THAT TENANT IS LEASING THE PREMISES, AS APPLICABLE, IN AN "AS IS" PHYSICAL CONDITION AND IN AN "AS IS" STATE OF REPAIR.

(b) General Release. Subject to Section 9.3(a) above, Tenant and its owners, employees, agents, assigns and successors agree that upon the Effective Date, Tenant shall be deemed conclusively to have released and discharged Landlord and its agents, employees, trustees, assigns and successors, from any and all damages, losses, demands, claims, debts, liabilities, obligations, causes of action and rights, whether known or unknown, by Tenant regarding the Premises, including, but not limited to, the environmental condition of the Premises.

Section 9.4 Representations and Warranties of Landlord. Landlord represents and warrants that as of the Effective Date:

(a) Landlord has all requisite right, power and authority to lease the Premises to Tenant pursuant to this Lease, and Landlord has received no notice that any action or suit, or threat of any action or suit, exists that could prevent Landlord's execution or performance of this Lease or prevent Tenant's ability use the Premises pursuant to the terms and conditions of this Lease.

(b) Landlord has taken all necessary or appropriate actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of, this Lease by Landlord.

(c) This Lease is a legal, valid and binding obligation of the Landlord, enforceable against it in accordance with its terms subject to and qualified by the effect of: (a) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (b) general principles of equity.

ARTICLE 10. EMINENT DOMAIN

The following provisions of this Article 10 shall apply only in the event of a Taking by the State of California, a State agency or by the federal government.

Section 10.1 Termination of Lease. Landlord and Tenant agree that, in the event of a Taking such that Tenant reasonably determines that the Premises cannot continue to be operated, at reasonable cost, for its then current use, then this Lease shall, at Tenant's sole option, terminate as of the date of such Taking.

Section 10.2 Continuation of Lease and Presumption of Restoration. Landlord and Tenant agree that, in the event of a Taking that does not result in the termination of this Lease pursuant to Section 10.1 above, this Lease shall continue in effect as to the remainder of the Premises, and the Net Condemnation Award will be disbursed in accordance with Section 10.4 below to Tenant.

Section 10.3 Temporary Taking. If there shall be a temporary Taking with respect to all or any part of the Premises or of Tenant's interest in this Lease, then the Term shall not be reduced and Tenant shall continue to pay all Rents, Impositions and other charges required in this Lease, without reduction or abatement at the times specified; provided, however, that Tenant shall not be required to perform such obligations that Tenant is prevented from performing by reason of such temporary Taking.

Section 10.4 Award.

(a) Prior to the Closing, if there is a Taking, whether whole or partial Landlord shall be entitled to receive and retain any Net Condemnation Award. After the Closing, if there is a Taking, whether whole or partial, Landlord and Tenant shall be entitled to receive and retain

such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, or as may be otherwise agreed, taking into consideration the fact that Landlord's interest in the Premises is limited to the land (exclusive of the Improvements), as encumbered by this Lease, and a reversionary interest in the Premises upon the expiration of the Term.

(b) If the Premises shall be restored as is contemplated in Section 10.2 above, Tenant shall be entitled to recover the costs and expenses incurred in such restoration out of any Net Condemnation Award. Thereafter, if the condemning authority does not make separate awards, the Parties agree that any Net Condemnation Award will be allocated on a proportionate basis, taking into consideration the fact that Landlord's interest in the Premises is limited to the land (exclusive of the Improvements), as encumbered by this Lease, and a reversionary interest in the Premises upon the expiration of the Term.

(c) If the Parties are unable to agree as to amounts that are to be allocated to the respective interests of each Party, then each Party shall select an independent M.A.I. real estate appraiser (an "**Appraiser**"). Each Appraiser shall separately determine the amount of the balance of the Net Condemnation Award that is to be allocated to the interests of each Party. If the percentage of the balance of the Net Condemnation Award each Appraiser allocates to Landlord (i) are within ten percent (10%) of each other, the two allocations shall be averaged, and such average shall be the final allocation of the Net Condemnation Award, or (ii) are not within ten percent (10%) of each other, the two Appraisers shall then select a third Appraiser, who shall independently allocate the Net Condemnation Award between Landlord and Tenant, and the middle of such three allocations shall be the final allocation of the Net Condemnation Award.

ARTICLE 11. DAMAGE OR DESTRUCTION

Section 11.1 Damage or Destruction to Premises.

