
*EAST BAY MUNICIPAL UTILITY
DISTRICT*

Performing Arts Lease

Lease covers Premises location:

Lessee's Name:

Telephone Number:

Address:

LEASE AGREEMENT-PERFORMING ARTS CENTER

THIS LEASE AGREEMENT, made and entered into this __ day of _____, 2025 (“Effective Date”), by and between the EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation of the State of California (“Lessor”) and _____, (“Lessee”).

RECITALS

A. Lessor is the owner of certain real property consisting of approximately 940 acres of watershed land located in Siesta Valley, the County of Contra Costa, state of California (“Property”).

B. An eight (8)_ acre portion of the Property has been zoned by the Contra Costa County and developed for use as a site for performing arts (“Premises”),

C. The Bruns Amphitheater, with associated buildings, structures and trade fixtures (“Improvements”), has been constructed on the site and is the property of Lessor.

D. Lessor has solicited proposals from potential tenants of the Premises to identify a tenant that will operate and maintain the Premises and Improvements as an outdoor performing arts center.

NOW THEREFORE, in consideration of faithful performance of the terms, conditions, covenants, and promises, the Parties hereinafter agree as follows:

1. PREMISES.

1.1 Description of the Premises. Lessor hereby leases to Lessee and Lessee leases from Lessor for the Term, several land parcels and Improvements, listed herein and further described in Exhibit (A) attached hereto and made part hereof:

1.1.1 **Parcel One** (Theater Parcel): Parcel consists of approximately three and half (3.5) acres, which includes the following:

1.1.1.1 Outdoor amphitheater capable of seating approximately 580 people.

1.1.1.2 A control booth for ten occupants.

1.1.1.3 Ground theater seating area, approximately 13,800 square feet (SF), to accommodate an additional 701 occupants.

1.1.1.4 Theater support building, approximately 7,870 gross square feet (GSF), including 2,920 GSF of basement space, to accommodate up to 131

occupants along with two dressing rooms, offices, a concession area, sound control room, separate men's and women's restrooms and storage rooms.

1.1.1.5 Upper Grove building, approximately 675 GSF, to accommodate four occupants.

1.1.1.6 Amphitheater undercroft (basement), approximately 2,570 GSF, mainly used for storage of theater equipment.

1.1.1.7 Picnic areas and small stages.

1.1.1.8 Ticket Booth, approximately 120 GSF.

1.1.2 **Parcel Two** (Parking Parcel): Consist of approximately 1.4 acres for the use as car parking, with 20 spaces for staff parking and 185 spaces for public parking ("Parking Area").

1.1.3 **Parcel Three** (Access Road): Consists of an approximately one (1) acre, access and fire road which also serves as lay down area for utility conduits and used for trucking water in support of the Premises.

1.1.4 **Parcel Four** (Solar Array): Consists of approximately (0.4) acres for the installation of new panels and maintenance of existing solar panels.

1.1.5 **Parcel Five** (Water Tanks): Consists of approximately one half (0.5) acres on which two water tanks already exist.

1.2 Condition of the Premises. Lessee is leasing the Premises from Lessor solely based on the Lessee's own independent investigation of the Premises and not on any representation or warranties made by Lessor. Accordingly, the Lessee accepts the Premises and all Improvements and furnishings on an "As-Is" and "Where-is" basis.

1.2.1 Lessor and Lessee hereby acknowledge and agree that unless otherwise expressly provided in this Lease, any statement of size or square footage set forth in this Lease is to be exactly measured by Lessee and shall not be expanded in anyway without Lessor's written consent

1.2.2 Acknowledgement. Lessee hereby acknowledges (a) it has been given the opportunity to inspect and measure the Premises; (b) it has been provided the opportunity to review and study the construction documents in possession of Lessor, (c) it has been advised by Lessor to satisfy itself with respect to the size and condition of the Premises and their suitability for Lessee's intended use; (c) Lessee has made investigation as it deems necessary with reference to such matters and assumes all responsibility therefore as the same relate to its occupancy of the Premises; and (d) Lessee is not relying on any representation as the size or condition of the Premises or Improvements made by Lessor or its representative(s).

1.2.3 Since the compliance with the American with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises complies with ADA or any similar regulatory requirements. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's sole expense.

1.3 Condition of Premises on the Effective Date. Except as otherwise provided in this Lease, Lessee hereby accepts the Premises in the condition existing as of the Effective Date or the date that Lessee takes possession of the Premises, whichever is earlier, subject to all applicable permitting requirements by city, county and/or state laws, ordinances and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto.

1.4 Trade Fixtures, Equipment, Artwork and Materials. The Premises includes trade fixtures and materials, along with various types of equipment listed in Exhibit "B," attached hereto and made part hereof. The Premises also includes sculptures and other art, which Lessee shall not move or alter without the express written consent of the Lessor.

2. TERM.

2.1 Term. Lessee shall have and hold the Premises with their appurtenances for a Term of fifteen (15) years firm-term.

2.2 Possession of Premises. Lessee shall have access and take possession of the Premises and shall remain in possession of the Premises through the full Term, starting on the Effective Date, with all the stated rights herein to carry out related construction activities and beneficial occupancy.

2.3 Lease Compliance. Notwithstanding the approval of Lessor's Board of Directors, Lessor shall not execute this lease or tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of the insurance required in Paragraph 35.

3. BASE RENT.

3.1 All monetary and non-monetary considerations and obligations of Lessee to Lessor under the terms of this Lease are deemed to base rent ("Base Rent")

3.2 Lessee shall pay to Lessor as rent for the Premises, the amount of \$ -----in advance, commencing on or before the Effective Date ("Base Rent") and continuing thereafter through the first day of the anniversary of the Effective Date ("Anniversary Date") of the Term.

