

**GROUND LEASE AGREEMENT**

**BY AND BETWEEN  
THE CITY OF SAN JOSE**

**AND**

**SVCREATES**

**FOR CREATIVE CENTER FOR THE ARTS**

## TABLE OF CONTENTS

RECITALS.....	1
AGREEMENT .....	2
SECTION 1. <u>DEFINITIONS</u> .....	2
SECTION 2. <u>LEASE OF LAND</u> .....	4
2.1. <u>Land</u> .....	4
2.2. <u>Net Lease</u> .....	4
2.3. <u>Conditions to Lease</u> .....	4
SECTION 3. <u>TERM</u> .....	5
SECTION 4. <u>RENT AND CONSIDERATION</u> .....	6
4.1. <u>Base Rent</u> .....	6
4.2. <u>Community Use</u> .....	7
4.3. <u>Operating Procedures</u> .....	7
4.4. <u>City Address for Rent Payments</u> .....	7
SECTION 5. <u>AUTHORIZED USE, CONDITIONS OF TITLE AND OPERATION OF PROPERTY</u> 7	
5.1. <u>Authorized Use</u> .....	7
5.2. <u>Condition of Title</u> .....	8
5.3. <u>Condition of Property; Remediation Contingency</u> .....	8
SECTION 6. <u>MAINTENANCE OF PROPERTY, CENTER</u> .....	9
6.1. <u>Lessee Obligations</u> .....	9
6.2. <u>City Obligations</u> .....	9
6.3. <u>Trash and Refuse</u> .....	9
6.4. <u>Waste or Nuisance</u> .....	10
SECTION 7. <u>CONSTRUCTION OF IMPROVEMENTS</u> .....	10
7.1. <u>General Construction Standards</u> .....	10
7.2. <u>Center Construction &amp; Development Schedules</u> .....	10
7.3. <u>City's Approval of Improvements</u> .....	10
7.4. <u>Compliance with Construction Documents and Laws; Issuance of Permits</u> .....	11
7.5. <u>Construction Meetings</u> .....	12
7.6. <u>City's Cooperation</u> .....	12
7.7. <u>Rights of Access</u> .....	12
7.8. <u>Punch List</u> .....	12
7.9. <u>Notice of Completion</u> .....	13
7.10. <u>No Right to Demolish</u> .....	13
7.11. <u>Discovery of Hazardous Materials During Construction</u> .....	13
7.12. <u>Governmental Approvals</u> .....	13
7.13. <u>Hazardous Materials</u> .....	13
7.14. <u>Bonding Improvements</u> .....	13
7.15. <u>Insurance</u> .....	14
7.16. <u>Asbestos Containing Materials</u> .....	14
7.17. <u>Underground Storage Tanks</u> .....	14
7.18. <u>No City Duty</u> .....	14

7.19 **Protection of City.**..... 15

7.20 **Mechanics Liens.**..... 15

SECTION 8. **CONSTRUCTION OF FUTURE ALTERATIONS** ..... 16

8.1 **General Construction Standards.** ..... 16

8.2 **City's Approval of Plans.** ..... 16

8.3 **Compliance with Construction Documents and Laws; Issuance of Permits**..... 17

8.4 **Construction Meetings.** ..... 17

8.5 **City's Cooperation.**..... 17

8.6 **Rights of Access.** ..... 18

8.7 **Punch List.**..... 18

8.8 **Notice of Completion.** ..... 18

SECTION 9. **TITLE TO IMPROVEMENTS, ALTERATIONS AND REPAIRS** ..... 18

SECTION 10. **UTILITY SERVICES**..... 19

SECTION 11. **EMINENT DOMAIN**..... 19

11.1 **Definition of Taking.** ..... 19

11.2 **Total Taking.**..... 19

11.3 **Partial Taking.** ..... 20

11.4 **Application of Awards.** ..... 20

11.5 **Notice of Taking; Single Proceeding.**..... 22

SECTION 12. **SIGNS/ADVERTISING**..... 22

SECTION 13. **ASSIGNMENT, SUBLEASE OR TRANSFER** ..... 22

13.1 **No Transfer Without City Consent.**..... 22

13.2 **Definition of Transfer**..... 23

13.3 **City Approval of Transfer.** ..... 23

13.4 **Consent Not Waiver.** ..... 23

13.5 **City-Approved Sublease**..... 23

SECTION 14. **TERMINATION OF AGREEMENT**..... 24

14.1 **Breach and Events of Default.**..... 24

14.2 **Remedies for Default.**..... 25

SECTION 15. **WAIVER OF BREACH**..... 27

SECTION 16. **INDEMNITY AND WAIVER OF CLAIM** ..... 28

16.1 **Indemnification.**..... 28

16.2 **Assumption of Risk.**..... 28

16.3 **Waiver of Claim.**..... 28

16.4 **Exceptions.**..... 29

SECTION 17. **INSURANCE** ..... 29

17.1 **Insurance Requirements.** ..... 29

17.2 **Application of Insurance Proceeds.** ..... 30

SECTION 18. **BAILEE DISCLAIMER**..... 30

SECTION 19. **RIGHT TO ENTER**..... 30

SECTION 20. **TAXES; ABSENCE OF LIENS**..... 31

20.1 **Payment by Lessee.**..... 31

20.2 **Possessory Interest.**..... 31

20.3 **No Liens.**..... 32

**20.4 Indemnity for Lessee’s Failure to Comply..... 32**  
**20.5 Payment by City..... 32**  
**20.6 Contest of Tax or Charge..... 32**  
**20.6.1 Notice of Contest..... 32**  
**20.6.2 Procedure for Contest..... 32**  
**20.6.3 Payment Upon Final Determination..... 33**  
**20.6.4 Failure to Pay Constitutes Event of Default..... 33**  
**SECTION 21. QUIET ENJOYMENT..... 33**  
**SECTION 22. DAMAGE OR DESTRUCTION..... 33**  
**22.1 Destruction Covered by Insurance..... 33**  
**22.2 Destruction Not Covered by Insurance..... 33**  
**22.3 Survival of Obligation to Repair..... 34**  
**SECTION 23. COMPLIANCE WITH LAWS..... 34**  
**SECTION 24. SURRENDER OF PROPERTY..... 34**  
**SECTION 25. HAZARDOUS MATERIALS - PROHIBITIONS AND RESTRICTIONS.. 35**  
**SECTION 26. AUTHORITY, STATEMENTS, RECORDS AND INFORMATION..... 35**  
**SECTION 27. GIFT..... 36**  
**SECTION 28. HEIRS, SUCCESSORS AND ASSIGNS..... 36**  
**SECTION 29. REPRESENTATIONS AND WARRANTIES..... 36**  
**SECTION 30. [INTENTIONALLY OMITTED]..... 36**  
**SECTION 31. LIMITATION OF CITY’S LIABILITY..... 36**  
**SECTION 32. AMERICANS WITH DISABILITIES ACT; OTHER ACCESSIBILTY  
LAWS 37**  
**SECTION 33. CASP INSPECTION..... 37**  
**SECTION 34. NO RELOCATION BENEFITS..... 38**  
**SECTION 35. NONDISCRIMINATION..... 38**  
**SECTION 36. MISCELLANEOUS..... 39**  
**36.1 Consent..... 39**  
**36.2 Controlling Law..... 39**  
**36.3 Entire Agreement..... 39**  
**36.4 Exhibits and Addenda..... 39**  
**36.5 Force Majeure..... 40**  
**36.6 Headings..... 40**  
**36.8 Material Considerations..... 40**  
**36.9 Amendment or Modification of Agreement..... 40**  
**36.10 No Assumption..... 40**  
**36.11 Number and Gender..... 41**  
**36.12 Recordation..... 41**  
**36.13 Resolutions..... 41**  
**36.14 Severability..... 41**  
**36.15 Successors and Assigns..... 41**  
**36.16 Lessee not an Agent of City..... 41**  
**36.17 Time of Essence..... 42**  
**36.18 Venue..... 42**

<b>36.19 <u>Distinction from Regulatory Approval</u></b> .....	42
<b>36.20 <u>Survival of Obligations</u></b> .....	42
<b>SECTION 37. <u>NOTICES</u></b> .....	42
<b>SECTION 38. <u>MORTGAGE LOANS</u></b> .....	43
<b>SECTION 39. <u>PERMITTED MORTGAGES AND LENDER RIGHTS</u></b> .....	43
<b>SECTION 40. <u>ADDITIONAL MORTGAGEE PROTECTION PROVISIONS</u></b> .....	46
<b>EXHIBIT A Legal Description of Land</b> .....	1
<b>EXHIBIT B CCA Guiding Principles</b> .....	1
<b>EXHIBIT C Site Plan</b> .....	1
<b>EXHIBIT D-1 Development Schedule</b> .....	1
<b>EXHIBIT D-2 Construction Schedule</b> .....	1
<b>EXHIBIT E Hazardous Materials</b> .....	1
<b>EXHIBIT F Insurance Requirements</b> .....	1
<b>EXHIBIT G Memorandum of Ground Lease Agreement</b> .....	1
<b>EXHIBIT H Approved Financing</b> .....	1

**GROUND LEASE AGREEMENT BY AND BETWEEN THE CITY OF SAN JOSE AND  
SVCREATES FOR CREATIVE CENTER FOR THE ARTS**

THIS GROUND LEASE AGREEMENT FOR CREATIVE CENTER FOR THE ARTS (“Agreement” or “Lease”) is made as of the \_\_\_ day of \_\_\_\_\_, 2017, by and between the CITY OF SAN JOSE, a California municipal corporation, (“City”) and Silicon Valley Creates, a California nonprofit public benefit corporation doing business as SVCcreates (“Lessee”). For purposes of this Agreement, City and Lessee are sometimes referred to collectively herein as “Parties” and individually as “Party”.

**RECITALS**

A. City is the owner of record of that certain unimproved real property commonly known as “Japantown Corporation Yard,” that is bounded by N. 6<sup>th</sup> Street, N. 7<sup>th</sup> Street, E. Taylor Street and Jackson Street, in the City of San José, County of Santa Clara, State of California, as more particularly described in **Exhibit A** attached hereto and incorporated by reference herein (the “Land”).

B. City acquired the Land from Jackson Taylor Partners, LLC, a Delaware Limited Liability Company (“Company”) as a proposed site for a cultural and arts community center as set forth in the Agreement for Purchase and Sale of Real Property by and between the City and Company dated as of December 15, 2014 (“Purchase Agreement”).

C. Lessee wishes to lease the Land and construct and operate a community and cultural and arts community center, as described in **Exhibit B** attached hereto, that will consist of a three to five floor 60,000 square foot building for cultural and arts activities (“Center”) along with other improvements (together with Center the “Improvements”) on the Land. The Land and the Improvements together are hereinafter referred to as the “Property”.

D. City and Lessee desire that the Center be integrated into the residential and commercial project including the park to be constructed by Company on adjacent properties pursuant to the Site Plan as depicted in **Exhibit C** attached hereto and incorporated by reference herein.

E. Development of the Center was evaluated in the Japantown Corporation Yard Redevelopment Project final environmental impact report (“FEIR”) prepared under the California Environmental Quality Act (“CEQA”) (set forth in Public Resources Code §§21000 *et seq.*) which was certified by the San Jose City Council on April 21, 2008 (Resolution 74384).

F. The purpose of this Agreement is to set forth City’s and Lessee’s responsibilities with respect to the construction and operation of the Improvements on the Land.

**NOW THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

## **AGREEMENT**

### **SECTION 1.           DEFINITIONS**

Each reference in the body of this Agreement to specific terms or phrases set forth in this Section shall have the specific meanings and/or contain the respective express information set forth below. To the extent there is a conflict between the information in this Section and any more specific provision of this Agreement, such more specific provision shall control.

**“Agreement”** shall mean this Ground Lease Agreement By and Between City and Lessee, as set forth in the caption to this Agreement.

**“Center”** means a recreational center for the support of performing and other creative arts, or other cultural or community-based activities and organization, as set forth in Recital C.

**“City”** shall mean the City of San José, a municipal corporation and a charter city in the County of Santa Clara and the State of California.

**“Commencement Date”** shall have the meaning set forth in Section 3.

**“Days”** unless otherwise specified, shall mean calendar days.

**“Director”** shall mean the person designated Director of Economic Development by City, or such other person, division, department, bureau or agency as may be designated by the City Council or the City Manager from time to time to exercise functions equivalent or similar to those now exercised by the Director of Economic Development. The term also includes any person expressly designated by the Director of Economic Development to exercise rights and/or obligations empowered in the Director of Economic Development under this Agreement.

**“Effective Date”** shall mean the date of execution by City.

**“Environmental Laws”** shall mean and include all federal, state and local laws, statutes, ordinances, regulations, resolutions, decrees and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to

industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all related federal or state super lien or environmental clean-up statutes.

**“Event of Default”** or **“Events of Default”** shall have the meaning ascribed to it in Section 14.

**“Hazardous Materials”** shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever that are or become listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) substances, products, by-products, waste or other materials that may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

**“Improvements”** shall have the meaning set forth in Recital C.

**“Land”** shall have the meaning set forth in Recital A.

**“Laws”** means all present and future applicable judicial decisions, statutes, laws, ordinances, regulations, building codes, City rules and regulations adopted from time to time, regulations, orders and requirements and policies of all governmental authorities including without limitation city, state, municipal, county, federal agencies or the federal government, and their departments, boards, bureaus, commissions and officials and such other authority as may have jurisdiction including, without limitation, any regulation or order of a quasi-official entity or body.

**“Lease”** shall mean this ground lease agreement between City and Lessee, as set forth in the caption to this Agreement.

**“Lessee”** shall mean Silicon Valley Creates, a California nonprofit public benefit corporation doing business as “SVCreates”.

**“Municipal Code”** means the City of San José Municipal Code, as amended from time to time.

**“Person”** means an individual, a corporation, a partnership, a joint venture or any other form of business association or entity.



“**Property**” shall have the meaning set forth in Recital C.

“**Rent**” shall have the meaning set forth in Section 4.

“**Tax**” shall mean and include any assessment, license, charge, fee, imposition, or levy imposed by any governmental body.

“**Term**” shall have the meaning set forth in Section 3.

## **SECTION 2. LEASE OF LAND**

### **2.1. Land.**

City hereby leases, transfers and demises to Lessee, and Lessee hereby leases and takes from City, the Land for the terms and upon the agreements, covenants and conditions set forth in this Agreement, the Land described in **Exhibit A** attached hereto and incorporated by reference herein.

### **2.2. Net Lease**

This Lease is a net lease. Except as expressly provided to the contrary in this Lease, all costs incurred in the operation and maintenance of the Property shall be paid by Lessee.

### **2.3 Conditions to Lease**

- (a) Prior to execution of the Lease by City, Lessee must satisfy the following conditions, which shall include, but not be limited to, the following:
  - (i) Lessee shall have submitted a scope of development that shall include a proposed method of financing (e.g. fundraising plan) that will indicate how Lessee intends to finance development of the Center and other Improvements on the Land. Lessee shall have submitted the final method of financing within one (1) year of the Effective Date.
  - (ii) Lessee shall have submitted and City shall have approved preliminary construction plans and/or schematics for the Center. Within 24 months of the Effective Date, Lessee shall have submitted and City shall have approved conceptually the construction documents for the Center.

- (iii) Lessee shall have prepared and submitted to City for the Director of the City's Office of Economic Development (OED) approval a detailed proposed capital/operating budget for the Center, including allowances for community use as set forth in Section 4.2.
  - (iv) Lessee shall provide evidence that the Lessee entity is legally formed and shall disclose all of the principal parties involved in the Center.
- (b) Prior to the commencement of construction pursuant to Section 7 of the Lease, Lessee must satisfy the following conditions, which shall include, but not be limited to, the following:
- (i) Lessee shall have submitted proposed contract provisions of the construction contract necessary to begin construction of the Center. Within 24 months of the Effective Date, City shall have approved the final construction contract.
  - (ii) Lessee shall have obtained all entitlements, including construction permits, necessary to begin construction of the Center, within 30 months of the Effective Date.
  - (iii) Lessee shall have provided City information about the proposed entity that shall provide a completion guarantee. Prior to commencement of construction, but no later than 24 months after the Effective Date, Lessee shall have provided a completion guarantee for the Center.

Failure to perform any term or condition of this Subsection 2.3 shall be deemed an Event of Default under Subsection 14.1.

### **SECTION 3. TERM**

The term of this Agreement shall be for a period of fifty-five (55) years (or until sooner terminated as herein provided) ("Term"), commencing on the Commencement Date (as defined below) and terminating on the date that is the fifty-fifth (55th) anniversary of the Commencement Date (the "Termination Date"). The "**Commencement Date**" shall be the date Lessee has met all conditions set forth in Subsection 2.3, a notice of completion for construction of the Center has been filed in the Official Records of the Santa Clara County Recorder's Office, and upon the first sublessee moving into the Center; provided that if the Commencement Date has not occurred within six (6) years after the Effective Date, either Party shall have the right to terminate this Lease upon written notice to the other Party.

If either Party elects to terminate the Lease pursuant to this Section 3, Lessee shall return the Land to City and convey any Improvements on the Land to City in accordance with Section 24 unless otherwise agreed upon between City and Lessee. Thereafter, neither City nor Lessee shall have any further rights and/or obligations under this Lease.

Pursuant to Government Code §37380, Lessee may renew this Lease for a period exceeding 55 years but not exceeding 99 years, if the Lease is subject to periodic review every five years by the City's Office of Economic Development, taking into consideration the then current market conditions. Lessee shall complete and demonstrate completion of the following requirements upon expiration of the initial 55-year lease term prior to City's approval of any lease extension:

- a) Each year, OED and the City's Office of Cultural Affairs (OCA) shall review an Annual Report provided by Lessee on or about one hundred and twenty (120) days after the completion of the Center's fiscal year containing: audited financials for the Center and a list of current tenants.
- b) Public Works shall perform a property inspection every 5 years.
- c) At the end of the initial 55-year term, OED/OCA shall perform a review of the most recent 5 years of operating performance of the CCA ("Performance Review"), which shall include but not be limited to occupancy rates, community usage rates, and all information contained in the Annual Reports.
- d) At the end of the initial 55-year term, Public Works shall perform its periodic property inspection and develop a Property Improvement Plan for the CCA, if one is required.