(a) Tenant shall give prompt written notice to Landlord after the occurrence of any fire, earthquake, act of nature or other casualty to, or in connection with, the Premises, the Improvements or any portion of them projected to cost in excess of Fifty Thousand Dollars (\$50,000) to remedy (a "**Casualty**").

(b) Subject to Section 11.2 below, if, during the Term, the Improvements shall be damaged or destroyed by Casualty, Tenant shall repair or restore the Improvements, so long as Tenant determines, in its sole discretion, that it is economically feasible to do so, to substantially the same condition in which they existed prior to the occurrence of such Casualty, and in such event Tenant provides or causes to be provided sufficient additional funds which, when added to such insurance proceeds, will fully effect such repair or restoration.

(c) Upon the occurrence of any such Casualty, Tenant, promptly and with all due diligence, shall apply for and collect all applicable insurance proceeds recoverable with respect to such Casualty. In the event that Tenant shall determine, by notice to Landlord given within thirty (30) days after receipt by Tenant of any such insurance proceeds, that it is not economically feasible to restore the Improvements and/or the Premises to substantially the same condition in

which they existed prior to the occurrence of such Casualty, then Tenant may, at its sole discretion, terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice.

(d) If Tenant terminates this Lease pursuant to this Section 11.1, Tenant shall surrender possession of the Premises to Landlord immediately and assign to Landlord all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises.

Section 11.2 Damage or Destruction Near End of Term. If, during the last seven (7) years of the Term, the Improvements shall be damaged by Casualty, then Tenant shall have the option, at its sole discretion, to be exercised within sixty (60) days after such Casualty: (a) to repair or restore the Improvements as hereinabove provided in this Article 11; or (b) to terminate this Lease by notice to Landlord, which termination shall be deemed to be effective as of the date of the Casualty. If Tenant terminates this Lease pursuant to this Section 11.2, Tenant shall surrender possession of the Premises to Landlord immediately and assign to Landlord all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises, subject to Section 11.3 below.

Section 11.3 Distribution of Insurance Proceeds. In the event that this Lease is terminated pursuant to Sections 11.1 or 11.2 of this Lease, the insurance proceeds received as the result of such Casualty shall be paid to Tenant or, as applicable pursuant to Sections 11.1 and 11.2 above, assigned or paid over to Landlord.

ARTICLE 12. EVENTS OF DEFAULT

Section 12.1 Events of Default. Each of the following shall be an “**Event of Default**” by Tenant under this Lease:

(a) failure by Tenant to pay any undisputed Rent when due or to pay or cause to be paid any Impositions, if applicable, or insurance premiums, if such failure shall continue for a period of thirty (30) days after notice thereof has been given by Landlord to Tenant;

(b) failure by Tenant to adequately manage, operate, or maintain the Premises as required by this Lease;

(c) failure by Tenant to comply with the use covenants set forth in this Lease;

(d) abandonment of the Premises by Tenant;

(e) an attempt by Tenant to voluntarily or involuntarily undertake a Transfer in violation of this Lease, unless otherwise permitted herein;

(f) a determination by Landlord in its reasonable judgment that any of Tenant's certificates, documents, or schedules supplied to Landlord by Tenant were untrue in any material respect when made, or that Tenant concealed or failed to disclose a material fact from Landlord;

(g) failure by Tenant to perform, keep or observe any of the other terms, covenants, agreements, or conditions of this Lease other than as set forth in Section 12.1(a), if such failure shall continue for a period of sixty (60) days after written notice thereof has been given by Landlord to Tenant; provided, however, that if any such failure cannot reasonably be cured within such sixty (60) day period, then Landlord shall not have the right to terminate this Lease or Tenant's right to possession under this Lease so long as Tenant promptly commences the curing of any such failure and thereafter proceeds in good faith and with due diligence to remedy and correct such failure within a reasonable period of time;

(h) the subjection of any right or interest of Tenant in this Lease to attachment, execution or other levy, or to seizure under legal process, if not released within sixty (60) days;

(i) the appointment of a receiver, to take possession of Tenant's Estate or of Tenant's operations on the Premises for any reason, if such receivership is not terminated, dismissed or vacated within ninety (90) days after the appointment of the receiver;

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

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

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

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

(n) a default under the Master Dissolution Agreement.

Section 12.2 Rights and Remedies.