3.3 Base Rent Adjustment. Commencing with the first anniversary of the Commencement Date and annually thereafter, the annual Base Rent payable hereunder shall be increased by an amount equal to five percent (5%) of the then preceding year Base Rent.

3.4 All Rent is payable in advance on or before the first day of each year (“Due Date”), to the Lessor at P.O. Box 24055, Oakland, CA 94623, MS#903.

3.5 Late Rent. Should the Annual Base Rent payment not paid in full within ten (10) days of the Due Date, a ten percent (10%) late fee shall be added to the next Annual Base Rent payment due. Lessor’s right to collect a late fee shall not be deemed an extension of the Due Date nor prevent the Lessor from exercising any other rights and remedies available under this Lease and by law.

4. USE OF THE PREMISES.

4.1 Parcel One shall be used for the purposes of operating and maintaining the Improvements for rehearsing, staging and performing outdoor performing arts productions, conducting related workshops and seminars, and for all lawful uses incidental thereto. Lessee shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any statute, ordinance, rule, regulation, or other statement of lawful governmental authority now in force or which may hereafter be promulgated (collectively “regulations”), and shall at its own expense abide by and comply with any and all such regulations regulating the use of the Improvements and the Premises.

4.2 Parcel Two shall be used only as a parking lot and shall not be utilized for any other purpose, regardless of the duration, without the specific written consent of the Lessor.

4.3 Parcel Three shall be used, non-exclusively, as an access road by Lessee and continue to serve as a fire road for Lessor’s use. Lessee shall continue to use this Parcel’s underground laydown area for pipes and conduits supporting performing arts activities.

4.4 Parcel Four shall be used for maintaining and replacing existing Solar Array infrastructure. Lessee shall not use the property for any other purpose without the written consent of the Lessor.

4.5 Parcel Five is to be used for maintaining or replacing the existing Water Tanks and as an ingress and egress for water delivery trucks. Lessee shall not use the property for any other purpose without the written consent of the Lessor.

4.6 Lessee may make the Premises available for educational, cultural and public service group activities to third parties during the non-performance season, subject to reasonable terms and conditions as may be imposed by Lessor and Contra Costa County in consultation with the City of Orinda and in accordance with the terms and conditions of this Lease. If so approved, such use by third parties will be supervised and managed by Lessee. At all times, Lessee is responsible for applying for all required authorizations jointly with the proposed user in order to facilitate the above stated activities during the non-performance season. Subject to Lessor’s approval, Lessee is authorized to impose a reasonable fee on the third party as a condition of the use in order to cover the cost of the approved activities.

4.7 Lessor reserves the right to the use of the Premises and Improvements, including the Premises’ utility services, at any time during each calendar year of this Lease for Lessor’s own

educational or similar purposes. Lessor shall notify Lessee in writing and its use of the premises shall be subject to the following conditions:

4.7.1 Meetings, events, or training by Lessor must be carried out during Lessor's weekday business hours.

4.7.2 Lessor will notify Lessee of Lessor's intent to use the Premises at least 48 hours in advance.

4.7.3 Lessor and Lessee will conduct an inspection of the Premises before and after Lessor's use to identify any damage for which Lessor may be responsible.

4.7.4 If there is a conflict between Lessor's desired use of the Premises and any in-season rehearsal or performance schedule, the needs of Lessee shall prevail.

4.8 Notwithstanding the foregoing, Lessor's operational needs are paramount to any right herein; therefore, Lessor reserves the right to enter the Premises and to use the same (except for the Improvements) in any manner Lessor shall desire, including, without limitation, for purposes of constructing, installing, operating, maintaining, repairing, replacing, altering, and moving pipelines, conduits, culverts, ducts, fences, power and communication poles and lines, and roads, and Lessor reserves the right to grant easements over, across, under, or upon the Premises, or for ingress and egress thereto, or for any other purpose, provided only that any such use by Lessor and Lessor's granting of any such easements shall not result in any material interference with the conduct of Lessee's business activities on the Premises. Lessor reserves the right, with reasonable notice to Lessee, to have the Solar Array and/or parking relocated to other nearby parcels if necessary to support Lessor's operational needs. Such relocation(s) shall be at the sole cost of the Lessee.

5. MAINTENANCE, CONDITION AND REPAIRS.

5.1 General. Lessor shall not be obligated to make any improvements, alterations, additions or repairs in or upon any part of the Premises including, but not limited to facilities structure, property or equipment operated or used by Lessee.

5.2 Lessee acknowledges that it has inspected the Premises, and Lessee accepts the Premises "as is" in the condition existing as of the Effective Date. Lessee shall, at Lessee's expense, maintain the Premises and the Improvements in good, safe and sanitary condition, order and repair including removal of fallen trees and branches. Lessee shall keep the Premises free from trash and other debris. Lessee shall be responsible for the cost of all maintenance of the Premises. Lessee shall promptly remove from the Premises any vehicles, machinery, equipment or other items which Lessee from time to time no longer uses in the conduct of business on the Premises.

5.3 Lessee is fully responsible for repairing, maintaining, and operating, the Improvements in a manner consistent with standard use of similar facilities and shall maintain their structural integrity throughout the Term. This includes the repairs, maintenance, restriping, or repaving part or all of the Parking Area.

5.4 Lessee is fully responsible for all repairs and maintenance of all the roads and trails within the Premises, including Parcel Three (Access Road), along with any gates, and shall maintain the road free of obstructions and accessible at all times.

5.5 The operation, repairs, and maintenance of the Water Tanks and Solar Array shall be the sole responsibility of Lessee. Lessee shall be responsible for cutting the grass in and around the Solar Array and Water Tanks Parcels, trimming overhanging tree branches, and keeping both Parcels free of falling tree branches, leaves, or any other item that may present a fire hazard.