Upon a satisfactory Performance Review, satisfaction of the Property Improvement Plan, and upon meeting requirements set forth in Government Code Section 37380, City may renew this lease for a period up to 99 years, in its sole discretion, subject to any federal, state or local regulations. Any renewal may be subject to additional terms and provisions.

## **SECTION 4. RENT AND CONSIDERATION**

### **4.1 Base Rent.**

In exchange for the covenants and conditions in this Agreement, Lessee shall pay to City the sum of One Dollars (\$1.00) per year as consideration for rental, use and occupancy of the Property ("Rent"). Rent shall be due and payable in advance on or before the first day of January of each year, commencing with the Commencement Date. It is not the intent of this Agreement to create any tenancy by Lessee beyond the expiration or termination date hereinabove set forth. Any holding over after the expiration or earlier termination of the Term of this Agreement shall be conditioned upon the approval of the City Council and on terms and conditions approved by the City Council.

#### **4.2 Community Use.**

As further consideration of the covenants and conditions in this Agreement, Lessee shall:

- A. Establish a rental structure (the “CCA Fee Policy”) for the Center that encourages activation and community use, while still covering the cost of event operation.
- B. Shall provide below market rental space for local nonprofit arts organizations serving families, students, artists and local residents that may include, but are not limited to: SJ Taiko, CreaTV, New Ballet School, SJ Jazz, Teatro Vision, Cashion Cultural Legacy/Los Lopenos, SJ Dance Co., Empire 7 Studios, Vivace Youth Chorus, Mission Chamber Orchestra and Lessee.
- C. Shall provide space in the Center for up to two meetings or events per month to City, upon reasonable notice and mutually agreeable dates.
- D. Lessee agrees to coordinate with City events staff and obtain necessary permits and permissions to conduct outdoor events.

#### **4.3 Operating Procedures.**

Lessee will establish such reasonable rules and regulations to govern the public’s use of the Center in order to ensure a high level, quality and character of the Center operations (“Center Rules”), consistent with the guiding principles set forth in Exhibit B. Lessee shall provide Director with a copy of the Center Rules when the Center opens to the public, and any subsequent amendment thereto.

#### **4.4 City Address for Rent Payments.**

Payments of Rent or other fees and charges of any kind under this Agreement shall be addressed to:

City of San Jose  
Office of Economic Development, Real Estate Services  
200 E. Santa Clara Street, T-12  
San Jose, CA 95113  
Attn: Account Clerk

### **SECTION 5. AUTHORIZED USE, CONDITIONS OF TITLE AND OPERATION OF PROPERTY**

#### **5.1 Authorized Use.**

The Property shall be used exclusively for the operation of a cultural and arts

community center. Such use may include, without limitation, rehearsal rooms, classrooms, office space, meeting rooms for arts groups, artists, City programs and community groups and organizations, community television studio, catering (including serving alcohol during events) per City regulations/code, and other recreational uses or neighborhood serving uses. Neither Lessee, nor any of its employees or agents, shall conduct, transact or otherwise carry on any business or service on the Property that is not specifically authorized by this Agreement. After construction of the Center, Lessee shall provide to City a list of sublessees as contained in the Annual Report, which is referenced in Section 3(a) and shall make available copies of sublease agreements upon request by City.

If Lessee, for budgetary or operational reasons, closes the Center and desires to assign this Lease, City agrees that notwithstanding that the Property shall only be used for the construction and operation of the Center and subject to City's written consent to any assignee as provided in Section 13 below, the Property may also be used for the following purposes: nonprofit arts activities, administrative or educational.

## **5.2 Condition of Title.**

City leases the Land subject to all easements, covenants, conditions, restrictions and other title matters whether recorded or unrecorded existing as of the Effective Date, and all matters that would be apparent from an inspection of the Land on the Effective Date.

## **5.3 Condition of Property; Remediation Contingency.**

Lessee agrees that the Land is leased and being authorized for use in its existing condition as of the Effective Date, as-is, with all faults, without warranty, and without obligation on the part of the City to perform work to prepare the Land for occupancy or use by Lessee. Lessee shall bear the cost of remediating the hazardous environmental condition described in Environmental Site Assessment dated \_\_\_\_\_ (the "**Phase I**") when Lessee implements the Site Management Plan dated \_\_\_\_\_ (the "**SMP**"), both of which RPS Iris Environmental, 1438 Webster Street, Suite 302, Oakland, CA 94612, Project No. 17-1510A, prepared. Lessee's remediation of the Land is a condition of this Lease. Lessee's failure to remediate the Land prior to completion of construction of the Improvements as evidenced by issuance of the first certificate of occupancy shall be deemed an Event of Default under Section 14. Lessee acknowledges that it is accepting the Land solely on the basis of its own investigations, and that neither City, nor any of its officers, council members, employees, or agents, is making or has agreed to make any representations or warranties of any kind, express or implied, written or oral, as to the physical condition of the Land; the fitness for Lessee's use, value or adequacy of the Land for any purpose or any limitations thereon, including, but not limited to, any representation or warranty pertaining to environmental or other laws, regulations or governmental requirements; the existence, adequacy or availability of utilities on or utility services to the Land; the condition of the soils and ground water of the Land; the presence or absence of toxic materials or hazardous substances on or under the Land; the condition of title to the Land; or any other matter bearing on the

use, value or condition of the Land. Lessee independently has satisfied itself regarding the following characteristics of the Land: topography, availability of utilities, general plan designation, zoning, soil, subsoil, presence or absence of fill, presence or absence of hazardous materials, the purposes for which the Land, and any part thereof may be used, drainage, flood zone designation, access to public roads, and applicable environmental laws, rules, or regulations. The failure on the part of the Lessee to procure in writing express warranties or representations regarding the Land's characteristics shall constitute a conclusive admission that Lessee has relied on Lessee's own investigation and judgment as to all matters relating to the Land. Lessee represents that it has, prior to the execution of this Agreement, made investigations and tests of the Land, including without limitation inquiry from governmental agencies and quasigovernmental agencies having jurisdiction over the Land, soils testing, tests and inspection for presence of hazardous materials and such other examination of the Land as Lessee has deemed necessary to determine the condition of the Land and that Lessee, except as specifically set out in this Agreement, by execution hereof accepts the Land in the condition and state in which it is, "as is" as of the Effective Date.

## **SECTION 6. MAINTENANCE OF PROPERTY, CENTER**

### **6.1 Lessee Obligations.**

A. Lessee shall, at all times during the term of this Lease and without cost or expense to City, cause the Property to be kept in a neat and clean condition of repair and ensure that each part thereof is maintained in a first-class manner. Such upkeep and maintenance shall include, without limitation, maintenance, repairs and replacement of all structural elements of the Center and reasonable measures to protect wood, stucco, concrete and other surfaces from weathering, deterioration and aging, and to protect from and promptly remove graffiti or other defacement from such surfaces.

B. If at any time during the Term, including renewals or extensions, Lessee fails to maintain the Property or make any repairs or replacements as required by this Section 6.1 and Lessee shall have failed to cure same within ten (10) days after written notice from City, City may, but shall not be required to, enter the Property and perform the maintenance or make the repairs or replacements for the account of Lessee; any sums expended by City in so doing, together with interest at seven percent (7%) per annum, shall be deemed additional rent and shall be immediately due from Lessee on demand of City.

### **6.2 City Obligations.**

City shall have no obligation to maintain the Land or the Improvements or any portion thereof or to make any repairs to the Land or the Improvements or any portion thereof.

### **6.3 Trash and Refuse.**

Lessee, at its sole cost and expense, shall keep and maintain the Property clean and free of rubbish, dirt, garbage, and other waste matter at all times and shall provide and

pay for regular janitorial and other service reasonably necessary for the proper maintenance of the Property in a clean and sanitary manner. Lessee, at its sole cost and expense, shall cause all dirt, rubbish, trash, garbage and other waste matter to be removed as needed from the Property and deposited in suitable containers for regular removal from the Property.

#### **6.4 Waste or Nuisance.**

Lessee shall not commit, cause, maintain, permit, suffer, or allow to be committed, caused, maintained or permitted, any legal waste upon the Property, or any public or private nuisance, or injury, or any improper or unlawful use on the Property or surrounding areas of the Property. Lessee shall maintain in safe, good and clean condition all areas of the Property.

### **SECTION 7. CONSTRUCTION OF IMPROVEMENTS**

#### **7.1 General Construction Standards.**

Construction of any Improvements, including the Center, shall be accomplished expeditiously and diligently. Under City Municipal Code, Title 20, construction of the Improvements shall be limited to Monday – Friday, 7:00 a.m. to 7:00 p.m. Lessee shall pay (or cause to be paid) all costs and expenses associated with the construction of the Improvements and shall own the Improvements during the Term of this Lease. Lessee shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience caused by construction of the Improvements. If, in connection with construction of the Improvements, Lessee is required to close or re-locate any access to the Land, Lessee shall obtain City's prior written approval prior to such closure or re-location. Lessee shall repair, at its own cost and expense, any and all damage to the Property caused by construction of the Improvements. Lessee shall construct a temporary fence on the Land for the storage of any construction materials, contractor vehicles or equipment to be used in construction of the Improvements.

#### **7.2 Center Construction & Development Schedules.**

Lessee agrees to use commercially reasonable efforts to cause the construction of the Center to be commenced by June 1, 2019 but no later than four (4) years after the Effective Date and completed six (6) years from the Effective Date. Failure to commence or complete construction within these timeframes is an Event of Default. The construction schedule is attached hereto as **Exhibit D-1** ("Construction Schedule") and the development schedule is attached hereto as **Exhibit D-2** (the "Development Schedule"), both of which can be amended with City approval as set forth herein and are subject to force majeure delays as described in Section 36.5.

#### **7.3 City's Approval of Improvements.**

In addition to the normal approval process by the City's Planning Department, Lessee shall also attain approval of the Improvements from the City Office of Economic

Development. City Office of Economic Development's approval of the Improvements shall be conditioned by the following:

a. City and Lessee shall mutually agree on the size, location and layout of the Improvements and the architectural features thereof (collectively, "Preliminary Design").

b. Lessee shall prepare or cause to be prepared, at its sole expense, and submit to City for its review and written approval, Preliminary Design documents ("Preliminary Plans") for the Improvements in compliance with any requirements contained herein. City shall approve or disapprove such submitted Preliminary Plans within twenty (20) days of receipt from Lessee, and such approval shall not be unreasonably withheld or delayed. Failure of City to specify any objection to such Preliminary Plans or make a proposal that would add to or change the Preliminary Plans within such 20-day period shall be deemed to be an approval. If the Preliminary Plans are approved by City, Lessee shall prepare or cause to be prepared, at its sole cost and expense, and submit to City for its review and written approval final plans and specifications developed from the approved Preliminary Plans ("Construction Documents"), which approval shall not be withheld, provided that the final Construction Documents are in conformity with the approved Preliminary Plans and are in compliance with existing building codes and other laws, regulations and ordinances. City shall approve or disapprove the Construction Documents within twenty (20) days of receipt of complete final Construction Documents. Failure of City to specify any objection to such final Construction Documents or make a proposal that would add to or change the final Construction Documents within such 20-day period shall be deemed an approval.

c. Lessee shall coordinate with City all utility requirements for the Improvements. Lessee shall be solely responsible for all costs, fees and charges associated with or arising from the installation, maintenance, repair and usage of utilities for any construction on the Property.

d. The Construction Documents shall also include all landscaping and lighting for the Improvements, including lighting in and around the parking lot to be made available for use by staff and visitors to the Center.

e. No material changes to the approved Construction Documents shall be made without the prior written approval of City, which approval shall not be unreasonably withheld or delayed.

f. If the Parties are unable to mutually agree on either the Preliminary Design or the Preliminary Plans, the Lease shall terminate and be of no further force and effect.

#### **7.4 Compliance with Construction Documents and Laws; Issuance of Permits.**

The Improvements shall be constructed in strict compliance with the Construction Documents approved by City under this Lease and also in strict compliance with all applicable local, state and federal laws and regulations. Lessee shall have the sole responsibility for obtaining all necessary permits or other governmental approvals necessary to construct the Improvements. Lessee shall provide City with a copy of any permits or other governmental approvals required for construction of the Improvements.



### **7.5 Construction Meetings.**

City may request and Lessee shall agree upon City's request to meet during the construction process. Upon City's request, Lessee shall invite a representative of City to any regularly scheduled construction meetings and, prior to any such meeting, shall provide City with a copy of any meeting agenda. Lessee shall also provide City's representative with a construction schedule setting forth the construction activities occurring on the Property during construction of the Improvements. If the schedule changes during construction, Lessee shall provide City's representative with a revised schedule.

### **7.6 City's Cooperation.**

City shall cooperate with and assist Lessee in every reasonable way in Lessee's efforts to obtain all governmental consents, approvals, permits or variances (collectively, "Permits") which may be required for the performance of any construction permitted under the terms of this Lease. Such cooperation shall include, without limitation, City's joinder in any application for any such Permits where joinder therein by the owner of the Land is required by law. City shall not be required to pay for any costs or fees associated with obtaining any of such Permits.

### **7.7 Rights of Access.**

Following reasonable and adequate notice, except in the case of emergency, representatives of City shall have the reasonable right of access to the Property without charges or fees, at normal construction hours during the period of construction, for the purposes of ascertaining compliance with the terms of this Lease, including, but not limited to, the inspection of the construction being performed, provided that (i) such representatives shall be accompanied by Lessee's representatives if Lessee so desires, (ii) such representatives shall comply with Lessee's contractor's reasonable rules for the construction site, and (iii) the timing of such access shall be approved by Lessee's contractor so as to minimize any disruption to construction activities occurring on the Property.

### **7.8 Punch List.**

Lessee shall notify City in writing when the Improvements are substantially complete. On receipt of such notice, Lessee's representative, the architect, and City's representative shall immediately inspect the Improvements ("Inspection") and prepare a written list of any items that are defective, incomplete or do not conform to the Construction Documents or all applicable laws or permits ("Punchlist"). Lessee may augment the Punchlist at any time following the Inspection with prior written notice to and approval by City of the revised Punchlist. Lessee shall cause Lessee's contractor to remedy all items listed on the Punchlist. After all items on the Punchlist have been remedied, Lessee shall notify City. Thereafter, Lessee and City's representative shall make a final inspection of the Improvements. If the Punchlist items have been satisfactorily completed, City shall approve in writing the Improvements.

**7.9 Notice of Completion.**

Upon completion of construction and approval in writing by City, Lessee, if required, shall file or cause to be filed in the Official Records of the County of Santa Clara a Notice of Completion ("Notice of Completion") with respect to the Center and other Improvements, and Lessee shall deliver to City, at no cost to City, a set of the final as-built drawings of the Improvements (electronically, if available), together with any maintenance manuals for the Improvements.

**7.10 No Right to Demolish.**

Notwithstanding any other provisions of this Article 7, Lessee shall have no right to demolish the Center or any Improvement once built, unless Lessee shall have received the prior written consent of City, it being agreed that City has entered into this Agreement in material reliance on Lessee's covenants to construct the Center in accordance with the Plans & Specifications and to operate and maintain the Center in accordance with the provisions of this Agreement.

**7.11 Discovery of Hazardous Materials During Construction.**

Lessee shall be solely and exclusively responsible for all costs of any investigation and remediation as is necessary as the result of the discovery during construction of Hazardous Materials contamination on the Land.

**7.12 Governmental Approvals.**

Lessee shall obtain at its sole cost and expense all governmental reviews and approvals (including any approvals of the Director or any other City official), licenses, and permits which are, or may be, required and are necessary to install any Improvements, to operate the Center, and to conduct any other activities on the Property, including, but not limited to, all plans and specifications approvals, site development reviews, development permits, and building permits. The Director's approval shall not be deemed to include the approval of any other City department or governmental or public entity, which Lessee may be required to obtain.

**7.13 Hazardous Materials.**

Lessee shall incorporate into any construction contract for the Center and any Alterations or Improvements, and shall require its contractor to incorporate into any subcontracts or contracts for materials or equipment, the requirements related to prevention and mitigation of Hazardous Materials releases in conformity with **Exhibit E**.

**7.14 Bonding Improvements.**

At least ten (10) business days prior to the commencement of construction of the Center or any Alterations and Improvements having a value in excess of Twenty Five Thousand Dollars (\$25,000), Lessee or its contractor shall provide to City copies of payment and performance bonds, in a sum of not less than one hundred percent

(100%) of the total cost of the contract or contracts for the construction, alteration, demolition or repair of the Land and/or Improvements, naming City as an additional obligee, in such form as may be satisfactory to and approved by City's Risk Manager or Director, and approved as to form by the City Attorney for City. At the discretion of the Director and upon approval of the City Attorney, the performance bond requirement may be waived.

**7.15 Insurance.**

At least ten (10) business days prior to the commencement of construction of the Center or any Alterations and Improvements having a value in excess of Twenty-Five Thousand Dollars (\$25,000), Lessee or its contractor shall provide City with certificates of insurance acceptable to City, showing City as an additional insured party as to all insurance coverage provided by Lessee's contractor concerning work performed by Lessee's contractor on the Property. Insurance Coverage shall meet, at a minimum, the requirements set forth in **Exhibit F**. The Parties, and each of them, by executing this Agreement, do not intend to make any agreement that will in any way prejudice the other Party with respect to insurers, and by entering into this Agreement, they anticipate that the actions taken pursuant to the terms of this Agreement may benefit such insurers. If any insurer makes any claim that any aspect of this Agreement provides a basis for rejection or limitation of coverage of one of the Parties, the Parties will attempt, in a manner consistent with the objectives of this Agreement, to return any joint claimant subject to such claim to a position that is satisfactory to such insurers.

**7.16 Asbestos Containing Materials.**

No asbestos-containing materials will be installed for any purposes on or as part of the Property whether as part of Lessee's or Lessee's agents', affiliates', contractors', licensees' or sublessees' business operations or as Lessee improvements, unless specifically identified in the Construction Documents or approved in advance, in writing by City.

**7.17 Underground Storage Tanks.**

Lessee shall not install or use any above-ground or underground storage tanks on the Property unless specifically shown in the Construction Documents or approved in advance in writing by City, which approval may be withheld in City's sole discretion. If City approves Lessee's installation or use of underground storage tanks, Lessee will be responsible for compliance with all applicable requirements and Environmental Laws, including, but not limited to, financial assurance requirements, and must furnish evidence satisfactory to City of that compliance. Lessee will also test the soil for settling and conduct appropriate tests of the tank and associated piping and equipment at the time of installation to assure that the tank has been properly installed.