(a) At any time after the occurrence of an Event of Default under this Lease, subject in all respects to the provisions of this Lease regarding Landlord's rights to cure defaults by Tenant, Landlord, in addition to any other remedies available to Landlord at law or equity, may terminate this Lease by giving Tenant written notice thereof, setting forth in such notice an effective date for termination which is not less than two hundred (270) days after the date of such notice, in which event this Lease and Tenant's Estate created hereby and all interest of Tenant and all parties claiming by, through or under Tenant shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same

extent as if the effective date of such notice had been the date originally fixed in Article 2 hereof for the expiration of the Term. In such event, Landlord, its agents or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Premises (including all buildings and other Improvements comprising any part thereof) at any time from and after the effective termination date without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or existing breaches of covenants. Notwithstanding anything to the contrary in the foregoing, Landlord shall not initiate any effort to terminate this Lease within the first year after the Effective Date, unless the Tenant's Event of Default is due to wholesale waste of the Premises or the conduct of illegal activities at the Premises.

(b) Landlord may institute an action for specific performance of the terms of this Lease to the extent that such action is available at law or in equity with respect to the Event of Default.

(c) Upon the exercise of Landlord's remedies pursuant to this Section 12.2, Tenant shall execute such releases, deeds and other instruments in recordable form as Landlord shall reasonably request in order to accurately set forth of record the then current status of Tenant's Estate and Tenant's rights under this Lease.

Section 12.3 Deficiency Judgments. Landlord agrees that it shall not be entitled to seek a personal judgment against Tenant and that upon any Event of Default under this Lease, the rights of Landlord to enforce the obligations of Tenant, its successors or assigns, or to collect any judgment, shall be limited to the termination of this Lease and of Tenant's Estate and the enforcement of any other rights and remedies specifically granted to Landlord under this Lease, provided, however, that the limitations set forth in this Section 12.3 shall not be applicable to: (a) fraud; (b) misappropriation of any Net Condemnation Award or insurance proceeds; or (c) misappropriation of any funds that Tenant now or hereafter holds or controls for the benefit of or otherwise belonging to Landlord.

Section 12.4 Default by Landlord.

(a) Events of Default. Landlord shall be in default of this Lease if it fails to perform any provision of this Lease that it is obligated to perform or if any of Landlord's representations or warranties is untrue or becomes untrue in any material respect, and if the failure to perform or the failure of such representation or warranty is not cured within sixty (60) days after written notice of the default has been given to Landlord. If the default cannot reasonably be cured within sixty (60) days, Landlord shall not be in default of this Lease if Landlord commences to diligently and in good faith continues to cure the default until completion.

(b) Right to Cure; Tenant's Remedies. If Landlord shall have failed to cure a default by Landlord after expiration of the applicable time for cure of a particular default, Tenant, at its election and sole discretion, but without obligation therefor, may terminate this Lease by giving Landlord written notice thereof, setting forth in such notice an effective date for termination which is not less than two hundred (270) days after the date of such notice, in which event this Lease and Tenant's Estate created hereby and all interest of Tenant and all parties claiming by, through or under Tenant shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective

date of such notice had been the date originally fixed in Article 2 hereof for the expiration of the Term.

ARTICLE 13.
DISPUTE RESOLUTION

Section 13.1 Meet and Confer. Before resorting to mediation, nonbinding arbitration, or other legal process, the Parties shall meet and confer and attempt to resolve any dispute arising from or relating to this Lease, subject to the following provisions:

(a) Any Party desiring to meet and confer shall so advise the other Party pursuant to a written notice. Within fifteen (15) days after provision of that written notice by the Party desiring to meet and confer, the Parties shall meet and attempt to amicably resolve their dispute. Each Party shall send to the meeting a person with full authority to resolve the dispute. If any dispute remains unresolved at the end of the meeting, either Party shall have the right to invoke the following mediation process:

(i) Any dispute that remains unresolved after the meet and confer shall promptly be submitted to nonbinding neutral mediation before a mutually acceptable, neutral retired judge or justice with the Judicial Arbitration and Mediation Service (“**JAMS**”), located at Two Embarcadero Center, Suite 1500, San Francisco, California 94111 (“**JAMS San Francisco Office**”). If, within five (5) days after the meet and confer, the Parties are unable to agree upon the selection of a neutral mediator, then the first available judge or justice at the JAMS San Francisco Office shall serve as the neutral mediator.