5.6 Lessee, at its sole cost and expense, agrees to maintain the trees within the Premises in accordance with the Tree Hazard Evaluation Program, as detailed in Exhibit _____, attached hereto and made a part hereof.

5.7 Lessee shall maintain the Premises in a safe sanitary condition at all times, and shall not permit unsanitary conditions, or a public nuisance to develop or exist on the Lessor's Adjacent Property. This includes keeping the Premises and Lessor adjacent property, free and clear from vandalism, graffiti, illegal dumping, encampments or other blight. Further, Lessee agrees to abate and remove any vandalism, graffiti, waste, material, goods, vehicles, or any other item abandoned or dumped on the Premises or property adjacent to the Parking Parcel.

5.8 Lessee is fully responsible for the repairs, maintenance, and replacement of the utilities and electrical infrastructure in and around the Premises.

5.9 Inspection. Lessor reserves the right to conduct, at its sole discretion, inspections of the Premises to ensure that the Premises and Improvements are maintained and operated in manner that provides for public safety, minimizes impacts to the Property, and in line with best fire prevention practices. This includes inspection of Improvements regarding proper maintenance and upkeep. Should Lessor identify any repairs or improvements reasonably necessary to remediate public safety, fire safety or environmental issues, Lessor shall provide written notice to Lessee of the need to complete such repairs or improvements, and Lessee shall complete the repairs or improvements to Lessor's reasonable satisfaction within 30 days.

5.10 Upon expiration of the Term or earlier termination of this Lease, Lessee shall surrender the Premises to Lessor in at least a similar condition as when Premises were delivered to Lessee, and any deferred maintenance shall be remedied by Lessee. With the exception of items and equipment purchased by the Lessee at its sole cost and expense, title to all of the Premises' facilities and equipment, improvements, and accessories described herein or described in Attachment (???), including replacements, substitutions and modifications thereof, shall remain Lessor property, and shall remain upon and within the Premises and be surrendered upon termination of this Contract, whether by expiration of the Term, cancellation or otherwise. No such facilities or equipment shall be removed from the Premises by Lessee at any time; provided, however, that equipment may be temporarily removed from the Premises to perform maintenance thereon and upon giving advance notice of such removal to Lessor.

6. FIRE PROTECTION

6.1 The local fire district(s) is responsible for all structure fires within the Premises. Lessee shall take all necessary precautions to prevent fire in or about the Premises and shall carefully observe all rules of Lessor and regulations of the fire protection district relative thereto. Lessee shall, at its expense, purchase, install and maintain such fire prevention and firefighting practices, apparatus or equipment and safety related items as may be required and are customary in public areas of similar nature in the State of California, said practices and equipment to be subject to Lessor's approval.

6.2 Lessee shall continue to furnish water for fire protection at no (service) cost to Lessor.

6.3 Lessee shall use all reasonable precaution to prevent fires and shall maintain proper equipment and personnel for the detection and suppression of fires on the Premises and Improvements. Lessee shall not allow any open flames, such as a fire pit, on the Premises and shall adhere to all laws related to fire prevention and control. Lessee agrees to complete any modifications within the Premises and Improvements as required by insurance, OSHA, the local fire district, or similar body, pertaining to fire prevention and control.

7. ALTERATIONS.

7.1 Lessee shall not make or permit to be made any improvements, alterations or additions to Premises or any part thereof without the prior written consent of Lessor, which consent will not be unreasonably withheld.

7.2 Lessee shall provide Lessor, for review and acceptance or rejection, the design of all improvements and alterations which Lessee may desire to make to the Premises, including, but not limited to, alterations of the Improvements. Prior to commencing construction or installation of any alteration or improvement, Lessee shall deliver to Lessor detailed plans and specifications for such construction or installation and obtain Lessor's consent thereto, which consent shall not unreasonably be withheld.

7.3 All construction, alterations, retrofitting, or installation work performed by Lessee or caused to be performed by Lessee in, on or about the Premises shall comply in all respects to all applicable statutes, ordinances, building codes, rules and regulations, including, but not limited to, fire, safety, and construction standards of any governmental authority, and shall furthermore comply with Lessor's most current watershed use and management guidelines.

7.4 Any consent given by Lessor pursuant to this Paragraph shall not constitute implied consent to any subsequent alteration upon the Premises or the Improvements but shall apply only to those items or matters for which consent was expressly provided.

7.5 Lessee shall notify Lessor at least ten (10) days in advance of the commencement of any construction type activities on, in, or around the Premises, and Lessor shall be entitled to post on the Premises notices of non-responsibility in favor of Lessor prior to commencement of any such alterations or construction.

7.6 Title to the existing Improvements shall remain vested in Lessor. All new alterations, or additions, constructed or installed on the Premises shall be for the exclusive use of Lessee until the expiration of the Term or sooner termination of this Lease, whereupon it shall pass to and vest in Lessor. Furthermore, Lessee shall at Lessee's expense promptly discharge and pay in full any encumbrances, liens and debts incurred by or created by Lessee with respect to such improvements and alterations.

7.7 Except as provided in this Paragraph, Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect from the Effective Date through the end of the Term regulating the use by Lessee of the Premises.

8. STORM DRAINAGE.

It is hereby agreed that Lessee shall be responsible for maintaining and, if necessary, providing needed repairs to maintain proper storm drainage within the Premises. In addition, Lessee shall not use nor permit the use of the Premises in any manner that may negatively impact the flow of storm water or Property drainage. Lessee shall be responsible for any damage or repairs resulting from flooding on any part of the Premises. Lessee must obtain and keep current a Stormwater Management Facility Operation and Maintenance Certification from Contra Costa County Department of Public Works.