**7.18 No City Duty.**

City's approval, review or modification of any plans, specifications or other construction documents with regard to the Center, the Improvements, Alterations or any other work by Lessee is for City's internal purposes only. Any City review or approval specifically shall exclude review for the purpose of determining whether the reviewed documents contain any defects in the design, construction, or installation of improvements and City shall have no liability or responsibility for any loss, damage, or injury arising out of or in any way connected with the design, construction or installation of any improvements on the Property. Likewise, City's review shall specifically exclude any review for purposes of determining whether the reviewed documents comply with laws, ordinances, rules or regulations applicable to the proposed work. By approving, reviewing, modifying or otherwise commenting on any of Lessee's plans, specifications or other construction documents, City shall not be deemed to make any express or implied warranty of the reviewed matters for any intended use or purpose. The scope and breadth of any review by City is at City's sole discretion and cannot be relied upon, or deemed for the benefit of, any other party.

#### **7.19 Protection of City.**

Nothing in this Agreement shall be construed as constituting the request of the City, express or implied, for the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Center or Improvements for City's account or benefit by any contractor, subcontractor, laborer or materialman. City shall have the right at all reasonable times to post, and keep posted, on the Property any notices that City may deem necessary for the protection of City, the Land, the Center and Improvements thereon from mechanics' liens or other claims. Lessee shall give City ten (10) days' prior written notice of the commencement of any work to be done on the Property to enable City to post such notices. In addition, Lessee shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Property and the improvements thereon.

#### **7.20 Mechanics Liens.**

Although City believes that California law prohibits any mechanics' lien from attaching to the Land, nevertheless, Lessee shall keep the Land, the Center and the Improvements free and clear of all claims for mechanics' liens and other liens on account of work done for Lessee or persons claiming under it. Lessee shall promptly discharge or remove by bond or otherwise prior to foreclosure thereof, any and all mechanics', materialmen's and other liens for work or labor done, services performed, materials, appliances, teams or power contributed, used or furnished in or about the Property for or in connection with any operations of Lessee, any alternations, improvements, repairs or additions that Lessee may make or permit or cause to be made, or any work or construction by, for or permitted by Lessee on or about the Property. Lessee agrees to and shall indemnify and save City harmless against liability, loss, damages, costs, attorneys' fees and all other expenses on account of claims of

lien of laborers or material suppliers or others for work performed or materials or supplies furnished to Lessee or persons claiming under it. Lessee shall give City written notice not less than 10 days in advance of the commencement of any construction, alteration, addition, improvement or repair costing in excess of Twenty-Five Thousand Dollars (\$25,000) in order that City may post appropriate notice of City's non-responsibility. In the event any lien is recorded and is not removed or discharged within 30 days, without reference to its validity Lessee shall, upon demand, furnish the bond described in California Civil Code Section 8424, or any other applicable or successor statute, which results in the removal of such lien from the Center, the Land or the Improvements.

## **SECTION 8. CONSTRUCTION OF FUTURE ALTERATIONS**

### **8.1 General Construction Standards.**

Construction of any future alterations, improvements or repair work permitted herein ("Alterations") shall be accomplished expeditiously and diligently and in conformity with all of the provisions of this Section 8. Lessee shall pay (or cause to be paid) all costs and expenses associated with the construction of any Alterations. Lessee shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience caused by construction of any Alterations, including any disruption to City's operations on the Property. Lessee shall notify City in writing at least seven (7) business days prior to any disruption caused by the construction of any Alterations. If, in connection with construction of any Alterations, Lessee is required to close or re-locate any access to the Land, Lessee shall obtain City's prior written approval prior to such closure or re-location. Lessee shall repair, at its own cost and expense, any and all damage to the Property caused by construction of any Alterations.

### **8.2 City's Approval of Plans.**

City's rights of approval with respect to any Alterations undertaken by Lessee on the Property shall be governed by the following:

a. Lessee shall have the right, without City's consent (but subject to all other provisions of this Lease), to perform any repair work required hereunder and to otherwise undertake any Alterations of the Property provided such Alterations (i) will not alter the location, design, height, bulk or exterior appearance of the Center previously approved by City ("Approved Design"), (ii) do not exceed the sum of \$500,000 in cost and do not affect any structural or exterior portions of the Center or adversely affect the electrical, plumbing or HVAC systems in the Center. City shall not unreasonably withhold or delay its consent to any Alterations that require City's consent hereunder.

b. If Lessee at any time desires to undertake any Alterations on the Property which is not exempt from City's approval as provided in Subsection 8.2(a) above, Lessee shall, prior to commencement of such work, prepare or cause to be prepared, at its sole expense, and submit to City for its review and written approval, preliminary plans for such work showing such information as is reasonably necessary for City to

make an informed decision on such submission. City shall approve or disapprove such submitted preliminary plans within thirty (30) days of receipt of complete preliminary plans meeting the requirements of this Subsection 8.2, and such approval shall not be unreasonably withheld or delayed. Failure of City to specify any objection to such preliminary plans or make a proposal that would add to or change the preliminary plans within such 30-day period shall be deemed to be an approval. If the preliminary plans are approved by City, Lessee shall prepare or cause to be prepared, at its sole cost and expense, and submit to City for its review and written approval final plans and specifications developed from the approved preliminary plans, which approval shall not be withheld, provided that the final plans and specifications are in conformity with the approved preliminary plans and are in compliance with existing building codes and other laws, regulations and ordinances. City shall approve or disapprove the final plans and specifications within thirty (30) days of receipt of complete final plans and specifications. Failure of City to specify any objection to such final plans and specifications or make a proposal that would add to or change the final plans and specifications within such 30-day period shall be deemed an approval.

c. No material changes to the approved plans and specifications shall be made without the prior written approval of City, which approval shall not be unreasonably withheld or delayed.

### **8.3 Compliance with Construction Documents and Laws; Issuance of Permits.**

Any Alterations shall be constructed in strict compliance with any final plans and specifications approved by City under this Lease and also in strict compliance with all applicable local, state and federal laws and regulations. Lessee shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction. Lessee shall provide City with a copy of any permits or other governmental approvals required for construction of any Alterations. Upon completion of any Alterations, Lessee shall provide to City a set of as built drawings of the completed Alterations (electronically, if available), together with any maintenance manuals, if applicable.

### **8.4 Construction Meetings.**

City may request and Lessee shall agree upon City's request to meet during the construction phase. Upon City's request and if applicable in connection with any Alterations, Lessee shall invite a representative of City to any regularly scheduled construction meetings and, prior to any such meeting, shall provide City with a copy of any meeting agenda. Lessee shall also provide City's representative with a schedule of construction activities occurring on the Property.

### **8.5 City's Cooperation.**

City shall cooperate with and assist Lessee in every reasonable way in Lessee's efforts to obtain all governmental consents, approvals, permits or variances that may be required for the performance of any construction permitted under the terms of this

Lease. Such cooperation shall include, without limitation, City's joinder in any application for any such consent, approval, permit or variance where joinder therein by the owner of the Property is required by law.

### **8.6 Rights of Access.**

Following 24 hours' notice, except in the case of emergency, representatives of City shall have the reasonable right of access to the Property without charges or fees, at normal construction hours during the period of any construction of the Alterations, for the purposes of ascertaining compliance with the terms of this Lease, including, but not limited to, the inspection of the construction being performed, provided that (i) such representatives shall be those who are so identified in writing by City, (ii) such representatives shall be accompanied by Lessee's representatives if Lessee so desires, (iii) such representatives shall comply with Lessee's contractor's reasonable rules for the construction site, and (iv) the timing of such access shall be approved by Lessee's contractor so as to minimize any disruption to construction activities occurring on the Property.

### **8.7 Punch List.**

In connection with any Alterations which require City's approval, Lessee shall notify City in writing when such Alterations are substantially complete. On receipt of such notice, Lessee's representative, the architect, and City's representative shall immediately inspect such Alterations and prepare a written punchlist of any items that are defective, incomplete or do not conform to the final plans and specifications approved by City or all applicable laws or permits. Lessee may augment the punchlist at any time following the Inspection with prior written notice to and approval by City of the revised Punchlist. Lessee shall cause Lessee's contractor to remedy all items listed on the punchlist. After all items on the punchlist have been remedied, Lessee shall notify City. Thereafter, Lessee and City's representative shall make a final inspection of the Alterations. If the punchlist items have been satisfactorily completed, City shall approve in writing the Alterations.

### **8.8 Notice of Completion.**

Upon completion of any Alterations and approval in writing by City, if required, Lessee, if required, shall file or cause to be filed in the Official Records of the County of Santa Clara a Notice of Completion with respect to such Alterations, and Lessee shall deliver to City, at no cost to City, a set of the final as-built drawings of the Alterations (electronically, if available), together with any maintenance manuals for such Alterations, if applicable.

## **SECTION 9. TITLE TO IMPROVEMENTS, ALTERATIONS AND REPAIRS**

All improvements, alterations or construction of improvements made to the Property by Lessee (other than furniture, trade fixtures and equipment which are and remain

movable and unattached to the Property) and additions and alterations thereto made upon the Property shall be and remain the property of Lessee until the termination of this Agreement, at which time the improvements may, at the option of Director in accordance with Section 24, become the property of City. Lessee shall execute any documents that Director feels necessary to further evidence the transfer of title to improvements from Lessee to City, including a quitclaim deed and/or bill of sale. Any failure by Lessee to execute any such transfer documents, however, shall not limit or preclude the transfer of title from Lessee to City provided in this Section 9.

## **SECTION 10. UTILITY SERVICES**

Lessee shall secure and directly pay for any electrical, gas, water, sewer, and telephone services to the Property utilized by Lessee as it may require. Installation of such additional utility connections shall be at Lessee's sole cost and expense and are subject to the provisions of Sections 7 and 8 regarding Lessee improvements and alterations. The location, relocation and coordination of all utilities and telephone facilities to service the Property shall be subject to the prior written approval of the Director. Lessee shall, upon request by the Director, cap off all utility connections installed by Lessee and restore the affected areas to their original condition upon expiration or earlier termination of this Agreement.

## **SECTION 11. EMINENT DOMAIN**

### **11.1 Definition of Taking.**

The term "taking" as used herein means the exercise by any governmental or other permitted authority of the power of eminent domain or the exercise of any similar governmental power and any purchase or other acquisition in lieu of condemnation, including, but not limited to, a voluntary sale or conveyance in lieu of condemnation.

### **11.2 Total Taking.**

In the case of a taking (other than for temporary use not exceeding one (1) year) of the fee of the entire Land, the improvements thereon, or the entire leasehold interest of Lessee, this Agreement shall terminate as of the date on which a final judgment apportioning just compensation among the Parties shall have been entered by the court with jurisdiction of the eminent domain proceeding. In the case of a taking (other than for temporary use not exceeding one (1) year) of such substantial part of the Land or the improvements thereon as shall result, as determined by an independent member of the American Institute of Real Estate Appraisers (or if such organization or any successor or organization no longer exists, any person having knowledge and experience in valuing properties similar to the Property and the improvements thereon, selected by Lessee and approved by City), in the Property and the improvements thereon remaining after such taking (even if restoration were made) being economically unsuitable for



the use being made of the Land and the improvements thereon at the time of such taking, Lessee, at its option, may terminate this Agreement by written notice given to City within sixty (60) days after such taking. Any taking of the Land or the improvements thereon of the character referred to in this Section 11, or the entire leasehold interest of Lessee, that results in the termination of this Agreement is referred to as a "total taking."

### **11.3 Partial Taking.**

In the event of a taking of a portion of the Land or the improvements thereon which is not a total taking (a "partial taking"), then:

- (a) This Agreement shall remain in full force and effect as to the portion of the Land and the improvements thereon remaining immediately after such partial taking.
- (b) Lessee will promptly commence and complete restoration of the Land and the improvements thereon as nearly as possible to its condition and character immediately prior to such partial taking, except for any reduction in area caused thereby; provided that, in the case of a partial taking for temporary use, Lessee shall not be required to effect such restoration until such partial taking is terminated. Such restoration shall be performed in a good and workmanlike manner and undertaken in accordance with plans and specifications submitted to and approved by City in accordance with Section 8.3 hereof, and otherwise in accordance with the applicable provisions of this Agreement.

### **11.4 Application of Awards.**

Awards and other payments on account of a taking of the Land or the Improvements thereon (less costs, fees and expenses incurred by City, Lessee in connection with the collection thereof) shall be applied as follows:

- (a) Net awards and payments received on account of a taking, other than (a) a taking for temporary use not exceeding one (1) year, (b) a taking of only the leasehold estate hereunder, or (c) a total taking, shall be allocated and paid in the following order of priority:
  - (1) First, to pay the cost of restoration of the Land and the Improvements thereon; provided, however, that the extent of Lessee's obligation to restore the Land and the Improvements thereon shall be limited to the amount of the net award and payment received on account of the taking. Lessee shall furnish to City evidence reasonably satisfactory to City of the total cost of the restoration of the Land and the Improvements thereon. Lessee's

cost of restoration of the Land and the Improvements thereon which is paid out of such net awards and payments on account of such partial taking shall not be an allowable expense deduction hereunder in connection with the determination of Rent.

- (2) Second, to Lessee, in an amount equal to any expenses for the maintenance and operation of the Improvements that have accrued between the date that Lessee loses possession pursuant to the partial taking and the date of the award, during the then current fiscal year up to the date of such partial taking, and which expenses are allocable to and remain payable with respect to the Land and the Improvements thereon which were taken by such partial taking, less net awards and payments pursuant to such taking received on account of such expenses, and less amounts compensated by business interruption or other insurance.
  - (3) Third, the balance to City.
- (b) Net awards and payments received on account of a taking for temporary use not exceeding one (1) year and relating to a period during the term of this Agreement shall be paid to 50% to city and 50% to Lessee; provided, however, that if such taking for temporary use has resulted in any damage to or destruction of the Land or the Improvements thereon, such net awards and payments shall be first held and applied to pay the cost of restoration thereof. Net awards and payments received on account of a taking for temporary use not exceeding one (1) year and relating to a period beyond the term of this Agreement shall be paid to City.
  - (c) Net awards and payments received on account of a taking of only the leasehold estate created by this Agreement shall be paid as follows: City to recover all lost rent and remainder of award to Lessee.
  - (d) Net awards and payments received on account of a total taking shall be allocated and paid in the following order of priority:
    - (1) First, at the option of City, in any amount necessary to raze remaining Improvements, clear the Land and make it safe.
    - (2) Second, to reimburse Lessee in an amount equal to any expenses for the maintenance and operation of the Improvements that have accrued between the date that Lessee loses possession pursuant to the total taking and the date of the award and remain payable with respect to the Land and the Improvements thereon, less net awards and payments pursuant to such taking received on account of such expenses, and less amounts compensated by business interruption or other insurance.

- (3) Third, the balance, if any, to City.

**11.5 Notice of Taking; Single Proceeding.**

In case of a taking of all or any part of the Land or the Improvements thereon or the commencement of any proceeding or negotiations that might result in such taking, the Party having notice of such taking or of the commencement of any such proceeding or negotiations shall promptly give written notice thereof to the other Party. City and Lessee shall jointly prosecute their claims for an award in a single proceeding, in which any leasehold mortgagee may join. City and Lessee shall not prosecute separate claims for an award, except that Lessee and any sublessee may prosecute separate claims for awards for moving expenses or on account of the taking of any removable trade fixtures or for the unamortized portion of any leasehold improvements made by any sublessee. Any portion of a claim of loss of good will attributable to low rents paid by Lessee under this Agreement shall not be recoverable by Lessee in such proceeding. Other than this limitation, Lessee and sublessee may recover loss of goodwill for Lessee's or sublessee's business and for a relocation allowance, but only to the extent that any such separate award shall not diminish the award made to City and Lessee with respect to their joint claim.

**SECTION 12. SIGNS/ADVERTISING**

Lessee shall not install, erect, affix, paint or place any sign, lettering or other advertising device or media in, or upon any portion of the Property without the prior written consent of Director, which consent shall not be unreasonably withheld. Any and all such advertising device or media shall be removed by Lessee at Lessee's sole cost and expense upon termination or expiration of this Agreement, without injury or damage to or defacement of any part of the Property. Lessee will promptly restore to their original condition those portions of the Property from which such advertising device or media have been so removed.

**SECTION 13. ASSIGNMENT, SUBLEASE OR TRANSFER**

**13.1 No Transfer Without City Consent.**

Lessee shall not assign, sublease, convey, sell, pledge, hypothecate, encumber by deed of trust, mortgage, or other instrument, or otherwise transfer this Agreement, the Property or any part thereof, or any rights or obligation of Lessee hereunder, whether voluntarily or by operation of law, without the prior written consent of City, which consent may be withheld at City's sole and absolute discretion. Notwithstanding the foregoing sentence or any other provision stated elsewhere in this Agreement, City gives its consent in the event Lessee seeks to encumber the leasehold estate created by this Agreement in order to obtain financing to construct the Improvements or operate the Center. Further, upon City's reasonable approval of: (a) the assignment and assumption agreement, (b) the Delaware Certification of Formation, (c) the LLC's operating agreement, (d)

the LLC-5 Application to Register a Foreign Limited Liability Company, and (e) any future amendment to the operating agreement, City shall consent to Lessee's assignment of the Agreement to a limited liability company, registered with the State of California, titled "Creative Center At Japantown Square, LLC" (the "LLC") in which Lessee is the managing member with San Jose Community Media Access Corporation, a California nonprofit public benefit corporation doing business as CreaTV San Jose, and San Jose Taiko Group, a California nonprofit public benefit corporation as members, and has and maintains a 51% or more interest in the LLC. City shall approve any amendments or modifications to the LLC's operating agreement. Lessee shall provide City with all proposed amendments or modifications to the LLC operating agreement prior to execution. Any amendment or modification of the LLC operating agreement executed without City approval shall be deemed an Event of Default.

**13.2 Definition of Transfer.**

A transfer within the meaning of this Section 13 shall include, but is not limited to, the contracting or subcontracting for operation and maintenance of the Center to any entity other than City.