(ii) The Parties agree to commit to at least one (1) full day to the mediation process. The costs of the mediator, if any, will be paid for by each Party on an equal basis. If a mediated settlement is reached, no Party shall be the prevailing party for the purposes of the resolution of the dispute.

(iii) Unless required by Legal Requirements, no Party shall be permitted to file legal action without first following the provisions within this Section 13.

ARTICLE 14.
QUIET ENJOYMENT AND POSSESSION; INSPECTIONS

Section 14.1 Quiet Enjoyment. Landlord covenants and warrants that Tenant, upon Debt Discharge referenced in this Lease and upon performance and observance of all of its covenants contained in this Lease, shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Premises during the Term, subject only to the provisions of this Lease and all applicable Legal Requirements.

Section 14.2 Landlord’s Right of Inspection. Notwithstanding Section 14.1 above, Landlord, in person or through its agents, upon reasonable prior notice to Tenant, shall have the right, subject to the rights of Tenant(s), to enter upon the Premises for purposes of reasonable inspections performed during reasonable business hours in order to assure compliance by Tenant

with its obligations under this Lease. In addition to the aforementioned inspection rights, Tenant hereby grants a right of access to the Landlord or any of its authorized representatives, with respect to any non-privileged and disclosable books, documents, papers, or other records related to this Lease in order to make audits, examinations, excerpts, and transcripts.

ARTICLE 15.
VACATION OF PREMISES

Section 15.1 Surrender. Tenant covenants that upon any termination of this Lease, whether by lapse of time or because of any of the conditions or provisions contained herein, Tenant will peaceably and quietly yield and surrender possession of the Premises to Landlord in as good condition as of the Effective Date, ordinary wear and tear excepted. An action of forcible detainer shall lie if Tenant holds over after a demand for possession is made by Landlord.

(a) All Tenant's furniture and personal property, including any modular buildings, installed or placed on the Premises during the Term shall be removed by Tenant at the expiration or termination of this Lease.

(b) If the Tenant fails to remove any such furniture or personal property, including any modular buildings, that is entitled for removal under this section, within thirty (30) days of the expiration or earlier termination of the Lease, Landlord may dispose of such furniture and/or personal property, subject to the provisions of this Lease and all applicable Legal Requirements, the reasonable costs of which the Tenant shall be responsible.

Section 15.2 No Right to Possession after Termination. Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. Any holding over by Tenant (or any successor-in-interest to Tenant) after the expiration or earlier termination of this Lease shall be construed to be a tenancy at sufferance on all of the terms and conditions set forth herein to the extent not inconsistent with a tenancy at sufferance. Acceptance by Landlord of Rent or any other sum payable hereunder after such expiration or earlier termination shall not result in an extension or renewal of this Lease. If Tenant fails to surrender the Premises upon the expiration or earlier termination of this Lease, Tenant shall indemnify, defend and hold harmless Landlord from and against all loss, damage, cost, liability or expense (including, without limitation, attorneys' fees and expenses) resulting from or relating to such failure to surrender the Premises including, without limitation, any Claim made by any succeeding Tenant.

Section 15.3 Waiver of Relocation Benefits. Tenant hereby waives any rights that it may have for relocation benefits or assistance as a result of termination of this Lease, and hereby releases Landlord from any liability for such benefits or assistance.

ARTICLE 16.
NON-MERGER

Except upon expiration of the Term or upon termination of this Lease pursuant to an express right of termination set forth herein, there shall be no merger of either this Lease or

Tenant's Estate created under this Lease with the fee estate of the Premises or any part thereof by reason of the fact that the same person may acquire, own or hold, directly or indirectly: (a) this Lease, Tenant's Estate created under this Lease or any interest in this Lease or Tenant's Estate (including the Improvements), and (b) the fee estate in the Premises or any part thereof or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of Landlord, having an interest in: (i) this Lease or Tenant's Estate created under this Lease; and (ii) the fee estate in the Premises or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

ARTICLE 17.
ASSIGNMENTS AND TRANSFERS

Section 17.1 Consent Required. Subject to the terms of, and except as expressly provided in this Lease, Tenant shall not, without the prior written consent of Landlord, sell, assign, hypothecate, or transfer this Lease or any interest therein ("**Transfer**"). A Transfer shall be deemed to include any attempt by Tenant to make or permit any voluntary or involuntary, total or partial, sale, lease, assignment, conveyance, pledge, encumbrance, or other transfer of any or all of the Premises, the Improvements, any equipment related thereto, or this Lease. Any person to whom any Transfer is attempted without such consent shall have no Claim, right or remedy whatsoever under this Lease against Landlord, and Landlord shall have no duty to recognize any person claiming under or through the same. Landlord shall have the right to Transfer the Excluded Area for rehabilitation and adaptive reuse pursuant to Section 2.1(a).