9. UTILITIES.

9.1 The Premises shall be delivered to Lessee with all of its existing utilities infrastructure as used and operated by the previous tenant. Lessor does not warrant or guarantee the operable condition of this infrastructure, since all electric conduits and water lines within the Premises are underground

9.2 Lessee shall pay directly to the charging authority promptly as the same become due all bills for any and all services and utilities supplied to the Premises, including but not limited to telephone, internet, water, gas, electricity and garbage removal.

10. RIGHT OF ENTRY.

In addition to Lessor's right to inspect the Premises pursuant to Paragraph 5.6, Lessor shall, at any and all reasonable times and upon reasonable notice, have the right to enter onto the Premises to post notices, alter, improve or repair the ground in and around the Premises, without abatement of rent payable by Lessee hereunder. Lessee hereby waives any claim for damages for any loss of occupancy or quiet enjoyment of the Premises.

11. FENCING.

Lessee shall install and maintain, at Lessee's sole cost and expense, permanent perimeter fencing around each Parcel within the Premises. Permanent fencing must be approved by the Lessor prior to installation. Lessee shall also provide and maintain temporary fencing when necessary, during performances to prevent unauthorized access to other parts of the Property.

12. SMOKING.

Smoking is prohibited on or adjacent to the Premises, except for areas approved by Lessor and under such conditions as may be required by Lessor or any local or state authority.

13. MOTORCYCLES.

Motorcycles and all off-road vehicles are prohibited on the Premises, except for the purpose of parking in the Parking Area.

14. SCHEDULE OF PERFORMANCES AND ACTIVITIES.

Prior to the start of each season, or at the beginning of each lease year, Lessee shall submit a complete schedule of Lessee's performances and activities for the season or year ("Schedule of Performances and Activities").

15. ALCOHOL.

Sale of alcoholic beverages shall be limited to vending of beer and wine only, immediately prior to and during actual theatre performances-and other scheduled activities of the Lessee as set forth in the Schedule of Performances and Activities and in conformity with applicable local, state and federal regulations. Lessee shall be solely responsible for obtaining and maintaining any license or permit for the sale of alcohol as may be required by local or state authorities.

16. SEATING CAPACITY.

No activities or uses shall be permitted on the Premises that exceed the current seating capacity.

17. PARKING.

Parking shall be limited to the Parking Area only. Under no circumstances will parking exceed 205 vehicles, as specified in Paragraph 1.1.3, including staff and disabled persons' parking, unless modified as provided for in this Lease. No parking will be permitted outside of the delineated Parking Area. Vehicles are prevented from parking along shoulders of roads, trail access areas, or blocking access to the fire-road.

18. PUBLIC CURFEW.

Lessee shall strictly observe a public curfew over the Premises between 12:00 a.m. and 7:00 a.m. This public curfew shall be in full force and effect for each and every season during the term of this Lease unless waived in advance in writing by Lessor.

19. NOISE LIMITATION.

19.1 Noise from any performance at the Premises shall not exceed 90 decibels at the rear edge of the seating area, a distance of 70 feet from the front, center of the stage.

19.2 Lessee shall comply with Contra Costa County noise ordinances and the noise limitation conditions set forth any local or state permits issued for the use of the Premises.

20. TRESPASSERS.

Lessee shall make every reasonable effort to discourage trespassers on the Property.

21. SECURITY MEASURES.

Lessee hereby acknowledges that Lessor shall have no obligation whatsoever to provide guard service or other security measures for the Premises or Lessee's personal property or the Improvements. Lessee assumes all responsibility for the protection of the Premises, Lessee, its directors, officers, officials, agents, volunteers, employees or invitees, and their personal property from acts of third party. Lessee shall be fully responsible for the security of the Premises, which includes, but is not limited to:

21.1 A security plan, satisfactory to and approved by Lessor, shall be submitted to Lessor on or before May 1st of each performance season during the Term. Any and all costs deemed by Lessor to be necessary in implementing a satisfactory security plan shall be borne by Lessee.

21.2 Lessee will provide a 24-hour per day security service during the performance season. All activities of the security guard(s) shall be confined to the Premises. The security guard(s) shall be subject to Lessor's Watershed Rules and Regulations and as contained herein.

22. WATERSHED ORIENTATION/PERSONNEL AND AUDIENCES.

Before each performance season, Lessee shall inform its cast and crew of the impact the Lessee's use has on the watershed environment and emphasize the need for respect of that environment and observation of specific use conditions, including fire and safety precautions. Prior to each performance Lessee shall announce a similar message to the audience.

23. CLEAN-UP OF GROUNDS AND PORTABLE SANITARY FACILITIES.

23.1 Lessee shall clean the Premises, Improvements, backstage area, and restrooms immediately after matinee performances, and the next morning after evening performances, to the satisfaction of Lessor.

23.2 Lessor shall bill Lessee for costs incurred, if Lessor is required to perform the cleaning required by Paragraph 22.1.

23.3 Lessee shall place trash in Lessee's dumpsters. Lessee's maintenance responsibilities shall include the removal of trash from the Lessee's trash containers and dumpsters at least once every week. Lessee shall be responsible, at its sole cost and expense for installing adequate trash and garbage containers and arranging for their timely emptying.

23.4 Lessee shall arrange for prompt disposal of raw sewage from Lease Area and will comply with all local and state health codes regarding use and maintenance of portable sanitary facilities and disposal of sewage.

24. PHONE SERVICE.

Lessee shall be required to maintain operable telephone service during the entire performance season. In the event telephone service is not provided via standard telephone cables, Lessee shall provide a fully operable cellular telephone or the like on the Premises. Any telephone installation service or maintenance shall be at Lessee's sole cost and expense.