**13.3 City Approval of Transfer.**

In determining whether to consent to such a transfer, City may consider, without limitation: (i) the financial condition and responsibility of the proposed transferee; (ii) the type of activity proposed to be conducted by such transferee at the Property; (iii) the capabilities and expertise of the proposed transferee to manage and operate the proposed activity; (iv) the past service record of the proposed transferee, (v) references of the proposed transferee; and (vi) any cost to City associated with such proposed transfer. In addition, City's consent to any proposed transfer under this Agreement may be conditioned upon, among other things, the express written assumption by the proposed transferee of Lessee's obligations under this Agreement and/or performance of required or necessary repairs or maintenance to the Property.

**13.4 Consent Not Waiver.**

The consent of City to any transfer described in this Section 13 shall not relieve Lessee of its obligation to obtain the further consent of City for any subsequent transfer. Any attempt to transfer without the consent of City shall be void, and shall constitute an Event of Default.

**13.5 City-Approved Sublease**

Any sublessee shall execute a sublease approved by City.

**SECTION 14.           TERMINATION OF AGREEMENT**

**14.1 Breach and Events of Default.**

An Event of Default shall occur under this Agreement upon the occurrence of any of the following events (severally "Event of Default" and collectively "Events of Default"):

- (a) Lessee shall have failed to pay any rent, fee, charge or obligation of Lessee requiring the payment of money under the terms of this Agreement within ten (10) days of the date when the same become due and payable; or
- (b) Lessee shall have failed to commence construction of the Center within four (4) years of the Effective Date of this Agreement; or
- (c) Lessee shall have failed to maintain any insurance required under Section 17; or
- (d) Lessee shall have failed to perform any term or condition under Subsection 2.3 or any other term, covenant, or condition of this Agreement to be performed by Lessee, other than those referred to in subparagraphs (a), (b) and (c) of this Subsection 14.1, and Lessee shall have failed to cure same within thirty (30) days after written notice from City; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion and to the satisfaction of Director; or
- (e) Any representation or warranty made by Lessee hereunder shall have been false or misleading in any material respect as of the date on which such representation or warranty was made; or
- (f) Lessee shall have made a general assignment of its assets for the benefit of its creditors; or
- (g) Lessee shall have assigned or otherwise transferred its interest in this Agreement in violation of the provisions contained in this Agreement whether voluntarily or by operation of law; or
- (h) Lessee shall have failed to occupy the Property or to maintain continuous operations at the Property, in each case, for any twelve (12) consecutive months without consent of City, have been dispossessed by process of law or otherwise, or have otherwise abandoned the Property; or

- (i) Lessee shall have failed to secure financing within four (4) years of the Effective Date; or
- (j) Lessee shall have failed to obtain necessary entitlements within thirty (30) months of the Effective Date.
- (k) A court shall have made or entered any decree or order: (i) adjudging Lessee to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee or assignee of Lessee in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of Lessee and such decree or order shall have continued for a period of sixty (60) days; or (v) Lessee shall have voluntarily submitted to or filed a petition seeking any such decree or order; or
- (l) The sequestration or attachment of or execution or other levy on (i) Lessee's interest in this Agreement; or (ii) the Property; or (iii) any improvements located thereon shall have occurred, and Lessee shall have failed to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such levy, whichever first occurs; or
- (m) The revocation or termination of any certificate, permit, franchise, approval, authorization or power necessary for Lessee to lawfully conduct the operations that Lessee is required or permitted to conduct on the Property; or
- (n) Any lien shall be filed against the Property because of any act or omission of Lessee, and shall not be discharged or contested by Lessee in good faith by proper legal proceedings within twenty (20) calendar days after receipt of notice thereof by City; or
- (o) Lessee shall fail to remediate the Land of all known hazardous environmental conditions as required by Section 5.3 prior to completion of construction of the Improvements as evidenced by issuance of the first certificate of occupancy.

## **14.2 Remedies for Default.**

Upon an "Event of Default", City shall have the following remedies, in addition to all other rights and remedies provided by law, equity or otherwise under this Agreement, to which City may resort cumulatively, or in the alternative:

- (a) At any time following prior written notice to Lessee and if Lessee has not cured, or commenced reasonable action to cure the default within ten (10)

days from the date set forth in such notice, City may, without any obligation to do so (implied or otherwise), and upon condition that it be for the account and at the expense of the Lessee, and without a waiver of such breach, perform any act which if performed by Lessee would otherwise cure the breach. If in so doing City is required or elects to pay any monies or do any acts which will require the payment of any monies or the incurring of any costs or expenses, Lessee covenants to pay to City upon demand by City the sum or sums of money paid or incurred by City, together with interest at the rate of one percent (1%) per month plus costs and damages, as part of its rental fee due on the first (1st) day of the month which immediately follows City's written demand therefore with documentation supporting City's demand.

- (b) In addition to any other remedy that City may have, City may, at its election, terminate this Agreement upon written notice of termination in which event this Agreement shall terminate if Lessee has not cured, or commenced reasonable actions to cure, the breach within ten (10) days from the date set forth in such notice. Any termination under this paragraph shall not relieve Lessee from the payment of any sums then due to City or from any claim for damages or rent previously accrued or then accruing against Lessee. In no event shall any one or more of the following actions by City, in the absence of a written election by City to terminate this Agreement, constitute a termination of this Agreement:
  - (i) Appointment of a receiver or keeper in order to protect City's interest hereunder; or
  - (ii) Any other action by City or its agents intended to mitigate the adverse effects of any breach of this Agreement by Lessee, including, without limitation, action to maintain and preserve the Property or any action taken to relet the Property or any portions thereof for the account of Lessee and in the name of Lessee.
- (c) This Agreement shall not terminate following an Event of Default and an abandonment of the Property unless City gives Lessee written notice of its election to terminate this Agreement. No act by or on behalf of City intended to mitigate the adverse effect of such breach, including those described by the immediately preceding subparagraphs (i) and (ii), shall constitute a termination of Lessee's right to possession unless City gives Lessee written notice of termination.
- (d) In the event City terminates this Agreement, City shall be entitled to damages in the following sums:
  - (i) The worth at the time of award of all unpaid rental fees and other fees which have been earned at the time of termination;
  - (ii) The worth at the time of award of the amount by which the unpaid rental fees and other fees which would have been earned after

termination until the time of award exceeds the amount of such rental fee or other fee loss that Lessee proves could have been reasonably avoided;

- (iii) Any other amount necessary to compensate City for all detriment or damage to the Property proximately caused by Lessee's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom, to fulfill its obligation to return the Property to the City in the condition existing as of the date this Agreement was entered into, reasonable wear and tear excepted; and
- (iv) The "worth at the time of award" of the amounts referred to in subparagraphs (i) and (ii) above is computed by allowing interest at the rate of ten percent (10%) or the legal rate, whichever is less, per annum. The "worth at the time of award" of the amount referred to in subparagraph (iii) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).
- (e) No payment by Lessee, or receipt by City, of a lesser amount than any rent, fee, charge or other amount due by Lessee hereunder shall be deemed to be other than on account of the earliest rent, fee, charge or other amount due, nor shall any endorsement or statement on any check from Lessee, or letter accompanying any check or payment, be deemed an accord and satisfaction. City may accept any such check or payment without prejudice to City's right to recover the balance of such rent, fee, charge or other amount or to pursue any other right or remedy available to City.
- (f) No option, right, power, remedy or privilege of City shall be construed as being exhausted or discharged by the exercise thereof in one or more instances.

## **SECTION 15. WAIVER OF BREACH**

The waiver by City of any breach of any term, covenant, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of such term, covenant or condition. The consent or approval by City to any act of Lessee requiring City's approval shall not be deemed to waive or render unnecessary the need for City's consent or approval to or of any subsequent similar act of Lessee. The subsequent acceptance of any fee, rent or charges hereunder by City shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Agreement other than the failure of Lessee to pay the particular rent, fee or charge so accepted, regardless of City's knowledge of such preceding breach at the time of the accepting of such rent, fee or charge. No waiver, consent or approval by City shall be effective unless made by a duly authorized representative of City.



**SECTION 16. INDEMNITY AND WAIVER OF CLAIM**

**16.1 Indemnification.**

Lessee, for and on behalf of its directors, officers, employees, and agents, covenants and hereby agrees to indemnify, defend, protect and hold harmless City, its officers, employees, contractors and agents (“City Parties”), from and against any and all claims, demands, damages, obligations, liabilities, losses, costs, expenses, penalties, suits or judgments, at any time received, (collectively, “Claims”) incurred or accrued by City Parties or members of the public using the Center or any other part of the Property arising out of or resulting in whole or in part from any act (or failure to act) of Lessee, its directors, officers, employees, contractors, subcontractors, agents, permittees or invitees (“Lessee Parties”), or which results from their noncompliance with any Laws respecting the condition, use, occupation or safety of the Property, or any part thereof, or which arises from the authorized activities hereunder or which arises from Lessee’s failure to do anything required under this Agreement, except as may arise from the sole active negligence or the willful misconduct of City Parties. City’s right to full indemnity hereunder shall arise notwithstanding that principles of joint, several or concurrent liability or comparative negligence, might otherwise impose liability on City or City Parties pursuant to statutes, ordinances, regulations or other Laws. All of Lessee’s obligations under this Section 16.1 are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Agreement. In an action or claim against City in which Lessee is defending City, City shall have the right to approve legal counsel providing City’s defense. The provisions of Section 32 regarding the Americans With Disabilities Act of 1990, as amended (“ADA”), shall not limit Lessee’s indemnification under this provision.

**16.2 Assumption of Risk.**

Lessee agrees to and covenants that it shall voluntarily assume any and all risk of loss, damage or injury to the person or property of Lessee or of Lessee Parties that may occur in, on, or about the Center and the Property at any time and in any manner, except such loss, injury, or damage as may be caused by the sole active negligence or the willful misconduct of City or of City Parties. The indemnification obligations of Lessee shall include the obligation of Lessee to defend, indemnify, protect and hold harmless City and City Parties from and against fines, costs, claims damages, obligations, suits, judgments, penalties, proceedings, causes of action, losses, liabilities or costs arising under the ADA or other accessibility Laws, that arise from Lessee’s or Lessee Parties’ activities under this Agreement.

**16.3 Waiver of Claim.**

Lessee, as a material part of the consideration to be rendered to City under this Agreement, hereby waives all claims or causes of action against City and City Parties that it may now or hereafter have for damage to its operations (including, without limitation, any interruption thereof), or to goods, wares, merchandise or other property on or about the Property, and for injuries or death to persons on or about the Property,

from any cause or causes arising at any time, except as may arise from the sole active negligence or willful misconduct of City, its officers, agents or employees.

By way of example and not limitation, save and except as arises out of the sole active negligence or willful misconduct of City or City Parties, Lessee hereby waives any and all claims or causes of action which it may now or hereafter have against City and City Parties (a) for loss, injury or damage sustained by reason of any deficiency, impairment and interruption of any water, electrical, gas, plumbing, air conditioning or sewer service or system serving any portion of the Property; (b) for any loss, injury or damage arising or resulting from any negligent act or omission of any other sublessee, contractor, occupant of the Property, or any person who uses the Property with or without the authorization or permission of City; and (c) for any loss or damage to the Property of, or injury or damage to Lessee, Lessee Parties, Lessee's, sublessees or any other person whomsoever, from any cause or causes arising at any time because of Lessee's construction, uses, or occupancy of the Center or the Property, or Lessee's operations thereon.

#### **16.4 Exceptions.**

Notwithstanding anything to the contrary in this Section 16 or the Lease, in the event the City uses the Center as permitted by this Agreement, including but not limited by Sections 4.2(c) and 5.1, and that use is memorialized pursuant to a separately negotiated agreement between City and Lessee, then the indemnification obligations described in this Section 16 shall be limited when Claims arise out of or relate to such use by City of the Center, and the indemnity provisions of the separate agreement between the City and Lessee whereby Lessee is not required to indemnify, defend or hold the City harmless for Claims that relate to or arise out of the acts, omissions, negligence, intentional acts, or willful misconduct of City Parties, but Lessee will be required to indemnify, defend, and hold the City harmless for Claims that relate to or arise out of the acts, omissions, negligence, intentional acts, or willful misconduct of Lessee or Lessee's Parties, shall control.

### **SECTION 17. INSURANCE**

#### **17.1 Insurance Requirements.**

Prior to commencing any work or operations under this Agreement, Lessee at its sole cost and expense and for the full term of this Agreement and all extensions thereof, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property which may arise from or in connection with the activities of Lessee and its agents, employees and contractors meeting at least the minimum insurance requirements set forth in **Exhibit F** on terms and conditions and in amounts as required by the Director of Finance or the Director's authorized designee ("Risk Manager"). City shall not be obligated to take out insurance on Lessee's property. Lessee shall provide City with certificates of insurance or copies

of all policies and such endorsements as may be required by City's Risk Manager. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. From time to time, at the request of the Risk Manager, Lessee shall provide a written statement of the replacement cost of the Lessee Improvements, with a copy to the Director.

**17.2 Application of Insurance Proceeds.**

All amounts that shall be received under any insurance policy specified herein shall be first applied to the payment of the cost of repair, reconstruction or replacement of any buildings or improvements, or furniture, fixtures, equipment and machinery, that is damaged or destroyed. Any amount remaining from the proceeds of any such insurance funds, after the repairing, reconstructing and replacing of any buildings or improvements, or furniture, fixtures, equipment and machinery, as herein required, shall be immediately paid to and be the sole property of Lessee; provided that, if any governmental law or regulation governing land use prohibits the restoration or reconstruction of the buildings or improvements damaged or destroyed to their pre-casualty state, any excess insurance proceeds over restoration or reconstruction costs that are the consequence of such prohibition shall be allocated as follows:

- (1) First, to Lessee, in an amount equal to any expenses for the maintenance and operation of the Improvements that have accrued between the date that Lessee loses possession as a result of the insured loss and the date of the issuance of insurance proceeds, during the then current fiscal year up to the date of such insurance award, and which expenses are allocable to and remain payable with respect to the Land and the Improvements thereon which were lost by such insured loss, less net awards and payments pursuant to any other agreements or contractual arrangements, including indemnification agreements, received on account of such expenses, and less amounts compensated by business interruption or other insurance.
- (2) Then, the balance to City.

If said insurance proceeds shall be insufficient in amount to cover the cost of repairing, reconstructing or replacing the Improvements, or furniture, fixtures, equipment and machinery, as herein required, Lessee shall promptly pay any deficiency.

**SECTION 18. BAILEE DISCLAIMER**

It is hereby understood and agreed that City in no way purports to be a bailee, and is therefore not responsible in any way for any damage to the property of Lessee or Lessee Parties.

**SECTION 19. RIGHT TO ENTER**

City reserves and shall have the right by its officers, employees, agents, contractors, and agency representatives to enter into and upon the Property at all reasonable times with reasonable written notice, and at all times in the case of emergencies:

- (a) To make any inspection Director may deem expedient or desirable for the proper enforcement of the covenants, conditions, restrictions, limitations and provisions of this Agreement;
- (b) To install, construct and maintain, repair, replace and use any and all public utilities, sewer lines, drainage lines, water lines, water systems, irrigation lines, electrical lines, fuel lines and any municipal uses and appurtenances thereto, either above, on or below the surface of, in, along and/or across the Land;
- (c) To otherwise maintain the Land, the building on which the Land is located and the Property, or to do any other repair, maintenance, alteration or removal under the conditions set forth herein; or
- (d) To post notices of non-responsibility for improvements, alterations or repairs if and when City shall desire to do so.

## **SECTION 20. TAXES; ABSENCE OF LIENS**

### **20.1 Payment by Lessee.**

Lessee shall pay before delinquency, and without notice or demand, any and all taxes, (including without limitation any gross receipts, income tax or excise tax) assessments, licenses, fees, possessory interest taxes and other public charges or penalties which may be levied, imposed, or assessed upon any of Lessee's leasehold interest, upon Lessee's business, or upon Lessee for the privilege of conducting business within the Land, or upon any other property of Lessee within the Property. Payment of any and all taxes, assessments, licenses, fees or other public charges shall not reduce the amount of rentals, charges or any other fee that is required to be paid by Lessee to City under the provisions of this Agreement.

### **20.2 Possessory Interest.**

In accordance with California Revenue and Taxation Code Section 107.6, Lessee recognizes and understands that this Agreement may, but is not intended to, create a real property possessory interest that may be, but is not intended to be, subject to real property taxation, and that Lessee may be subject to the payment of real property taxes levied on such interest. If any possessory interest tax is levied on the Land, the Improvements and/or Lessee's leasehold estate created by this Agreement, Lessee shall pay such tax before delinquency. City shall have no obligation to pay any possessory interest tax. No such possessory interest tax, or any other tax by any governmental entity, shall in any way reduce or substitute for the rent, charges or fees required to be paid as a condition of this Agreement or as otherwise required by City. Under California law, City is not obligated to pay property taxes for its ownership of real property, and shall promptly file for cancellation of any such real property taxes.

Lessee shall be responsible for any possessory interest taxes as may be assessed against the Property in accordance with California law.

**20.3 No Liens.**

Lessee shall not permit or suffer any liens or encumbrances to be imposed upon the Property or any building or structure thereon, as a result of Lessee's activities without promptly discharging the liens or encumbrances; provided, however, that Lessee may, if it so desires, contest the legality of any liens or encumbrances following prior written notice to City. In the event of a contest, Lessee shall provide a bond in an amount and in a form acceptable to City immediately following request therefore by City.

**20.4 Indemnity for Lessee's Failure to Comply.**

Lessee shall protect, defend, indemnify and hold City, including the Land, and any Improvements now or hereafter on the Land, free and harmless from and against any liability, loss, or damage resulting from any taxes, assessments, or other charges required by this Agreement to be paid by Lessee and from all interests, penalties, and other sums imposed thereon and from any proceedings to enforce collection of any such taxes, assessments, or other charges.

**20.5 Payment by City.**

If Lessee fails to pay any tax or charge required by this Section 20 to be paid by Lessee, City may, but is not obligated to, after five (5) business days' prior written notice to Lessee, pay, discharge, or adjust such tax or charge for Lessee's benefit. In such event, Lessee, on receipt of written demand of City, shall reimburse City promptly for the full amount paid by City in paying, discharging or adjusting such tax or charge together with interest thereon from its due date at the rate of one percent (1%) per month until paid, plus pay any penalties.