Section 17.2 Limitations on Consent Requirement. Notwithstanding the foregoing, the consent of Landlord shall not be required for grants and easements for the establishment, operation, and maintenance of utility services.

Section 17.3 Subsequent Assignment. In cases where Landlord's consent is required, Landlord's consent to one assignment will not waive the requirement of its consent to any subsequent assignment.

Section 17.4 Request for Consent. If Tenant requests Landlord's consent to a specific assignment, Tenant shall provide to Landlord such information as may reasonably be required by Landlord.

ARTICLE 18.
PARTICULAR COVENANTS

Section 18.1 Non-Discrimination.

(a) Tenant shall not discriminate against, or segregate any person or group of persons on the grounds of race, color, creed, religion, sex, sexual orientation, condition of Acquired Immune Deficiency Syndrome ("**AIDS**") or AIDS related complex, marital status, national origin or ancestry, disability, age (other than senior housing permitted by law) or source of income (including rental housing subsidies) in the lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Premises nor shall Tenant, or any person claiming under or through Tenant,

establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Tenant, subtenants, or vendees of the Premises. The foregoing covenant shall run with the land.

(b) Landlord shall be entitled to invoke any remedies available at law or in equity to redress any breach of this Section 18.1 or to compel compliance therewith by Tenant. The obligations of Tenant and Landlord to comply with Section 18.1(a) above shall inure to the benefit of each other. Landlord shall be entitled to invoke any remedies available at law or in equity to redress any breach of this Article 18 or to compel compliance therewith by Tenant.

Section 18.2 Employment Nondiscrimination. Tenant, its successors, assigns, contractors and subcontractors may not discriminate against any employee or applicant for employment in connection with the Premises on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, marital status, AIDS or AIDS-related complex, or physical or mental disability. Each of the following activities shall be conducted in a nondiscriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rates of pay and other forms of compensation; and selection for training, including apprenticeship. Tenant, and its successors, assigns, contractors and subcontractors may not retaliate against, threaten, or harass employees based on immigration status.

ARTICLE 19. MISCELLANEOUS PROVISIONS

Section 19.1 Integration; Amendments. This Lease, together with the Exhibits incorporated by reference, constitutes the entire understanding between the Parties with respect to the transaction contemplated by this Lease. This Lease may be modified or amended only upon the mutual written agreement of the Parties.

Section 19.2 Governing Law. This Lease, and the rights and obligations of the Parties under this Lease, shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in the County of Alameda.

Section 19.3 Binding Effect. This Lease shall inure to the benefit of and be binding upon the Parties hereto, their heirs, successors, administrators, executors and permitted assigns except that there shall be no transfer of any interest of any of the Parties hereto except pursuant to the terms of this Lease. The Parties intend that the covenants contained in this Lease shall constitute covenants running with the land and shall bind the Premises and every person having an interest in the Premises during the Term. Tenant agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Premises. Nothing in this Section 19.3 shall in any way alter the provisions against assignment or subletting in this Lease.

Section 19.4 Severability. In the event any provision or portion of this Lease is held by any court of competent jurisdiction to be invalid or unenforceable, such holdings shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

Section 19.5 Captions. All captions, headings, paragraphs, subparagraphs, letters and other reference captions are solely for the purpose of facilitating convenient reference to this Lease, shall not supplement, limit or otherwise vary the text of this Lease in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions hereof. All references to particular articles, sections, subsections, paragraphs and subparagraphs by number refer to the text of such items as so numbered in this Lease.

Section 19.6 Gender. Words of any gender used in this Lease shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

Section 19.7 Exhibits. Each and every exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is and shall be construed to be made a part of this Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and otherwise mentioned.

Section 19.8 References. All references to paragraphs or subparagraphs shall be deemed to refer to the appropriate paragraph or subparagraph of this Lease. Unless otherwise specified in this Lease, the terms “herein”, “hereof”, “hereinafter”, “under this Lease” and other terms of like or similar import, shall be deemed to refer to this Lease as a whole, and not to any particular paragraph or subparagraph hereof.