25. WATER SUPPLY.

Lessee shall be responsible, at its sole cost and expense, for obtaining water for the existing water tanks on the Premises to serve as a water supply for the Premises. Lessee shall utilize one of the existing water tanks to provide adequate emergency water storage for fire suppression as directed by the Moraga-Orinda Fire District, along with the Lessor, and the California Department of Forestry and Fire Protection. Lessee shall also maintain an adequate supply of potable water throughout the performance season.

26. DAMAGE.

Notwithstanding any alterations or improvements made by Lessee, Lessee shall repair any and all damage to the Premises resulting from Lessee's use of or activities upon the Premises. Lessor will be the sole judge of the extent of such damage and Lessee will be required to reimburse Lessor for repair or restoration costs.

27. DESTRUCTION OF BUILDINGS

In the event of destruction, loss or damage by fire or other cause of any of the District-owned buildings, improvements, structures or facilities used by Lessee in connection with its operations or business hereunder, District shall not be obligated to replace any destroyed, lost or damaged property or be liable to Lessee for any loss of use or damage. In the event loss or damage occurs to any property for which insurance coverage has been obtained through Lessee's policy(ies) and such insurance proceeds are adequate to cover the cost to replace the damaged property, then District agrees to use the proceeds of such insurance to rebuild or replace any property so damaged or destroyed, up to the amount of the proceeds.

28. SIGNS.

At the beginning of each performance season, Lessee shall submit designs and proposals for any and all additional signs to be installed on or about the Premises, including but not limited to signs for advertising or information, to Lessor for prior design review and approval. Installation of such signs will be at Lessee's cost and must be compatible with the open space quality of the Premises as determined solely by Lessor and in accordance with local or state law. No billboards shall be permitted on the Premises.

29. DISABLED ACCESS.

Lessee is fully responsible for maintaining or providing sufficient access to the Premises for disabled persons in accordance with all existing local, state and federal laws.

30. AUCTIONS.

Lessee shall not conduct, nor permit to be conducted, any public auctions upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

31. LIENS.

Lessee shall keep the Premises and Improvements free from any liens arising out of any work performed, materials furnished, or obligations incurred by Lessee.

32. EASEMENTS.

32.1 Lessor reserves to itself the right, from time to time, to grant such easements, rights and dedications that Lessor deems necessary or desirable on the Premises, and to cause the recordation of Parcel Maps and restrictions, so long as such easements, rights, dedications, Maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee.

32.2 Lessee shall sign any of the aforementioned documents upon request of Lessor and failure to do so shall constitute a material breach of this Lease.

33. CONDEMNATION.

33.1 If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs.

33.2 If more than 25% of Lessee's operations is impacted, or more than 25% of the land area of the Premises, is taken by condemnation, Lessee may, at Lessee's option, to be exercised in writing only within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession), terminate this Lease as of the date the condemning authority takes such possession.

33.3 If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining.

33.4 In the event that this Lease is not terminated by reason of such condemnation, Lessor shall not be obliged to repair any damage to the Premises caused by such condemnation.

33.5 Award. Any award for the Premises and Lessee's operations in a condemnation action shall be allocated as follows. Lessee shall be entitled to the value of its interest in any personal property and fixtures it has added to the Premises, and it has the right to remove and to any portion of the award specified to apply to Lessee's goodwill, interruption of or damage to Lessee's business, and the then fair market value of Lessee's interest in this Lease.

34. ESTOPPEL CERTIFICATE.

34.1 Lessee shall at any time upon not less than ten (10) days' prior written notice from Lessor execute, acknowledge and deliver to Lessor a statement written on Lessor's estoppel certificate form (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrances of the Premises and by Lessor.

34.2 At Lessor's option, Lessee's failure to deliver such statement within such time shall be a material breach of this Lease or shall be conclusive upon Lessee (i) that this Lease is in full force and effect, without modification except as may be represented by Lessor, (ii) that there are no uncured defaults in Lessor's performance, and (iii) that not more than one (1) month's rent has been paid in advance, or such failure may be considered by Lessor as a default by Lessee under this Lease.

34.3 If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee hereby agrees to deliver to any lender or purchaser designated by Lessor such financial statements of Lessee as may be reasonably required by such lender or purchaser. Such statements shall include the past three (3) years' financial statements of Lessee. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

35. EMISSIONS; STORAGE, USE AND DISPOSAL OF MATTER.

35.1 Definitions.

35.1.1 "Environmental Response Actions" means any and all activities referenced in Paragraph 33.2.2, including data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, initiated or required in connection with any local, state or federal governmental or private party claims, including any claims by Lessee.

35.1.2 “Environmental Response Costs” means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

35.1.3 “Hazardous Materials” means any substance, material or waste which is (1) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” or “restricted hazardous waste” under any provision of California law; (2) petroleum or petroleum products; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. section 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317); (7) defined as a “hazardous substance” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq. (42 U.S.C. § 6903) or its implementing regulations; (8) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. section 9601 et seq. (42 U.S.C. § 9601); or (9) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

35.1.4 “Applicable Law” shall include all federal, state and local statutes, regulations, rules, ordinances, and all other governmental requirements governing Hazardous Materials.

35.2 Compliance and Response. During the term of this Lease, Lessee, on behalf of Lessee’s officials, tenants, associates, employees, agents or invitees, shall:

35.2.1 Comply with Applicable Law in all respects, including, but not limited to, (i) acquisition of and compliance with all permits, licenses, orders, requirements, approvals, plans and authorizations which are or may become necessary for conduct of Lessee’s operations on the Premises; (ii) compliance with all regulatory requirements relating to such operations or the substances and equipment used therein or the emissions, emanations and wastes generated thereby; and (iii) reporting, investigation, and remediation of, or other response to the exposure or potential exposure, of any person to, or the emission, discharge or other release of any Hazardous Material into the Premises or the environment.