**20.6 Contest of Tax or Charge.**

**20.6.1 Notice of Contest.**

In the event that Lessee desires, in good faith, to contest or review by appropriate legal or administrative proceedings any tax or charge specified hereunder, Lessee, at least ten (10) business days prior to the delinquency of any such tax or charge or within the applicable period of time allowed by law, shall give City written notice of Lessee's intention to contest such tax or charge.

**20.6.2 Procedure for Contest.**

Lessee may withhold payment of the tax or charge being contested if, but only if, nonpayment is permitted during the pendency of such proceedings without the foreclosure of any tax lien or the imposition of any fine or penalty. The contest

shall be prosecuted to completion (whether or not this Agreement has expired or terminated) without delay at Lessee's sole cost and expense.

**20.6.3 Payment Upon Final Determination.**

Within the applicable period of time allowed by law after the final determination of the amount of tax due, Lessee shall pay the amount determined to be due, together with all costs, expenses and interest (whether or not this Agreement has then expired or terminated).

**20.6.4 Failure to Pay Constitutes Event of Default.**

The failure to pay any tax or charge hereunder within ten (10) business days of the date when the same becomes due and payable shall constitute an Event of Default, and the obligation to pay the same shall survive the termination of this Agreement.

**SECTION 21. QUIET ENJOYMENT**

Subject to the provisions of this Agreement, City covenants that Lessee, on paying the rentals and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Property.

**SECTION 22. DAMAGE OR DESTRUCTION**

**22.1 Destruction Covered by Insurance.**

In the event Improvements on the Land are damaged by any casualty which is covered under an insurance policy required to be maintained pursuant to this Agreement, Lessee shall repair such damage as promptly as reasonably possible in accordance with **Section 8** and this Agreement shall continue in full force and effect, without any abatement of rent or payment of any damages or other amounts by City to Lessee.

**22.2 Destruction Not Covered by Insurance.**

In the event the Improvements on the Land are damaged by any casualty not covered under an insurance policy required to be maintained pursuant to this Agreement, then City (through Director) may, at City's option, give written notice to Lessee within thirty (30) days after the date of occurrence of such damage, of City's intention to cancel and terminate this Agreement as of the date of the occurrence of the damage. Regardless of whether or not City elects to terminate this Agreement, if such damage is caused by an act or omission of Lessee, its agents, servants or employees, then Lessee shall promptly repair such damage, at its sole cost and expense, in accordance with Section 8.

### **22.3 Survival of Obligation to Repair.**

Lessee's obligation pursuant to this Section 22 to repair any damage or destruction that occurs during the term of this Agreement shall survive the Expiration Date or earlier termination of this Agreement.

### **SECTION 23. COMPLIANCE WITH LAWS**

Lessee shall, at its sole cost and expense, comply with and conform to all Laws applicable to or affecting, directly or indirectly, Lessee, the Property, or Lessee's authorized activities under this Agreement. Further, Lessee shall not do anything in, on or about the Property, or bring anything that is prohibited by a standard form of fire insurance policy or that in any way would increase or affect the then existing rate of fire or other insurance required to be carried upon the Property, or any part thereof, or any of their contents, or that will cause a cancellation of any insurance policy covering the Property or any part thereof, or any of their contents. Lessee agrees to observe and obey all rules and regulations adopted by City from time to time with respect to the use of the Property. Lessee shall be solely and fully responsible for compliance with the American with Disabilities Act as provided in **Section 32** below. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceedings against Lessee, whether City be a party thereto or not, that Lessee has violated any such law, statute, ordinance, rule, regulation, order or requirement in the use of the Property or the Property shall be conclusive of that fact as between City and Lessee.

In connection with its development of the CCA and operations in or about the Property, Lessee shall pay to City all amounts, fees, charges and taxes due City under any ordinance, resolution or other applicable law governing activities in or about the Property, except for those fees or assessments waived by City for the development of the CCA.

### **SECTION 24. SURRENDER OF PROPERTY**

**24.1** On the last day of the Term, or sooner termination of this Agreement, Lessee shall quit and surrender, in good condition and repair (ordinary wear and tear excepted), the Land and Alterations, additions, Improvements and betterments that may have been made in or to the Land, except: (i) movable and unattached furniture and trade fixtures installed at the expense of Lessee; and (ii) such other property, if any, that Lessee is expressly authorized in writing by Director to remove from the Land . The Property shall be surrendered to City in vacant condition, with no individuals, persons, or entities in occupancy of the Property. The Land and Alterations, additions, Improvements and betterments that were made in or to the Land as specified in this Agreement shall be surrendered to the City at no cost to City.

**24.2** Lessee shall, on or before the end of the Term, remove all personal property

owned by it (except such as it may be required to surrender under the provisions of the two immediately preceding paragraphs) from the Property. All such property not so removed prior to any vacation, abandonment, dispossession or surrender of the Property shall be deemed, at the option of Director, to have been abandoned by Lessee. City may, at the option of Director, retain any such property so abandoned by Lessee or remove and/or dispose of such property; Lessee shall reimburse City for any costs or expenses incurred by City in removing and/or disposing of such property promptly upon demand by City.

**24.3** Upon expiration or termination of this Agreement and upon the request of City, Lessee will perform all of the following activities:

- (i) an environmental assessment of the Property to evaluate the environmental condition of the Property from the Effective Date until the date of expiration or termination of this Agreement and any potential environmental liabilities and in accordance with Section 25 and Exhibit E titled "Hazardous Materials";
- (ii) all remedial or other work identified in the environmental assessment in accordance with Section 25 and Exhibit E titled "Hazardous Materials" and all applicable Environmental Laws;
- (iii) all corrective, remedial, repair, or other work necessary to correct any alleged violations, deficiencies, or hazards arising from the activities of Lessee and Lessee Parties on the Land after the Effective Date until the date of expiration or termination of this Agreement noted by any environmental governmental agency; and
- (iv) all steps necessary to terminate, close, or transfer all environmental permits, licenses, and other approvals or authorizations for the Property or for activities, equipment, or conditions on the Property, in accordance with all Environmental Laws. Lessee will also obtain and provide to City the written approval or verification of the satisfactory completion of the termination, closure, or transfer from each agency with jurisdiction over the environmental permit, license, or other approval.

**SECTION 25. HAZARDOUS MATERIALS - PROHIBITIONS AND RESTRICTIONS**

Lessee shall at all times comply with the provisions of this Agreement, including those provisions of **Exhibit E**, regarding Hazardous Materials.

**SECTION 26. AUTHORITY, STATEMENTS, RECORDS AND INFORMATION**

Lessee represents and warrants to City that all statements, records, reports,



certifications and other information submitted by Lessee to City have been true and accurate in all respects to the best of Lessee's actual knowledge without any additional investigation; that the individuals who execute this Lease are duly authorized by Lessee; that Lessee has authority to enter into this Lease; and Lessee covenants that all future statements, records, reports, certifications and other information submitted by Lessee to City will be true and accurate in all respects to the best of Lessee's actual knowledge without any additional investigation.

**SECTION 27. GIFT**

Lessee is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the Municipal Code. Lessee agrees not to offer any City officer or designated employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Agreement by Lessee. In addition to any other remedies City may have at law or in equity, City may terminate this Agreement for such breach as provided in Section 14 of this Agreement.

**SECTION 28. HEIRS, SUCCESSORS AND ASSIGNS**

All of the covenants, agreements, conditions and undertakings herein contained shall apply to and bind the representatives, heirs, executors, administrators, successors and/or assigns of all the Parties hereto.

**SECTION 29. REPRESENTATIONS AND WARRANTIES**

If Lessee is a partnership or joint venture, at least two (2) partners or each party to the joint venture, shall execute this Agreement on behalf of Lessee.

**SECTION 30. [INTENTIONALLY OMITTED]**

**SECTION 31. LIMITATION OF CITY'S LIABILITY**

In the event of any transfer of City's interest in this Agreement, City (and in case of any subsequent transfer, the then transferor) shall be automatically freed and relieved from and after the date of such transfer of all personal liability for the performance of any covenants or obligations on the part of City contained in this Agreement thereafter to be performed; provided, however, that any funds in the hands of City, or the then transferor at the time of such transfer, in which Lessee has an interest shall be turned over to the transferee and any amount then due and payable to Lessee by City or the then transferor under any provision of this Agreement shall be paid to Lessee; and provided, further, that upon any such transfer, the transferee shall expressly assume, subject to the limitations of this Section 31, all of the agreements, covenants and conditions in this Agreement to be performed on the part of City, it being intended hereby that the covenants and obligations contained in this Agreement on the part of City shall, subject as aforesaid, be binding on City, its successors and assigns, only during its period of ownership.

**SECTION 32. AMERICANS WITH DISABILITIES ACT; OTHER ACCESSIBILITY LAWS**

Lessee shall be solely and fully responsible for complying with the ADA and any other accessibility Laws including, but not limited to, CASp, in connection with: (i) the Property or any portion thereof and its operations thereon; (ii) removing physical barriers on the Property; (iii) providing auxiliary aids and services for use of the Property, where necessary or required; and (iv) modifying its policies, practices and procedures to comply with the ADA, as it and any implementing regulations may be amended or modified from time to time. Lessee shall develop a workplan to correct or avoid any violations or noncompliance with the ADA or any other accessibility Laws. Lessee shall deliver to the City, upon City's request, a copy of each such report and workplan. City's approval of or acceptance of any aspect of Lessee's activities under this Agreement shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. Lessee shall be solely responsible for any repairs or alterations required under the ADA or any other accessibility Laws, including any costs thereof. Lessee agrees to indemnify, defend and hold the City harmless from any and all costs incurred by City with respect to Lessee's failure to comply with the ADA.

Nothing herein shall relieve Lessee from the obligation to seek and obtain City's consent prior to commencing any construction, alteration or renovation pursuant to Section 8.

**SECTION 33. CASP INSPECTION.**

Pursuant to Section 1938 of the California Civil Code, any sublease entered into by Lessee for lease of any portion of the Property, must include the following provision:

"The Center/Property:  has not undergone an inspection by a Certified Access Specialist (CASp).  has undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Center/Property met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.  has undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Center/Property did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq."

If the Center/Property has not been issued a disability access inspection certificate, as described in subdivision (e) of California Civil Code Section 55.53, Lessee shall state the following on the sublease form or rental agreement:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all 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 City may not prohibit the lessee or tenant from obtaining a CASp inspection of the 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.”

**SECTION 34. NO RELOCATION BENEFITS**

Lessee acknowledges and agrees (i) that the possession and occupancy of the Property created by this Agreement is of a temporary nature; (ii) that City is allowing Lessee’s use and occupancy of the Property only on an temporary basis prior to City’s planned future use of the Property; (iii) that Lessee understands the provisions of relocation law (including without limitation California Government Code Section 7260, *et seq.*) with regard to relocation assistance in connection with projects involving public entities; and (iv) that Lessee shall not acquire, as a result of this Agreement and Lessee’s use and occupancy of the Property, any right to any relocation benefits or payments, whatsoever. Lessee understands that such relocation assistance may include, without limitation, certain moving expenses, business re-establishment expenses, and expenses incurred in searching for a replacement business.

After full consideration of such information, Lessee expressly agrees that, under California Government Code Section 7260(C)(2)(D), Lessee is not considered a “displaced person” if this Agreement is terminated in connection in accordance with its terms and, therefore, Lessee is not entitled to any relocation benefits in connection with such termination. If for any reason Lessee shall ever be determined to be such a “displaced person”, Lessee does hereby, in consideration of City’s agreement to allow this Agreement, expressly and knowingly waive any claim to relocation assistance (including without limitation under California Government Code Section 7260, *et seq.*) in connection with the Agreement and/or Lessee’s occupancy of the Property. Lessee further expressly acknowledges that City is relying on this waiver in approving the Agreement. To the extent that Lessee sublets the Property or permits its occupancy by any other party, Lessee agrees that it will indemnify and hold harmless City from any claim for relocation benefits by any sub-Lessee or other occupant.

**SECTION 35. NONDISCRIMINATION.**

A. During the Term, Lessee shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

B. Any subleases and contracts entered into by Lessee for the use, occupancy, or development of the Center shall contain substantially the following clause:

There shall be no discrimination in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the use, occupancy, tenure or enjoyment of the premises, nor shall the transferee itself, or any person claiming under or

through it, establish or permit discrimination in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the selection, location, number, use or occupancy of licensees, vendees or invitees in the premises.

**SECTION 36. MISCELLANEOUS**

**36.1 Consent.**

Unless expressly stated otherwise, whenever in this Agreement the approval or consent of a Party is required, such approval or consent must be in advance, shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

**36.2 Controlling Law.**

Except as federal law may apply, the Parties agree that this Agreement shall be governed and construed by and according to the laws of the State of California.

**36.3 Entire Agreement.**

This instrument contains all of the terms and conditions entered into and made by and between the Parties pursuant to Section 36.9.

**36.4 Exhibits and Addenda.**

The recitals stated above, all exhibits, and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment thereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein.

The Exhibits attached to this Agreement are:

- Exhibit A     Legal Description of Land
- Exhibit B     CCA Guiding Principles
- Exhibit C     Site Plan
- Exhibit D-1   Development Schedule
- Exhibit D-2   Construction Schedule
- Exhibit E     Hazardous Materials
- Exhibit F     Insurance Requirements
- Exhibit G     Memorandum of Ground Lease Agreement
- Exhibit H     Approved Financing

**36.5 Force Majeure.**

For purposes of this Agreement the term “Force Majeure” shall mean earthquake, fire or other casualty, flood, landslide, epidemic, unforeseeable adverse weather, “acts of God,” war, civil disturbance, court ordered injunction, intervention by civil or military authorities or government, strikes, lockouts, boycotts or other labor disputes, to the extent any of the foregoing are beyond the reasonable control of either City or Lessee and that cause such Party to be delayed or hindered in or prevented from the performance of any covenant or obligation under this Agreement other than the payment of money.

**36.6 Headings.**

The headings of the several paragraphs and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**36.7 Joint and Several.**

If there be more than one Lessee designated in or signatory to this Agreement, the obligations hereunder imposed upon Lessee shall be joint and several; and the term Lessee as used herein shall refer to each and every of said signatory parties, severally as well as jointly.

**36.8 Material Considerations.**

Each and every term, condition, covenant and provision of this Agreement shall be deemed to be a material part of the consideration for the Parties entry into this Agreement, and any breach hereof by a Party shall be deemed to be a material breach. Each term and provision of this Agreement to be performed by Lessee shall be construed to be both a covenant and a condition.

**36.9 Amendment or Modification of Agreement.**

This Agreement shall not be amended or modified, unless the Parties first agree to and approve of such amendment or modification in writing.

**36.10 No Assumption.**

The review, approval, inspection, examination or consent of City of or to any item to be reviewed, approved, inspected, examined or consented to by City shall not constitute the assumption of any responsibility by City for either accuracy or

sufficiency of any item or the quality or suitability of such item for its intended use, but rather for the sole purpose of protecting City's interests. No third parties, including Lessee or persons claiming under Lessee, shall have any rights hereunder resulting therefrom or otherwise.

**36.11 Number and Gender.**

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

**36.12 Recordation.**

Upon request of City, Lessee shall execute, acknowledge and deliver to City a short form of memorandum of this Lease, in the form attached hereto as **Exhibit G**. In the event of any amendment to this Agreement, Lessee shall, upon request of City, execute, acknowledge and deliver to City a short form of memorandum of Lease, as amended, in a form satisfactory to Director and suitable for recording. In no event shall this Agreement or any memorandum hereof be recorded without the prior written consent of City, and any attempt to do so shall constitute a default by Lessee.

**36.13 Resolutions.**

Lessee shall submit a copy of any corporate resolution, if requested by City, that authorizes any director or officer to act on behalf of Lessee or that authorizes Lessee to enter into this Agreement.

**36.14 Severability.**

If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the remaining provisions of this Agreement shall remain in effect.

**36.15 Successors and Assigns.**

The provisions of this Agreement shall, subject to the provisions concerning transfer, apply to and bind the successors and assigns of the Parties hereto.

**36.16 Lessee not an Agent of City.**

Lessee is not an agent, contractor or employee of City and nothing in this Agreement nor any action of Lessee shall be construed in any way to constitute Lessee as an agent, contractor or employee of City for any purpose.



Office of Economic Development  
200 E. Santa Clara Street, 17<sup>th</sup> Floor  
San José, CA. 95113  
Attn: Director of Real Estate

All notices shall be sufficiently given and served upon the other party if sent by first-class U.S. mail, postage prepaid, or by electronic mail to the electronic mail addressed indicated herein for either Party. All termination notices shall be served in accordance with California Code of Civil Procedure Section 1162, as may be amended or modified

**SECTION 38. MORTGAGE LOANS**

- (a) Loan Obligations. Nothing contained in this Lease shall relieve the Lessee of its obligations and responsibilities under any current or future loans (“Loans”) to develop or operate the Center as set forth therein.
- (b) Liens and Encumbrances Against Lessee’s Interest in the Leasehold Estate. Lessee shall have the right to encumber the leasehold estate created by this Lease.
- (c) Cost of Loans to be Paid by Lessee. Lessee shall bear all of the costs and expenses in connection with (i) the preparation and securing of the Loans, (ii) the delivery of any instruments and documents and their filing and recording, if required, and (iii) all taxes and charges payable in connection with the Loans.
- (d) Proceeds of Loans. It is expressly understood and agreed that all Loan proceeds shall be paid to and become the property of Lessee, and that the City shall have no right to receive any such Loan proceeds.
- (e) Notice and Right to Cure Defaults Under Loans. Upon the recording of a Memorandum of Lease, City may record in the office of the Recorder of the County in which the Property is situated a request for notice of any default under each Loan. In the event of default by the Lessee under a Loan, the City shall have the right, but not the obligation, to cure the default. Any payments made by the City to cure a default shall be treated as rent due from the Lessee which shall be paid within ninety (90) days of the date on which the payment was made by the City.