Section 19.9 Rights Cumulative. Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred under this Lease shall be cumulative and not restrictive of those provided at law or in equity.

Section 19.10 Notices. All formal notices, requests, demands, or other communications required or permitted to be given under this Lease shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by overnight or hand delivery by a recognized, reputable delivery service or courier, to each Party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any Party, from time to time, may change its address for notices under this Lease. Either Party may, by notice to the other Party given pursuant to this Lease, specify additional or different addresses for notice purposes.

To Landlord: City of Oakland
 Economic & Workforce Development Department
 Real Estate Division
 250 Frank H. Ogawa Plaza, 4th Floor
 Oakland, CA 94612
 Attn: Real Property Asset Manager

With a copy to: Office of the City Attorney
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attn: Supervising City Attorney for Real Estate

To Tenant: Oakland Unified School District
1000 Broadway, Suite 300
Oakland, CA 94607
Attn: General Counsel's Office

Section 19.11 Time of Essence. Time is and shall be of the essence in this Lease.

Section 19.12 Relationship of Parties. In no event shall this Lease be construed as creating a legal partnership, joint venture, employment, or agent/principal relationship between the Parties.

Section 19.13 Litigation. Tenant shall promptly give notice in writing to Landlord of any litigation pending or threatened against the Tenant in which the amount claimed is in excess of One Hundred Thousand Dollars (\$100,000) and relates to the Premises.

Section 19.14 Waiver. Any waiver by Landlord of an obligation in this Lease must be in writing and executed by an authorized agent of Landlord. No waiver will be implied from any delay or failure by Landlord to take action on any breach or event of default of Landlord or to pursue any remedy allowed under this Lease or applicable law. Any extension of time granted to Tenant to perform any obligation under this Lease shall not operate as a waiver or release from any of its obligations under this Lease. Consent by Landlord to any act or omission by Tenant shall not be construed to be a consent to any other act or omission or to waive the requirement for Landlord's written consent to future waivers.

Section 19.15 Enforced Delay. Performance by either Party under this Lease shall not be deemed to be in default where delays or default are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of nature; acts of the public enemy; epidemics; pandemic; quarantine restrictions; freight embargoes; lack of transportation; or unusually severe weather ("**Enforced Delay**"). An extension of time for any such cause shall be for the period of the Enforced Delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause. Times of performance under this Lease may also be extended in writing by Landlord and Tenant. On conditions acceptable to both Parties, Landlord and Tenant may elect, in a mutually executed writing, to terminate this Lease as a result of or related to an Enforced Delay, which renders repairs to, or replacement of, the Premises financially unfeasible.

Section 19.16 Interpretation. In interpreting this Lease, it shall be deemed to have been prepared jointly by the Parties and no ambiguity shall be resolved against either Party on the premise that it, or its attorney, was responsible for drafting this Lease or any provision hereof.

Section 19.17 Attorneys' Fees. In the event any legal action is commenced to interpret or to enforce the terms of this Lease, or to collect damages as a result of any breach of this Lease, the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees and costs incurred in the action.

Section 19.18 Reasonable Approvals. The approval of Party of any documentation or submissions herein called for shall not be unreasonably withheld, delayed or conditioned.

Section 19.19 Landlord Approvals. Whenever a reference is made herein to an action or approval to be undertaken by Landlord, the City Administrator, or his or her designee, are authorized to act on behalf of Landlord, unless specifically provided otherwise. If the City disapproves or fails to give its approval or consent, the request shall be considered disapproved. Notwithstanding any other provision of this Lease, the approval or consent of the Landlord for any matter or item required to be approved by the Landlord under this Lease shall not impose any liability on the Landlord with respect to such matter or item, which matter or item shall remain the sole responsibility of the Tenant.

Section 19.20 Counterparts. This lease may be executed in one or more counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement.

[Remainder of page intentionally left blank.]

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

LANDLORD:

City of Oakland,
a municipal corporation

By: _____

Name: _____

Title: _____

Approved as to form and legality:

By: _____

Name: _____

Title: _____

TENANT:

Oakland Unified School District,
a public school district organized and existing
under the laws of the State of California

By: _____

Dr. Kyla Johnson-Trammell
Superintendent

By: _____

Name: _____

Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

[Attached]

EXHIBIT B

SITE PLAN

[Attached]

EXHIBIT C

EXCLUDED AREA

[Attached]

EXHIBIT D

INSURANCE REQUIREMENTS

[Attached]

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