35.2.2 Promptly respond to and remedy (by removal and proper disposal or such other methods as shall be reasonably required) to the satisfaction of applicable governmental agencies any release or discharge of any Hazardous Material connected with Lessee’s operation or Lessee’s presence on the Premises. All such action shall be done in Lessee’s name, and at Lessee’s sole cost and expense. For purposes of this paragraph 33.2.2, the term “respond” shall include, but not be limited to, the investigation of environmental conditions, the preparation of feasibility reports or remedial plans, and the performance of any cleanup, remediation, containment, maintenance, monitoring or restoration work. Any such actions shall be performed in a good, safe, workmanlike manner and shall minimize any impact on the businesses or operations conducted at the Premises. In its discretion, Lessor may, but shall not be required to, enter the Premises

personally or through its agents, consultants or contractors and perform all or any part of the response activity or remedial action which it feels is reasonably necessary to comply with the terms of this Lease, and shall be reimbursed for its costs thereof and for any liabilities resulting therefrom.

35.2.3 Promptly notify Lessor of Lessee's receipt of any notice, request, demand, inquiry or order, whether oral or written, from any government agency or any other individual or entity relating in any way to the presence or possible presence of any Hazardous Material on, in, under or near the Premises or the Lessee's compliance with, or failure to comply with, Applicable Law. Receipt of such notice shall not be deemed to create any obligation on the part of Lessor to defend or otherwise respond to any such notification.

35.2.4 Promptly upon discovery thereof, notify Lessor of the discovery of any release, discharge, or emission of any Hazardous Material or of the existence of any other condition or occurrence which may constitute or pose a significant presence or potential hazard to human health and safety or to the environment, whether or not such event or discovery necessitates any report to any other person or government agency.

35.3 Other Emissions. Lessee shall not:

35.3.1 Permit any vehicle on the Premises to emit exhaust which is in violation of any Applicable Law;

35.3.2 Create, or permit to be created, any sound pressure level which will interfere with the quiet enjoyment of any real property adjacent to the Premises, or which will create a nuisance or violate any Applicable Law;

35.3.3 Transmit, receive, or permit to be transmitted or received, any electromagnetic, microwave or other radiation which is harmful or hazardous to any person or property in, on or about the Premises, or anywhere else;

35.3.4 Create, or permit to be created, any ground or building vibration that is discernible outside the Premises;

35.3.5 Allow or permit any water, storm water or effluent to drain and flow onto neighboring properties except in approved drainage and flood retention areas; and

35.3.6 Produce, or permit to be produced, any intense glare, light or heat except within an enclosed or screened area and then only in such manner that the glare, light or heat shall not be discernible outside the Premises.

35.4 Inspection-Compliance. Lessor and Lessor's consultants shall have the right to enter into the Premises at any time, in case of an emergency and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises, including collecting samples, and for verifying compliance by Lessee with this Paragraph. The cost of any such inspections shall be paid by Lessor unless a violation of the terms of this Paragraph are

found, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection. In addition, Lessee shall provide copies of relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

35.5 Survival. The duties set forth in this Paragraph shall survive the termination of this Lease.

36. INDEMNIFICATION AND DAMAGES.

36.1 Indemnity and Hold Harmless. To the fullest extent permitted by law, Lessee expressly agrees to indemnify, defend and hold harmless Lessor, and Lessor's directors, officers, officials, agents, volunteers and employees ("Indemnitees") from and against any and all loss, liability, expense, claims, suits, and damages, including attorney's fees, court costs and costs of alternative dispute resolution (if any), arising out of or resulting from the use, maintenance or occupancy of the Premises and/or performance under this Lease by Lessee or Lessee's directors, officers, officials, agents, volunteers, employees or invitees. This indemnification, defense and hold harmless obligation shall include any loss, liability, expense, claims, suits, and damages, including attorney's fees, court costs and costs of alternative dispute resolution (if any), against the Indemnitees arising out of an allegation that any aspect of the approval or performance of this Lease constitutes a violation of the California Environmental Quality Act. The defense and indemnification obligations of this Lease are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained herein. Lessor's acceptance of Certificates or Verifications of Insurance provided by Lessee in accordance with the requirements of this Lease shall not in any way relieve Lessee, its officials, associates, employees, sub-consultants or other agents from liability under this Paragraph. The Parties agree that if any part of this indemnification provision is found to conflict with applicable laws, such part shall be unenforceable only insofar as it conflicts with said laws, and that this indemnification provision shall be judicially interpreted and rewritten to provide the broadest possible indemnification legally permissible.

36.2 Hazardous Materials Indemnity. Lessee agrees, from and after the Effective Date, to defend, indemnify, protect and hold harmless the Indemnitees from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions, claims, losses, damages, fines, penalties, expenses, Environmental Response Costs or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), resulting from or in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials, at, on, in, beneath or from the Premises and/or the Property from the Effective Date of this Lease (sometimes herein collectively referred to as "Contamination"), except to the extent caused by Lessor or its agents, contractors or employees during Lessor's ownership of the Property prior to the Effective Date or solely caused by the Lessor or its agents, contractors or employees during the Term. Lessee's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Contamination, at Lessee's sole cost.

36.3 Materiality. Lessee acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of Lessee for the benefit of Lessor set forth in this Lease are a material element of the consideration to Lessor for the performance of its obligations under this Lease, and that Lessor would not have entered this Lease unless Lessee's obligations were as provided for herein.