**SECTION 39. PERMITTED MORTGAGES AND LENDER RIGHTS**

City hereby consents and agrees as follows:

- (a) Consent to Mortgage. City hereby consents to the Loans identified pursuant to Exhibit H titled “Approved Financing”, as amended from time to time, and any deeds of trust securing such Loans and encumbering the leasehold.
- (b) Preservation of Leasehold Benefits. After the recordation of the deeds of trust securing the Loans against the leasehold estate and during the term of such Loans, City agrees:



- (i) Voluntary Leasehold Termination. That City will not voluntarily cancel or surrender the Lease, or amend the Lease to increase the obligations of Lessee or the rights of City thereunder or voluntarily encumber its fee interest in the Land without the prior written consent of Lenders, as defined in Exhibit H titled “Approved Financing”;
- (ii) Effect of Lessee Waiver. That City will not enforce against any Lender any waiver or election made by Lessee under the Lease which has a material adverse effect on the value of the leasehold without the prior written consent of Lenders;
- (iii) Notice to Lender. That City will send to each Lender a copy of any notice given by City to Lessee under the Lease at such address that has been provided to City in writing in accordance with Section 37, “Notice”;
- (iv) Recognition of New Lessee. That, following foreclosure of a leasehold mortgage, or assignment in lieu thereof, City will recognize the purchaser or assignee of the Lease as the Lessee under the Lease at the rent, and upon the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Property, subject to the following:
  - (1) Obligations of New Lessee. That, following any foreclosure or assignment, the new Lessee shall be personally obligated only for performance of obligations under the Lease for the period commencing as of the date of such foreclosure or assignment and ending as of the date of any assignment of the Lease to a successor Lessee;
  - (2) Assignment by New Lessee. That, following any foreclosure or assignment or the execution of a new lease, the new Lessee shall have the right to assign the leasehold subject to the written consent of City;
- (c) Insurance or Condemnation Proceeds. That City will pay to Lessee and Lenders jointly any proceeds from insurance or condemnation of the Property that are payable to Lessee under the Lease, for disposition as provided in the Lenders’ mortgages.
- (d) Insurance and Condemnation Proceedings - Notice. That City will provide reasonable prior notice to Lender of any proceedings for adjustment or adjudication of any insurance or condemnation claim involving the Property and will permit Lender to participate therein as an interested party.
- (e) Right to Pay Taxes and Cure Defaults. The Lenders shall have the right (but not the obligation) to pay any taxes payable by Lessee with respect to the Property, and to cure any monetary or non-monetary default by Lessee under any mortgage or other encumbrance on the Property or the leasehold.
- (f) Right of Lender to Cure.
  - (i) Notwithstanding any default by Lessee under this Lease, City shall have

no right to terminate this Lease unless City shall have given each Lender written notice of such default and such Lenders shall have failed to remedy such default or remove the Lessee's managing member, acquire Lessee's leasehold estate created by this Lease, commence foreclosure or commence other appropriate proceedings as set forth in, and within the time specified by, this Section.

(ii) Any Lender which has an outstanding leasehold mortgage shall have the right, but not the obligation, at any time to pay any or all of the rent due pursuant to the terms of this Lease, and do any other act or thing required of Lessee by the terms of this Lease, which are necessary to prevent termination of this Lease after notice of default. Any Lender and its agents and contractors shall have a right to enter the Property upon prior written notice reasonably delivered to the City for purposes of accomplishing the foregoing, so long as such Lender indemnifies and holds City harmless from any and all liability arising from such entry upon the Property (except to the extent of liability arising from City's active negligence or willful misconduct). Each Lender shall have ninety (90) days after mailing of notice from City describing such default to cure the default; provided, however, that if it is not reasonably possible to effect a cure within ninety (90) days, no default shall occur under this Lease so long as Lender shall give notice to the City thereof, commence such cure within the ninety (90) day period and thereafter diligently prosecute cure to completion in accordance with a schedule of cure reasonably acceptable to City and further provided, if it is necessary for Lender to obtain possession of the Property in order to effect cure, the period within which Lender is permitted to effect cure shall be extended by the time that is required for Lender to obtain such possession, provided the Lender (i) diligently prosecutes such possession, (ii) cures such defaults that do not require possession, and (iii) after gaining title to the Property or entering into a new lease, the Lender or its transferee cures all non-monetary defaults of Lessee hereunder capable of cure by such Lender.

(iii) All payments so made and all things so done shall be as effective to prevent a termination of this Lease as the same would have been if made and performed by Lessee instead of by Lenders.

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

(g) Limitation on Liability of Lender after Foreclosure. No assumption of obligations

by Lender shall be inferred from or result from foreclosure or as the result of any other action or remedy for default provided for by such leasehold mortgage or other instrument. No Lender or its designee or transferee shall be or become liable to City under such circumstances unless it enters into new lease or assumes liability under another written instrument executed by City and Lender or its designee or transferee.

(h) Estoppel Certificates. City and Lessee agree that at any time and from time to time upon not less than twenty (20) business days' prior written notice by the other Party or a Lender, it will execute, acknowledge and deliver to the other Party or to such Lender a statement in writing certifying (a) that this Lease is unmodified and in full force and effect; (b) the date through which the Rent has been paid; and (c) stating whether or not, to the current actual knowledge of the certifier, that the Lessee or City, as the case may be, is in default of any covenant, agreement or condition under the provisions of this Lease and, if so, specifying each such default. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of City, or Lessee, as the case may be, in this Lease or by any prospective Lender or investor or permitted assignee of any leasehold mortgage.

(i) Notice to City of Leasehold Mortgages. Lessee shall provide written notice to City of the name and address of each Lender and written notice of any changes in such parties and their addresses within 10 days of Lessee's receipt thereof.

#### **SECTION 40. ADDITIONAL MORTGAGEE PROTECTION PROVISIONS**

(a) No Modifications. City and Lessee shall not amend or modify this Lease in any material respect nor shall Lessee exercise any option or election by the Lessee without the prior written consent of the Lenders.

(b) Loss Payee Endorsement. City agrees that Lessee may add the names of each Lender to the "Loss Payable Endorsement" of any insurance policies required to be carried by Lessee under this Lease on condition that the insurance proceeds are applied in the manner specified in the applicable leasehold mortgage.

(c) Cures. No Lender shall be required to perform any act which is not susceptible to performance by a Lender, such as to cure a filing or condition of bankruptcy or insolvency or to cure or commence the cure of any default which arises from Lessee's failure to pay any lien, charge or encumbrance which is junior in priority to the Lender's encumbrance or, to pay any amount owed by Lessee, based on an event which occurred before the Lender or its designee or transferee took title to the Property, accepted an assignment of this Lease or entered into a new lease for the Property.

(d) New Lease After Lessee Default. City agrees that in the event of termination of this Lease by reason of any Event of Default by Lessee, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Lessee or its property, or by any other reason City will enter into a new lease of the Property with the Lender or its designee requesting a new lease for the remainder of the Lease Term, effective as of the date of such termination, at the rent, and upon the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Property, provided:

(i) The Lender shall make written request upon City for the new lease at any time prior to the date that is thirty (30) days following the delivery to Lender of written notice of termination of this Lease;

(ii) The Lender shall perform and observe all covenants herein contained on Lessee's part to be performed upon and following the effective date of the new lease, and shall further remedy any other conditions which Lessee under the terminated Lease was obligated to perform under its terms, to the extent the same are curable or may be performed by the Lender; provided however, that the Lender shall not be personally obligated for performance of obligations under the Lease occurring prior to the execution of the new lease;

(iii) The lessee under the new lease shall have the same right, title and interest in and to all improvements located on the Property as Lessee had under the terminated Lease immediately prior to its termination. City shall by grant deed or by the terms of the new lease convey to the Lender or its designee, title to the improvements, if any, which become vested in City as a result of the termination of the Lease; and

(iv) The rights granted any Lender to a new lease shall survive any termination of this Lease for a period of thirty (30) days. Nothing herein contained shall require any Lender to enter into a new lease pursuant to this Section.

(e) Recognition of Transferee. Foreclosure of any leasehold mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the leasehold mortgage, or any conveyance of the leasehold estate hereunder from Lessee to any Lender or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of City or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance City shall recognize the purchaser or other transferee in connection therewith as the Lessee hereunder so long as such purchaser or other transferee shall assume in writing all outstanding obligations of Lessee under this Lease.

(f) No Cancellation. Unless and until City has received notice from all Lenders that the Lenders elect not to demand a new lease as provided in this Section, or until the thirty (30) day period therefore has expired, City shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new subleases hereunder without the prior written consent of the Lenders.

(g) Insurance Proceeds. The proceeds from any insurance policies available to Lessee or arising from a condemnation if such condemnation proceeds would be payable to Lessee shall be paid to and held by the Lender and distributed pursuant to the provisions of this Lease and the leasehold mortgage, but such Lender may reserve the right to apply to its leasehold mortgage debt all, or any part, of Lessee's share of the

proceeds pursuant to the debts secured by such leasehold mortgage.

(h) Notices of Proceedings. Lessee shall give all Lenders and City notice of any, arbitration, litigation, or condemnation proceedings, or of any pending adjustment of insurance claims as each may relate to the Property, and any Lender shall have the right to intervene therein and shall be made a party to such proceedings. If any Lender shall not elect to intervene or become a party to the proceedings, Lessee shall provide such Lender with notice of such proceeding and a copy of any award or decision made in connection with such proceeding.

[Remainder of Page Left Intentionally Blank. Signatures on Following Page.]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first written above.

APPROVED AS TO FORM

\_\_\_\_\_  
HANA HARDY  
Deputy City Attorney

“CITY”

CITY OF SAN JOSE, a California municipal corporation

By: \_\_\_\_\_

Julie Edmonds-Mares  
Deputy City Manager

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

“LESSEE”

SILICON VALLEY CREATES, a California nonprofit public benefit corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

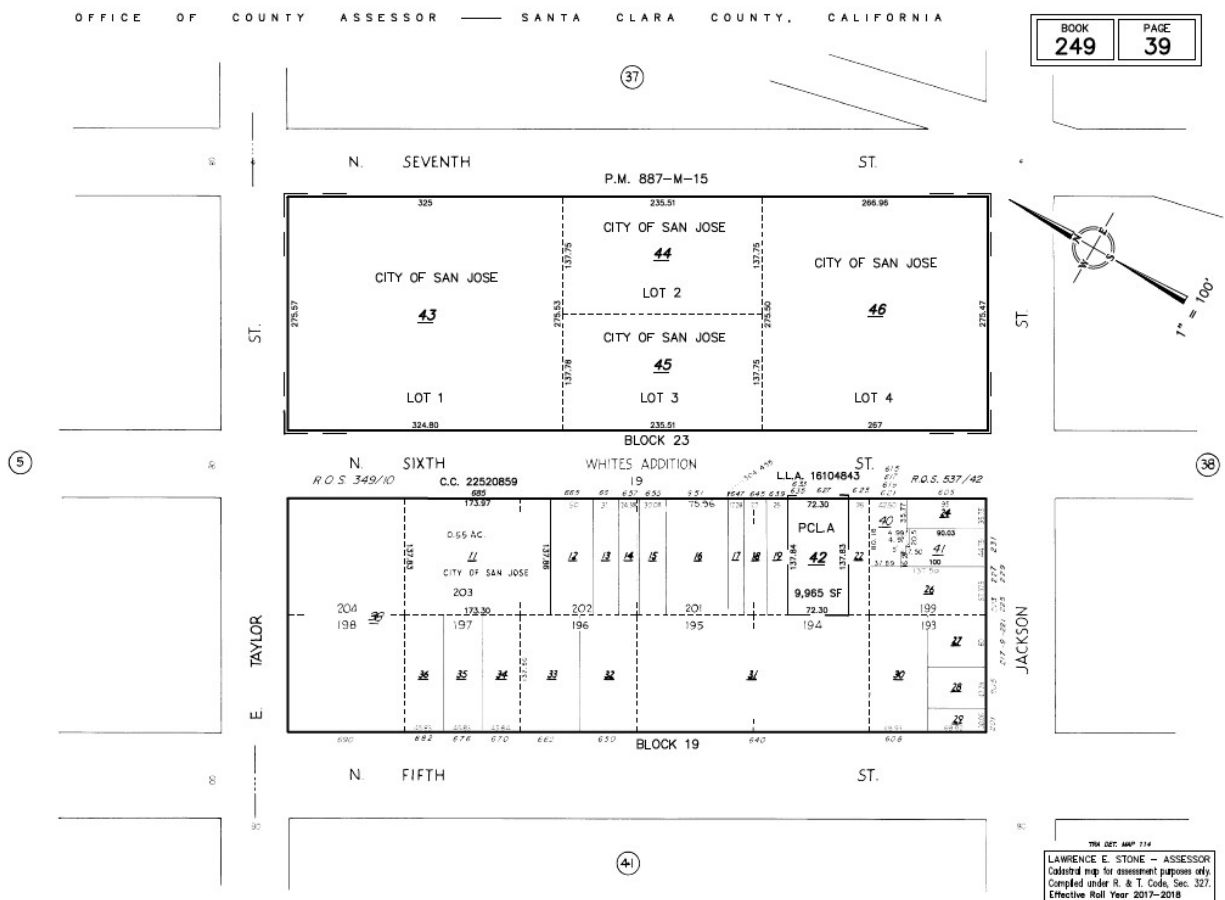
Title: \_\_\_\_\_

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

## EXHIBIT A Legal Description of Land

PARCEL 2 AS SHOWN ON THE PARCEL MAP FILED FOR RECORD OCTOBER 1, 2015  
IN BOOK 887 OF MAPS, PAGES 15 AND 16, SANTA CLARA COUNTY RECORDS.

APN: 249-39-044



## **EXHIBIT B CCA Guiding Principles**

### **VISION AND PURPOSE**

The *Creative Center for the Arts (the CCA)*, also called the Creative Center at Japantown Square, is a new model for supporting artists and creative and cultural organizations in the 21st century. Centered in San Jose's Japantown, a vibrant and diverse village adjacent to San Jose's central downtown, the CCA will promote an environment of collaboration and entrepreneurial spirit in the creative sector that will thrive in the context of Silicon Valley. Through the leadership of several key cultural organizations as anchor tenants, the CCA will create a nexus of flexible services and spaces within physical and virtual infrastructures. The CCA will provide resources for both nonprofit and for-profit creative enterprises as well as independent artists and creatives. As a model and sustainable hub of resources for creative practice, the CCA will also address common operating needs of Silicon Valley's arts groups today. The CCA will be owned and operated for the benefit of the local arts ecosystem.

### **SPIRIT AND VALUES**

The core values that created the CCA establish the spirit of the place and are essential to maintain, they include:

- CREATIVITY
  - Wonder, Beauty, Inspiration, Creation, Dedication, Enjoyment, Exploration, Celebration
- ENGAGEMENT
  - Participation, Education, Learning, Inclusion, Mentorship, Captivating, Immersive, Fascinating, Opportunities
- COMMUNITY
  - Relationships, Histories, Connections, Eco-Systems, Environment, Sustenance

### **KEY OBJECTIVES**



- Create a synergistic hub of services and resources – of creative work spaces and shared operational services, onsite and in other settings through leveraged partnerships – for both nonprofit and for-profit creative enterprises;
- Drive down the cost of doing business for core tenants, independent artists and participating community organizations by providing hoteling services, back office consolidations, and technology solutions;
- Create a new, sustainable model of support through earned revenue streams (e.g. space rental, business support services) that can be used for ongoing facility-related maintenance, management, or development;
- Facilitate collaborative partnerships and cross-cultural creativity; and,
- Provide a suitable permanent home for three anchor tenants/equity partners – San Jose Taiko Group, CreaTV San Jose, and Silicon Valley Creates - and continue the strong relationship between these organizations and the local community.

## USES AND TENANTS

The CCA will be managed and owned by the LLC and will accommodate four categories of users:

**Anchor Tenants** are those organizations that participate in the design of the CCA and contribute financially and otherwise to the capital construction of the facility. These tenants permanently occupy dedicated space in the CCA, on a long term lease.

**Regular Tenants** are those organizations who sign a medium or long term lease for ongoing office or studio space in the facility. Priority will be giving to nonprofit arts organizations based in Santa Clara County whose missions and values align with those of the CCA. These tenants will pay below market rental rates and will also have access to shared meeting, event and studio space and shared services provided by the CCA.

**Renters** will be able to rent studio, rehearsal, office and meeting space on daily, weekly or monthly basis. Priority will be giving to nonprofit arts organizations and individual artists based in Santa Clara County whose missions and values align with those of the CCA. These tenants will pay below market rental rates. Rental space will also be made available to for profit creative enterprises on a different rental scale.

**Shared Services Members** will participate in the below market operational services provided by the CCA including marketing, HR, financial and others. A menu of available resources will be available based on a sliding membership scale to provide those back office support systems needed by small and mid-size nonprofit arts organizations and independent artists. Members may, but are not required, to rent physical space in the facility.

## **PROMOTING A POSITIVE CO-LOCATION EXPERIENCE**

1. The CCA will offer space to selected agencies that share the vision of the CCA, have similar or congruent missions to the anchor tenants, and are willing to agree to work collaboratively for the good of the whole. The CCA will make every effort to solicit input from the tenants regarding operational issues, and will take into account their needs individually and collectively, but will reserve the right to make the ultimate operational decisions based on the mission of the foundation and its role and responsibilities as the owner of the property.
2. Regular meetings will be held, as a method for communication and problem identification and resolution, and tenants will be expected to attend and provide their input at that time. Tenants will also be expected to respond in a timely manner to the requests of the CCA.
3. In order for the CCA to function in a positive and collaborative manner, each agency must be willing to collaborate and work towards the common good, as long as it does not compromise its ability to provide services. Should a conflict arise between tenants, an effort should be made to resolve it as soon as possible either through discussion between and among those concerned or having it brought to the attention of the CCA management.
4. Tenants agree to collect and furnish all data as required by the funding agencies and for research and evaluation purposes.

## **EXCLUSIONS**

While CCA management will reserve the right to accept or reject any potential regular tenant or renter, there are several categories of renter/user of space or services that are likely to be rejected as not aligning with the CCA's core values and goals. Those might include:

1. Commercial ventures which are focused on profit only without a community benefit or any local artist employment;
2. Nonprofits or independent artists with no local connection or local community benefit objective;
3. Organizations or individuals with a solely political or partisan objective;
4. Organizations or individuals in violation of City of San Jose laws or regulations

**EXHIBIT C**  
**Site Plan**



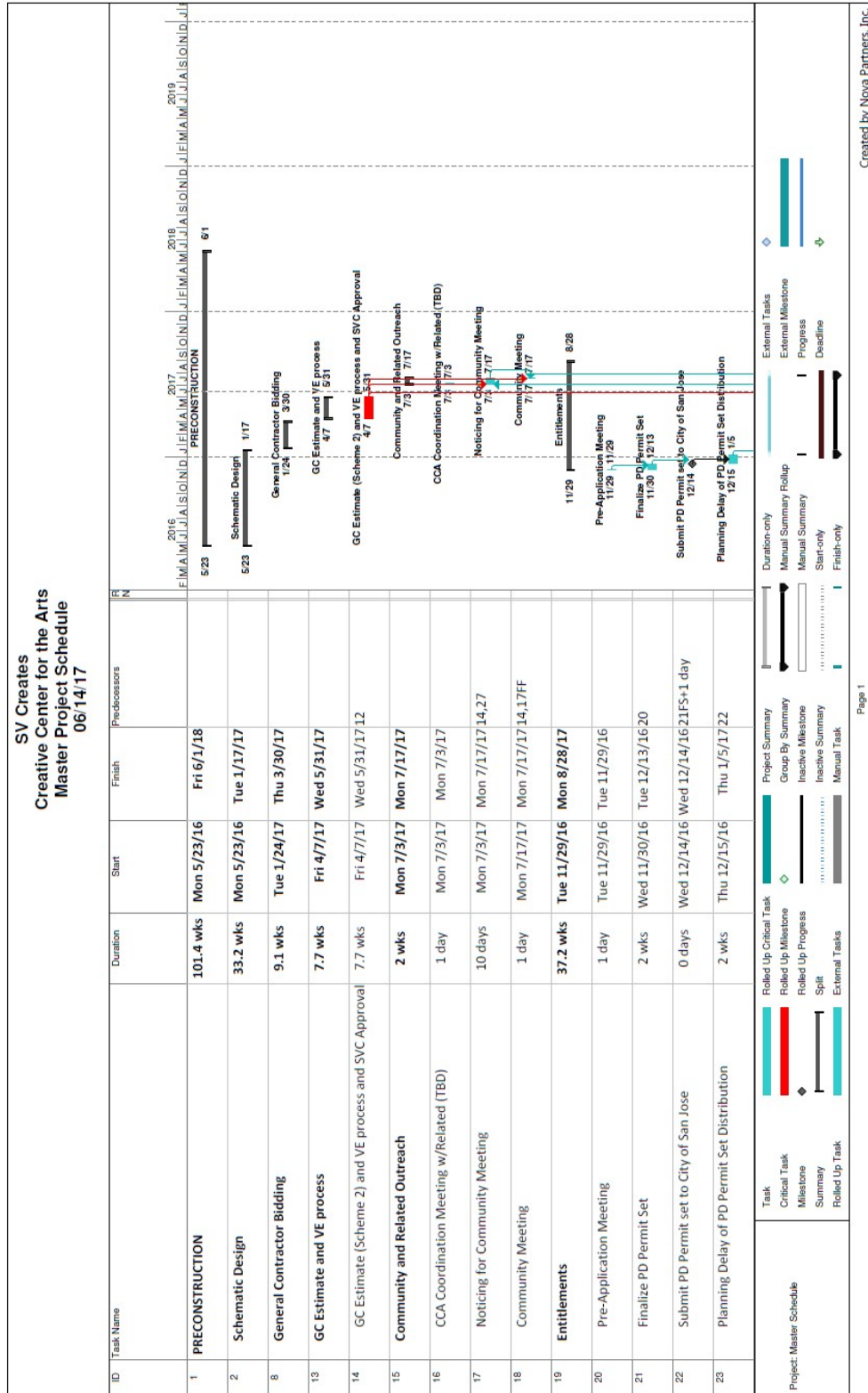
**EXHIBIT D-1**  
**Development Schedule**

<b>Date</b>	<b>Requirement/Milestone</b>
"Effective Date"	Mutual execution of this Agreement.
Within 1 year of Effective Date	SVCreates shall have submitted the final method of financing. Section 2.3(a)(i)
Prior to Commencement of Construction	SVCreates shall have submitted and City shall have approved conceptually the construction documents. Section 2.3(a)(ii)
Within 2 years of Effective Date	SVCreates shall have submitted and City shall have approved the final construction contract for the Center. Section 2.3(b)(i)
Within 2 years of Effective Date and Prior to Commencement of Construction	SVCreates shall have submitted and City shall have approved information on the entity providing the completion guarantee, along with the completion guarantee. Section 2.3(b)(iii)
Within 2.5 years of Effective Date and Prior to Commencement of Construction	SVCreates shall have obtained all entitlements and building permits for the Center. Section 2.3(b)(ii)
Within 4 years of Effective Date	SVCreates shall have commenced construction of the Center. Section 7.2
Prior to Issuance of First Certificate of Occupancy	SVCreates shall have remediated the hazardous environmental condition as described in section 5.3. Section 14.1(o)
Within 6 years of Effective Date	SVCreates shall have completed construction of the Center. Section 7.2
"Commencement Date"	Date of first tenant moving into the Center, but no longer than 6 years after the Effective Date. Section 3
"Termination Date"	Fifty-five years after the Commencement Date. Section 3

**EXHIBIT D-2  
Construction Schedule**

D2-1

**SV Creates  
Creative Center for the Arts  
Master Project Schedule  
06/14/17**



Created by Nova Partners, Inc.

SV Creates  
Creative Center for the Arts  
Master Project Schedule  
06/14/17

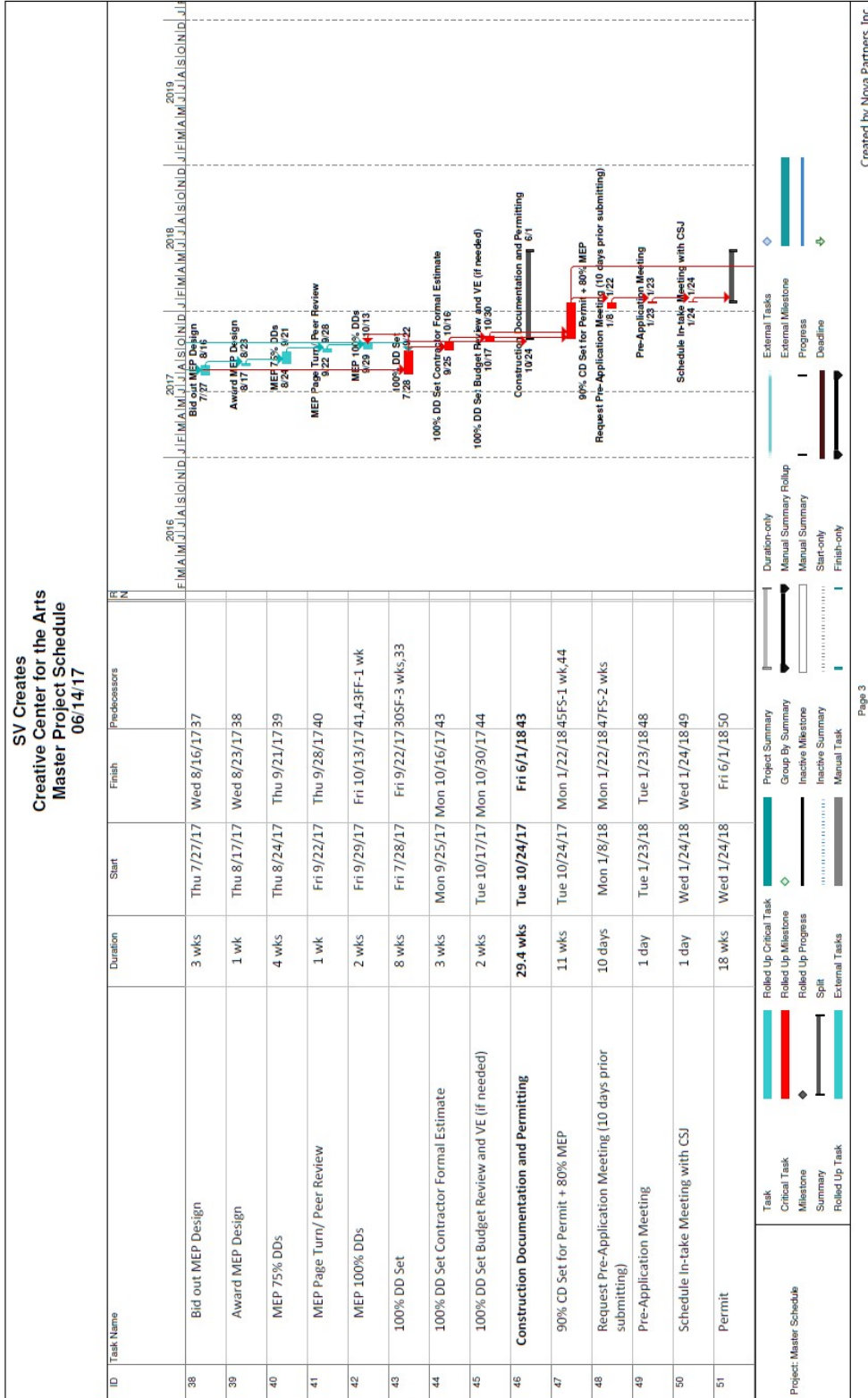
ID	Task Name	Duration	Start	Finish	Predecessors
24	PD Permit review by City, 1st Round	22 days	Fri 1/6/17	Mon 2/6/17 23	
25	Respond to City Comments on PD Permit set	2 wks	Tue 2/7/17	Wed 2/22/17 24	24
26	PD Permit review by City, 2nd Round	30 days	Thu 2/23/17	Wed 4/5/17 25	25
27	Responses to City Comments on PD Permit + Changes to PD App. (w/ VE)	2.6 wks	Thu 6/1/17	Mon 6/19/17 26,14	26
28	Received PD Set From AMA and Nova Submit to City	1 day	Tue 6/20/17	Tue 6/20/17 27	27
29	PD Permit review by City, 3rd Round (after revs made based on VE)	3 wks	Wed 6/21/17	Wed 7/12/17 28	28
30	PD Approval	30 days	Tue 7/18/17	Mon 8/28/17 18,29	29
31	<b>Design Development</b>	<b>21 wks</b>	<b>Thu 6/1/17</b>	<b>Mon 10/30/17</b>	
32	Complete Salter Site Visit (Taiko practice)	1 day	Tue 6/6/17	Tue 6/6/17	31
33	50% DD Progress Set (after VE confirmed, BEFORE PD PERMIT APPL)	8 wks	Thu 6/1/17	Thu 7/27/17 14	31
34	Contractor Budget Review Check-In	2 wks	Fri 7/28/17	Thu 8/10/17 33	33
35	<b>MEP Design Build DDs</b>	<b>17 wks</b>	<b>Wed 6/14/17</b>	<b>Fri 10/13/17</b>	
36	Basis of Design (BOD)	5 wks	Wed 6/14/17	Wed 7/19/17 33SS+9 days	35
37	BOD Review & Approval	1 wk	Thu 7/20/17	Wed 7/26/17 36	36

Created by Nova Partners, Inc.

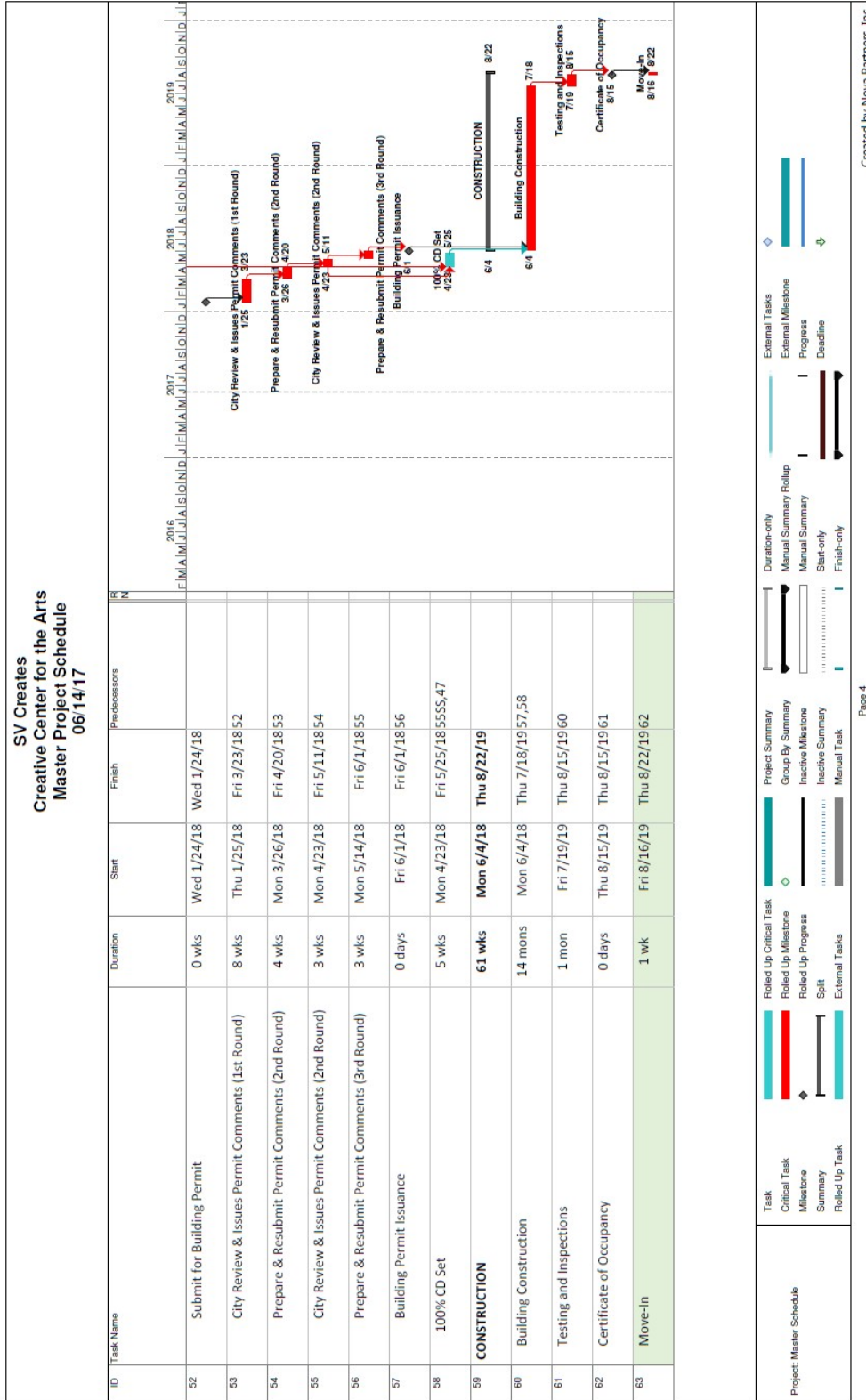
Page 2



SV Creates  
Creative Center for the Arts  
Master Project Schedule  
06/14/17



SV Creates  
Creative Center for the Arts  
Master Project Schedule  
06/14/17



## **EXHIBIT E Hazardous Materials**

In addition to complying with the provisions set forth earlier in this Lease, Lessee agrees to the following provisions:

1. Notification Requirements. Lessee shall be solely and fully responsible for:
  - (a) notifying the appropriate public agencies, after the Effective Date, of any known Hazardous Material release which occurs on the Land, or is caused by or results from the activities of Lessee, Lessee's officers, agents, employees, contractors, permittees or invitees on the Land;
  - (b) immediately after learning thereof, notifying City of any Hazardous Material release which occurs on the Property, regardless of whether the release was caused by or results from Lessee's activities or is in a quantity that would otherwise be reportable to a public agency, or which occurs on the Land other than the Property and is caused by or results from the activities of Lessee's officers, agents, employees, contractors, permittees or invitees, regardless of whether the release is in a quantity that would otherwise be reportable to a public agency;
  - (c) giving immediate written notice to City of:
    - (i) any enforcement, remediation, or other regulatory action or order, taken or threatened, by any Agency regarding, or in connection with, the presence, or threat of any Hazardous Material on, under, about, or from the Land, or any tanks on the Land, or otherwise resulting from Lessee's use of the Property;
    - (ii) all demands or claims made or threatened by any third party against Lessee or Lessee's Parties or the Property relating to any liability, loss, damage, or injury resulting from the presence, or threat of any Hazardous Materials on, under, about, or from the Land or otherwise resulting from Lessee's use of the Property;
    - (iii) all incidents or matters where Lessee and Lessee's Parties are required to give notice to any Agency pursuant to applicable Environmental Laws.
  - (d) promptly providing City with copies of all materials, reports, technical data, Agency inspection reports, notices and correspondence, and other information or documents relating to incidents or matters subject to

notification hereunder; and

- (e0 promptly furnishing to City copies of all permits, approvals, and registrations Lessee receives or submits with respect to Lessee's operations on the Property, including, without limitation, any underground storage tank registrations, installation permits, and closure permits.
2. Liability. Lessee shall be solely and fully responsible and liable for:
- (a) any Hazardous Material Release which is caused by or results from the activities of Lessee, Lessee's officers, agents, employees, contractors, or subcontractors on the Land, except for any release that may occur during work required by the county-approved site management plan.
  - (b) any Hazardous Material Release which is caused by or results from the activities of permittees or invitees on the Land if the same was caused by the negligent or intentional misconduct of Lessee.
  - (c) any Hazardous Material release that commences during the Term of the Lease on the Property, unless Lessee establishes through investigation, sampling, testing and analysis acceptable to the City, that the release existed before the commencement of the Term or was caused by the negligence of the City, City's officers, agents, employees, contractors or permittees or solely by migration of Hazardous Materials onto the Land from a source off the Land.
3. Prevention of Release. Lessee shall take all necessary precautions to prevent its activities from causing any Hazardous Material release to occur on the Land, including, but not limited to any release into soil, groundwater, or the City's sewage or storm drainage system.
4. Obligation to Investigate and Remediate. Lessee, at Lessee's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws:
- (a) any release or danger of release of Hazardous Material on the Land other than the Property, after the Commencement Date, including, but not limited to, into soil or groundwater, or the City's sewage or storm drainage system, which was caused, or results, in whole or in part from the activities of Lessee, Lessee's officers, agents, employees, contractors, and subcontractors;
  - (b) any Hazardous Material release which is caused by or results from the activities of permittees or invitees on the Land if the same was caused by the negligent or intentional misconduct of Lessee;

- (c) any release or danger of release of Hazardous Materials which commenced during the Term of this Lease and which is discovered on the Property, unless Lessee establishes through investigation, sampling, testing and analysis acceptable to City, that the release existed before the commencement of the Term or was caused by the negligence of City, City's officers, agents, employees, contractors or permittees or solely by migration of Hazardous Materials onto the Land from a source off the Land.