36.4 Damages. Lessee shall be responsible for and shall reimburse Lessor for any damage or loss to Lessor's present or future facilities, to the extent directly or indirectly contributed to or caused by the operations and/or performance under this Lease by Lessee or Lessee's directors, officers, officials, agents, volunteers, employees or invitees, including, but not limited to, any damage or loss due to the deposit of Hazardous Materials onto the Premises by Lessee or Lessee's directors, officers, officials, agents, volunteers, employees or invitees.

36.5 Assumption of Risk. Lessee agrees to assume all risk of damage to any property under the control or custody of Lessee or Lessee's directors, officers, officials, agents, volunteers, employees or invitees while upon the Property or rights of way of Lessor or in proximity thereto, caused by or contributed to in any way by the construction, reconstruction, operation, maintenance, repair, or use of pipelines, reservoirs or other facilities or improvements or roadways of Lessor, present or future.

36.6 Lessee hereby agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Lessee or Lessee's directors, officers, officials, agents, volunteers, employees or invitees, or any other person in or about the Premises unless caused by the negligence or intentional misconduct of Lessor or Lessor's directors, officers, officials, agents, volunteers, or employees, nor shall Lessor be liable for injury to the person of Lessee or Lessee's directors, officers, officials, agents, volunteers, employees or invitees, as a result of any condition of the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause in or about the Premises, unless caused by the negligence or intentional misconduct of Lessor or Lessor's directors, officers, officials, agents, volunteers, or employees.

36.7 The duties and obligations set forth in this Paragraph shall survive the expiration or earlier termination of this Lease.

37. INSURANCE REQUIREMENTS.

Insurance Requirements are as stated in Exhibit ("C"), Insurance Requirements.

38. SUBLETTING AND ASSIGNMENT.

38.1 Except as herein otherwise specifically provided, neither this Lease nor any rights or interest hereunder shall be transferred or assigned by Lessee, voluntarily or involuntarily, nor shall this Lease or any interest therein be assignable by action of law, including bankruptcy, voluntary or involuntary, and no sheriff, trustee, creditor, purchaser at any judicial sale, officer of

any court, or receiver shall acquire any rights under this Lease or to the use or possession of the delineated Premises or any part thereof, unless the written consent thereto of Lessor is first obtained. No such consent by Lessor under this Paragraph in any one instance shall constitute a waiver or discharge of the provisions of this Paragraph except as to the specific instance covered by such consent. Any violation of the terms of this Paragraph shall, at the option of Lessor, be deemed a breach of this Lease.

38.2 Lessee may enter into subleases or agreements with third parties for the construction or operation of concessions or food service facilities upon the Premises, which subleases or agreements will require the prior written approval of Lessor, which shall not be unreasonably withheld. All future subleases and agreements relating to the Premises entered into after the effective date of this Lease shall be subject to all of the terms and conditions of this Lease and shall specifically refer to this lease and its provisions, and all tenants, sub lessees, permittees, concessionaires, or other users of the Premises shall be bound by the terms and conditions of this Lease. Lessee shall supply to Lessor, promptly upon request, such information as Lessor may request as to the names and addresses of any or all of Lessee's tenants, sublessees, permittees or concessionaires, and the terms and conditions under which any such use or occupancy of the Premises is permitted by Lessee.

39. REAL PROPERTY TAXES.

39.1 The term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or Lease levy of tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct power to tax and where the funds are generated with reference to the Premises address and where the proceeds so generated are to be applied by the city, county, or other local taxing authority of a jurisdiction within which the Premises is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment used by Lessee pursuant to this Lease.

39.2 Payment of Taxes. Lessor specifically calls to Lessee's attention the fact that this Lease may create a possessory interest under California Revenue and Tax Code Section 107.6 subject to Real Property Taxes, and Lessee may be subject to Real Property Taxes levied on such interest. Lessee alone shall pay all Real Property Taxes assessed on the Premises. If the right is given, by tax collector, to pay any of the taxes, assessments or other impositions which Lessee is herein obligated to pay either in one sum or in installments, Lessee may elect either mode of payment.

39.3 Personal Property Taxes. Lessee shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Lessee contained in the Premises or elsewhere. Lessee shall cause said trade fixtures,

furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor

40. HOLDING OVER.

40.1 Lessee shall have no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease.

40.2 If Lessee, in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy from month to month during which all provisions of this Lease shall continue in full force and effect. In such event, Lessee shall pay Lessor Rent equal to commercial rental rates for comparable property at the time of holdover.

40.3 In the event that Lessee holds over, without Lessor's consent, then the Rent specified in Paragraph 3 shall be increased to 200% of the prevailing market lease rates from comparable Premises applicable immediately preceding the expiration or termination dates.

40.4 Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

41. DEFAULT, BREACH & REMEDIES.

41.1 A "Default" under this Lease is defined as:

41.1.1 Lessee's failure to pay any monetary Rent or any other monetary sum due to Lessor under this Lease.

41.1.2 Lessee's failure to abide by or perform any material term of this Lease.

41.1.3 Lessee's abandonment of the Premises.

41.1.4 Lessee's vacation of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 35 and Exhibit ___ is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

41.1.5 Lessee's failure to allow Lessor and/or its agents access to the Premises, after reasonable notice from Lessor.

41.1.6 Lessee's failure to comply with provisions of Paragraph 33, relating to emissions, storage, use and disposal of Hazardous Materials.

41.1.7 The commission of waste, an act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee and/or its employees, agents, contractors or invitees, or the failure to fulfill any obligation under this Lease where the failure occurs in such a manner as to endanger lives or threaten the Premises.

41.1.8 Lessee's failure to provide (i) reasonable written evidence of compliance with the insurance requirements of this Lease, (ii) written evidence of the rescission of an unauthorized assignment or subletting, (iii) an Estoppel Certificate or financial statements, (iv) a requested subordination, (v) evidence concerning any guaranty and/or Guarantor, (vi) material data safety sheets (MSDS) if applicable, or (vii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease.