Unless an emergency situation exists that requires immediate action, City's written approval of these actions will first be obtained, and the approval will not be unreasonably withheld. City's right of prior approval of these actions includes, but is not limited to, the selection of any environmental consultant to perform work on or related to the Land, the scope of work, and sampling activities to be performed by the consultant before the report is final. Lessee will provide City with at least three (3) business days' advance notice of any sampling, and upon request of City, will split samples with City. Lessee will also promptly provide City with the results of any test, investigation, or inquiry conducted by or on behalf of Lessee or Lessee's Parties in connection with the presence or suspected presence of Hazardous Materials on, under, about, or from the Land. Lessee must notify City in advance and give City the right to participate in any oral or written communications with regulatory agencies concerning environmental conditions on or arising from the Land. Within thirty (30) days after Lessee's completion of any remediation of the Land, Lessee must deliver to City a letter from the applicable Agency stating that the remediation was undertaken in accordance with all applicable Environmental Laws and that any residual contamination remaining after the remediation does not pose a threat to human Health or the environment.

The failure to promptly commence remediation and provide City with a schedule for diligent completion of the remediation which thirty (30) days after discovery of such release, or danger of release, of Hazardous Material (or such additional time period of time that is reasonably necessary under the circumstances) shall constitute prima facie evidence of failure to promptly commence remediation. In addition to all other rights and remedies of City hereunder, if Lessee does not promptly commence, and diligently pursue to remediate any such release, or danger of release, of Hazardous Materials, City, in its discretion, may pay to have same remediated and Lessee shall reimburse City within fifteen (15) business days of City's written demand for payment with supporting documentation of the completion and the cost the remediation. The reasonable payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Lessee.

- 5. City's Right of Entry and Testing. City and City's representatives have the right, but

not the obligation, at any reasonable time during regular business hours to enter onto and to inspect the Property and to conduct reasonable testing, monitoring, sampling, digging, drilling, and analysis to determine if Hazardous Materials are present on, under, or about the Property and to review and copy any documents, materials, data, inventories, financial data, or notices or correspondence to or from private parties or governmental authorities (collectively, "Inspection"). If the Inspection indicates the presence of any environmental condition that occurred during the Term as a result of Lessee's or Lessee's agents', affiliates', contractors', licensees' or sublessees' activities, or failure to act where Lessee had a duty to act, in connection with the Property, Lessee will reimburse City for the cost of conducting the tests.

6. Environmental Assessment. City may require Lessee to retain a duly licensed environmental consultant acceptable to City that will perform an environmental compliance audit of the Property and Lessee's business activities and compliance with the provisions of this Exhibit E. City may require Lessee to cause the environmental compliance audit to be conducted once every ten (10) years, the cost of which will be the sole responsibility of Lessee. If the results of the environmental compliance audit indicate that Lessee is or may be in violation of this Exhibit E, Lessee will be responsible for the cost of any additional testing required by City. Lessee must promptly provide a copy of the report from the consultant to City upon receipt, and upon request must promptly provide to City a copy of all data, documents, and other information prepared or gathered in connection with the report. Lessee acknowledges that Lessee has been provided an adequate opportunity to conduct Lessee's own environmental investigation of the Property with independent environmental experts and consultants prior to the commencement of the Term, and that investigation is summarized in the Phase I.
  
7. Indemnification. Lessee shall defend, indemnify and hold City harmless from and against all loss, damage, liability, and expense (including, without limitation, the cost of any required cleanup and remediation of the Hazardous Materials) which City may sustain as a result of:
  - (a) any Hazardous Material release on the Land, including, but not limited to any release into soil or groundwater, or the City's sewage or storm drainage system, which is caused by or results directly from the activities of Lessee, Lessee's officers, agents, employees, contractors, and subcontractors; or
  - (b) Lessee's breach of any prohibition or provision of this Exhibit E.
  - (c) The presence of any Hazardous Materials on or under the Land which commenced during the Term, including, but not limited to any release into

soil or groundwater, except a release which Lessee establishes, through investigation, sampling, testing and analysis acceptable to the City, was caused by the negligence of City, City's officers, agents, employees, contractors or permittees, or by migration of Hazardous Materials onto the Land from an identified source off the Property.

This obligation by Lessee to indemnify, protect, defend, and hold harmless City includes, without limitation, costs and expenses incurred for or in connection with any investigation, cleanup, remediation, monitoring, removal, restoration, or closure work required by the Agencies because of any Hazardous Materials present on, under, or about the Land; the costs and expenses of restoring, replacing, or acquiring the equivalent of damaged natural resources if required under any Environmental Law; all foreseeable consequential damages; all reasonable damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property; all reasonable sums paid in settlement of claims; reasonable attorney's fees; litigation, arbitration, and administrative proceeding costs; and reasonable expert, consultant, and laboratory fees. Neither the written consent of City to the presence of Hazardous Materials on or under the Property, nor the strict compliance by Lessee with all Environmental Laws, will excuse Lessee from the indemnification obligation.

This indemnity will survive the expiration or termination of this Agreement for only four years. Further, if City detects a deficiency in Lessee's performance under this indemnity and Lessee fails to commence the correction of the deficiency within ten (10) days after receipt of written notice from City, City has the right to join and participate in any legal proceedings or actions affecting the Property that are initiated in connection with any Environmental Laws. However, if the correction of the deficiency takes longer than ten (10) days, City may join and participate if Lessee fails to commence corrective action within the ten (10) day period and after that diligently proceeds to correct the deficiency.

8. Release of Claims Against City. Lessee releases, acquits and forever discharges City from any and all claims, actions, causes of action, demands, rights, damages, costs, including but not limited to loss of use, lost profits, or expenses, which Lessee may now have, or which may hereafter accrue on account of or in any way growing out of all known or unknown, foreseen and unforeseen bodily and personal injuries and property damage, and the consequences thereof resulting or arising out of the presence or cleanup of any Hazardous Material on the Land, unless the presence of the Hazardous Material results from City's action. This release shall not apply to any claims for contribution that Lessee may have against City in the event that Lessee incurs any cost in undertaking any cleanup of Hazardous Material from the Land ordered by a governmental agency, to the extent that the cleanup order and costs result from a release of Hazardous Material for which Lessee is not responsible and liable under this Lease.

9. (a) Cessation of Activities. Lessee shall cease its activities on the Property to the extent reasonably requested by City, if City determines, in its reasonable opinion, that such cessation is necessary to investigate, cure or remediate any release of Hazardous Materials. Lessee shall not recommence its activities on the Property until notified by City that such release or danger of release of Hazardous Material has been investigated, cured, and remediated in a manner satisfactory to the City.
- (b) Abatement of Fees and Charges on Property. Lessee shall not be entitled to an abatement of any fees or charges due under this Lease after Lessee has been requested to cease activities for investigation, cure, or remediation of Hazardous Materials on the Property, except if Lessee establishes, through investigation, sampling, testing and analysis that the presence of Hazardous Materials on the Property was due to any event for which Lessee is not responsible and liable under this Lease.
10. Records and Inspections.
- (a) Lessee shall maintain, during the term of this Lease and for a period of not less than four (4) years after the expiration or termination of this Lease, or for any longer period of time required by any applicable law, regulation, policy, order or decree, separate and accurate daily records pertaining to the use, handling and disposal of any Hazardous Material(s) by Lessee, Lessee's officers, agents, employees, contractors, permittees or invitees on or from the Land.
- (b) Upon request by City, Lessee shall furnish City with such daily records, and such other documentation or reports as Director, from time to time, and at any time during the term of this Lease, may reasonably require pertaining to the use, handling and disposal of any Hazardous Material(s) by Lessee, Lessee's officers, agents, employees, contractors, permittees or invitees on or from the Land.
- (c) On the date that is one year from the commencement of the Term and annually after that, Lessee must provide City with a letter certifying that Lessee has complied with all applicable Environmental Laws and the requirements of all applicable Agencies and that no soil or groundwater contamination has occurred on or originated from the Property.
- (d) After the expiration of four (4) years following the termination of this Lease, Lessee may destroy the records pertaining to the use, handling and disposal of any Hazardous Material(s) by Lessee, Lessee's officers, agents, employees, contractors, permittees or invitees on or from the Land, provided, however, that Lessee shall notify City no later than sixty (60) days prior to any proposed destruction of any of said records and



shall upon request by City within thirty (30) days after such notice is received.

11. No Third Party Beneficiaries. Nothing contained in this Exhibit shall be construed as conferring any benefit on any person not a party to this Lease, nor as creating any right in any person not a party to this Lease to enforcement of any obligations created under this Lease.
12. Survival of Obligations. Each Party's obligations under this Exhibit shall survive the expiration or earlier revocation or suspension of this Lease.

**EXHIBIT F**  
**Insurance Requirements**

**INSURANCE**

Lessee, at Lessee's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Lessee, its agents, representatives, employees, volunteers or subcontractors.

**A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001, including products and completed operations; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles"; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services if applicable to Lessee. (*Lessee shall further ensure and confirm for Contractors or Subcontractors performing any type of design or engineering services or other professional services including but not limited to, surveying, sampling, testing and similar activities*):
  - i. Architect
  - ii. Structural Engineer
  - iii. Civil Engineer
  - iv. Mechanical Engineer
  - v. Electrical Engineer
  - vi. Environmental testing
  - vii. Any other professional deemed necessary
5. Lessee shall ensure and confirm that Contractor and Subcontractors have Contractor's Pollution Liability Insurance, including coverage for all operations, completed operations and professional services; and
6. Builder's Risk (for any capital improvement or Lessee improvements) for completed value of work of the project; and

7. Property and Casualty Insurance for “all risk” coverage, such as that provided by ISO “Causes of Loss – Special Form” or the equivalent.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY’s Risk Manager.

**B. Minimum Limits of Insurance**

Lessee shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage including sublimits of \$100,000 for fire legal liability insurance. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; coverage shall be endorsed to state carrier waives its rights of subrogation against the CITY, its officers, employees, agents and contractors; and
4. Professional Liability Errors & Omissions \$1,000,000 per claim/aggregate limit.
5. Lessee shall apply as is applicable for all contractors and subcontractors. Contractor’s Pollution Liability Insurance: \$1,000,000 per contamination incident. Policy shall at a minimum cover on-site and off-site liability including third-party injury and property damage claims, transportation, clean-up costs, as a result of pollution conditions arising from Contractor’s or its contractor’s operations and completed operations.
6. During any improvements or construction, Builders’ Risk for completed value of the project with total replacement value not to be less than stated what was included in the original contract documents.
  - i. Valuation for Property under Construction—The cost to repair or replace the lost or damaged property, valued as of the time and place of loss, with material of like kind and quality, less betterment, including contractor's reasonable profit and overhead in the same proportion as that included in the original contract documents.
  - ii. No deductible shall exceed \$50,000.

7. Property and casualty insurance for “all risk” coverage shall be in an amount at least equal to the full replacement value of the buildings, improvements, furniture, furnishings, fixtures, equipment and other items (whether personality or fixtures). If the Property is situated in an area now or subsequently designated as having special flood hazards, as defined by the Flood Disaster Protection Act of 1973, as amended, flood insurance’s limit shall be in an amount equal to 100% of the appraised value of the Property.

**C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors; or Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

**D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
  - a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Lessee; products and completed operations of Lessee; premises owned, leased or used by Lessee; and automobiles owned, leased, hired or borrowed by Lessee. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
  - b. Lessee's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of Lessee's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies by Lessee shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
  - d. Coverage shall state that Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - e. Coverage shall contain a waiver of subrogation in favor of the CITY, its officers, employees, agents, and contractors.
2. Workers’ Compensation and Employers’ Liability  
Coverage shall contain waiver of subrogation in favor of the City of San José, its officers, employees, agents, and contractors.
3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. **Verification of Coverage**

Lessee shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE, which shall be provided by the Lessee's insurance company as evidence of the stipulated coverages. This Proof of Insurance shall then be mailed to the following offices:

City of San José – Finance  
Risk Management  
200 East Santa Clara St. 14<sup>th</sup> Floor Tower  
San José, CA 95113-1905

G. **Subcontractors**

Lessee shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

**EXHIBIT G**  
**Memorandum of Ground Lease Agreement**

Recording Requested by:  
City of San José, a  
municipal corporation of  
the State of California

When recorded, return to:  
City Clerk's Office  
200 East Santa Clara Street  
San José, CA 95113-1905

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MEMORANDUM OF GROUND LEASE AGREEMENT

THIS MEMORANDUM OF GROUND LEASE AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between the City of San José, a municipal corporation of the State of California ("City") and Silicon Valley Creates, a California nonprofit public benefit corporation ("Lessee"). City leases to Lessee and Lessee leases from City the use of certain Property located at \_\_\_\_\_, San José, California, as more particularly described in Exhibit A attached hereto. For purposes of this Memorandum of Ground Lease Agreement, City and Lessee are sometimes referred to collectively herein as "Parties".

The leased Property is leased upon and subject to the terms, provisions, covenants and conditions contained in, and the location and amount of space leased are more particularly described in, an unrecorded Ground Lease Agreement by and between the City and Lessee for Creative Center for the Arts dated \_\_\_\_\_, 201\_ ("Ground Lease"). The term is, initially, for fifty-five years (55) years commencing on \_\_\_\_\_, 201\_, but the term is subject to early termination. The Ground Lease is on file with the City Clerk's Office of the City of San José. The purpose of this Memorandum of Ground Lease Agreement is to give notice of the existence of the Ground Lease, which itself constitutes the agreement between

the Parties.

APPROVED AS TO FORM

\_\_\_\_\_  
HANA HARDY  
Deputy City Attorney

“City”

CITY OF SAN JOSE, a California municipal corporation

By: \_\_\_\_\_

Julie Edmonds-Mares  
Deputy City Manager

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

“Lessee”

SILICON VALLEY CREATES, a California nonprofit public benefit corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

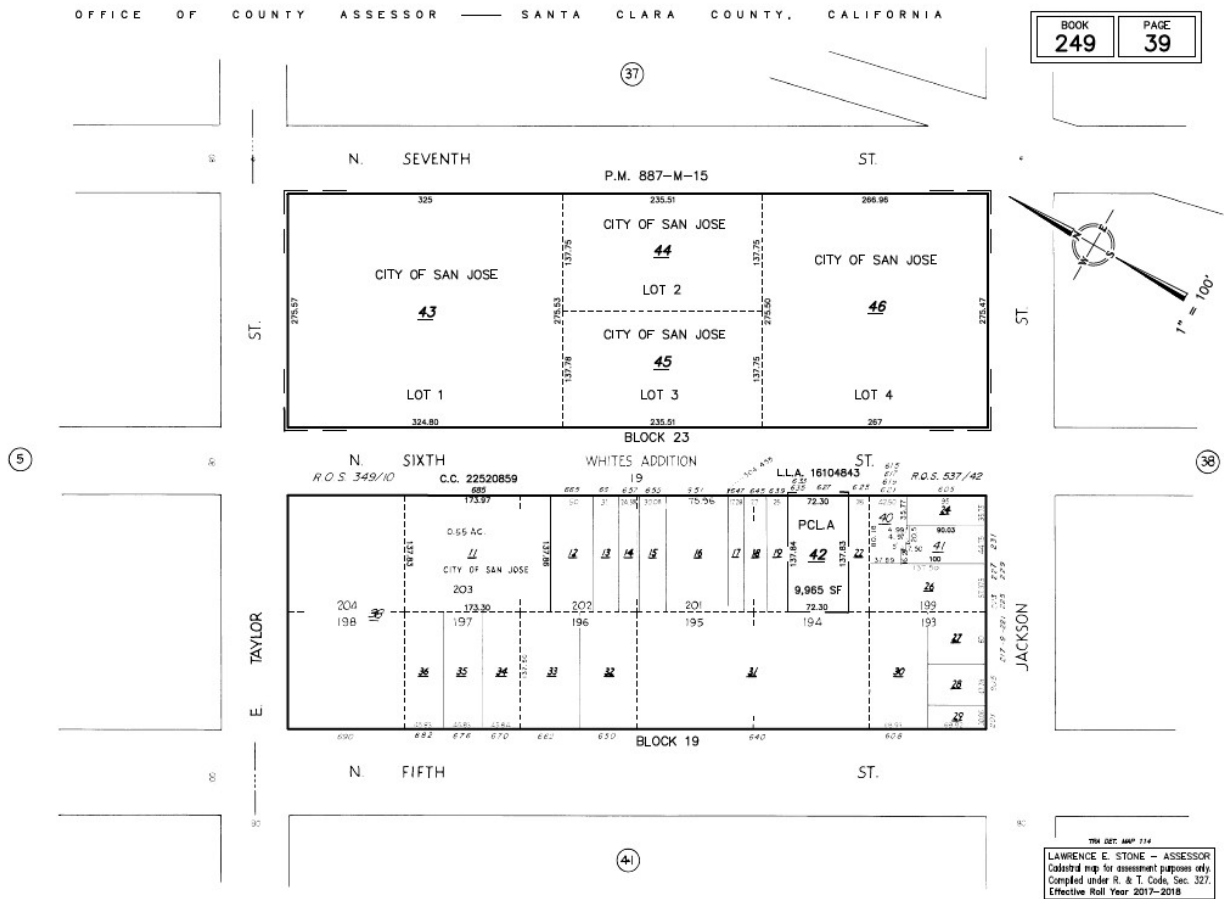
Title: \_\_\_\_\_

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

### Memorandum of Ground Lease Agreement: EXHIBIT A

PARCEL 2 AS SHOWN ON THE PARCEL MAP FILED FOR RECORD OCTOBER 1, 2015  
IN BOOK 887 OF MAPS, PAGES 15 AND 16, SANTA CLARA COUNTY RECORDS.

APN: 249-39-044





**EXHIBIT H  
Approved Financing**

**(To be provided)**

**City Approved Lenders and Financing for CCA Japantown**

Financing Source	Amount	Type of Financing	Terms