41.1.9 The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed with 60 days) (iii) the appointment of a trustee or receiver to take possession of substantially all of the Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of the Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

41.2 All Defaults shall be cured within the following time periods:

41.2.1 In the case of a monetary Default under Paragraph 39.1.1, Lessee shall have five (5) days to cure from the date of written notice to do so from Lessor.

41.2.2 If the nature of Lessee's nonmonetary Default is such that the default may be cured and more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within the 30 day period and thereafter diligently prosecutes the cure to completion.

41.3 A "Breach" is defined as the occurrence of one or more of the Defaults specified in Paragraph 39.1, and the failure of Lessee to Cure the Default within the applicable period provided in Paragraph 39.2.

41.4 In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

41.4.1 Terminate Lessee's right of possession of the Premises by any lawful means, in which case this Lease shall terminate, and Lessee shall immediately surrender possession to Lessor. In such event, Lessor shall be entitled to recover from Lessee any amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of re-letting, including necessary renovation and alteration of the Improvements and Premises, and reasonable attorney's fees. If termination of this Lease is obtained through the provisional remedy of unlawful

detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable herein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and cure period required was not previously given, a notice to comply or quit, or to perform or quit given to Lessee under the applicable unlawful detainer statutes shall also constitute the notice requirement. In such case, the applicable cure periods and the unlawful detainer statutes shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such cure periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the maximum remedies provided for in this Lease and/or by the unlawful detainer statutes.

41.4.2 Continue the Lease and Lessee's right to possession.

41.4.3 Pursue any other remedy now or hereafter available under the laws of the state of California.

41.5 Lessor's Right to Cure Lessee's Default. Lessor, at any time after Lessee commits a Default which Lessee has failed to cure within the time established therefor, may cure the default at Lessee's cost. If Lessor at any time, by reason of Lessee's default, pays any sum, the sum paid by Lessor shall be due immediately from Lessee to Lessor at the time the sum is paid, and if paid at a later date, shall bear interest at the maximum rate permitted by law from the date the sum is paid by Lessor until Lessor is reimbursed by Lessee. The sum, together with interest on it, shall be additional Rent.

41.6 The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

41.7 Defaults by Lessor. Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor under this Lease within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are required for performance then Lessor shall not be in default if Lessor commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

42. SEVERABILITY.

The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

43. TIME OF ESSENCE.

Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

44. INCORPORATION OF PRIOR AGREEMENTS; AMENDMENTS.

44.1 This Lease contains all agreements of the Parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective.

44.2 This Lease may be modified in writing only, signed by the Parties in interest at the time of the modification.

45. NOTICES.

45.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, and shall be deemed sufficiently given. The addresses for delivery or mailing of notices for each Party shall be:

Lessor:
Real Estate Manager
East Bay Municipal Utility District
375 11th Street, MS 903
Oakland CA 94623

Lessee

Either Party may be by written notice to the other specifies a different address for notices. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time thereafter designate in writing.

45.2 Date of Notice.

45.2.1 Any notice sent by registered mail, return receipt requested, shall be deemed given on the date delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. Refusal of any such delivery shall be deemed receipt.

45.2.2 If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid.

45.2.3 Notices delivered by the United States Express Mail, or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier.

46. WAIVERS.

No waiver by Lessor of any provision of this Lease shall be deemed a waiver of any other provision hereof or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act by Lessee. The acceptance of Rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular Rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such Rent.

47. CUMULATIVE REMEDIES.

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

48. COVENANTS AND CONDITIONS.

Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

49. BINDING EFFECT.

Subject to any provisions hereof restricting assignment or subletting by Lessee, this Lease shall bind the Parties, their personal representatives, successors and assigns.

50. CHOICE OF LAW.

This Lease shall be governed by the laws of the State of California.

51. ATTORNEYS' FEES.

If either Party brings an action to enforce the terms hereof or declare rights hereunder, the prevailing Party in any such action, on trial or appeal, shall be entitled to reasonable attorneys' fees to be paid by the losing Party as fixed by the court. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceedings is pursued to decision or judgment. The attorneys' fees award shall not be computed in accordance with any court fee schedule but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

52. AUTHORITY; MULTIPLE PARTIES; EXECUTION.

52.1 If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

52.2 This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

52.3 If Lessee is a corporation, this Lease must be signed in the corporate name, followed by the signature and title of the officer or other person signing this Lease on its behalf, duly attested, and, if requested by the Lessor, evidence of this authority to so act shall be furnished.

52.4 If Lessee is a joint venture, this Lease must be signed by each participant in the joint venture in the manner prescribed in Paragraphs 50.1 through 50.3 for each type of participant. When a corporation is participating in the joint venture, the corporation shall provide evidence that the corporation is authorized to participate in the joint venture.

52.5 If this Lease is executed by an attorney, agent, or trustee on behalf of Lessee, an authenticated copy of the power of attorney, or other evidence to act on behalf of the Lessor, must accompany this Lease.

Lessor and Lessee have carefully read and reviewed this Lease and each term and provision contained herein, and by the execution of this Lease show their informed and voluntary consent thereto. The Parties hereby agree that, at the time this Lease is executed, the terms of this Lease are commercially reasonable and effectuate the intent and purpose of Lessor and Lessee with respect to the Premises.

The parties hereto have executed this Lease at the place and on the dates specified immediately adjacent to their respective signatures.

LESSOR:

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____
Matt Elawady
Manager, Real Estate Services

Date:

Approved as to Form:

By: _____
Derek McDonald
General Counsel

Date:

LESSEE:

XXX

By: _____

xxx
xxx

Date: