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**GROUND LEASE OF PROPERTY  
BETWEEN THE CITY OF SAN JOSE  
AND  
LICKING ENTERPRISES, LLC  
AT  
1157 EAST TAYLOR STREET, SAN JOSE, CALIFORNIA**

Licking Enterprises  
Document No. T-18554/578403\_7

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**

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EXHIBIT 1 – DESCRIPTION OF PREMISES  
EXHIBIT 2 - INSURANCE  
EXHIBIT 3 - HAZARDOUS MATERIALS.  
EXHIBIT 4 - MEMORANDUM OF LEASE

A-1  
B-1  
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CORPORATE SECRETARY CERTIFICATE AND NOTARY  
MEMORANDUM OF LEASE

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**GROUND LEASE OF PREMISES  
BETWEEN CITY OF SAN JOSE  
AND  
LICKING ENTERPRISES LLC.**

This Ground Lease is dated for convenience this 14th day of April, 2011 ("Ground Lease"), and is by and between the City of San Jose, a municipal corporation of the State of California ("City"), and Licking Enterprises, a corporation authorized to do business in the State of California ("Tenant"). All capitalized terms in this Agreement shall have the meanings set forth in Section 1, "Summary of Ground Lease Terms" or Section 2, "Definitions", unless otherwise specifically defined in this Ground Lease.

A. City is the owner of certain real property located at 1157 East Taylor Street, San Jose, California, as more particularly described on the attached **EXHIBIT 1** ("Real Property").

B. The Real Property is improved with an approximately 3990 square foot dwelling structure, as well as a carport and accessory structures ("**Buildings**"), which Buildings are owned by Tenant.

C. City and Tenant are parties to that certain Settlement Agreement and Release dated \_\_\_\_\_ (the "Settlement Agreement"), and this Ground Lease is entered into pursuant to that Settlement Agreement.

**NOW, THEREFORE**, for valuable consideration, and subject to all the terms and conditions of this Ground Lease, City and Tenant agree to the terms, conditions, and requirements for lease of the Real Property as follows

**SECTION 1. SUMMARY OF GROUND LEASE TERMS.**

Each reference in the body of this Ground Lease 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 Ground Lease, such more specific provision shall control.

"Tenant" shall mean Licking Enterprises, incorporated in the state of California.

"Authorized Activities" (§4 PREMISES AND AUTHORIZED USE) shall mean use of the Premises as further described in Section 4 of this Ground Lease.

"Effective Date" (§3.1 TERM) means the date set forth in Section 3.1 herein.

"Expiration Date" (§3.1 TERM) shall mean the date September 30, 2015, subject to earlier termination as provided in this Ground Lease.

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**“Rents, fees, and charges” (§4 –RENT, FEES AND CHARGES)** means the following amounts to be charged to and paid by Tenant in accordance with Section 6 of this Ground Lease:

(a) Space Rental:	\$1.00 per month, and specified in-lieu rentals of utilities, maintenance, and repair costs and expenses
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**“Tenant Address” (§34 NOTICES)** means the following information for notices to Tenant:

<b>Name:</b>	Licking Enterprises LLC
<b>Title:</b>	
<b>Mail Address:</b>	1249 Robbia Court Sunnyvale, CA 95087
<b>Street Address: (If different)</b>	
<b>Telephone:</b>	(408) 733-3456
<b>Fax No.:</b>	
<b>E-mail Address: (email Notices cannot be used in lieu of Notice Required under Section 34 of this Ground Lease)</b>	

**“City Address for Payments” (§6 RENT, FEES AND CHARGES):**

City of San Jose  
Real Estate Services  
200 E. Santa Clara, T-4  
San Jose, CA 95113

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**“City Address for Notices” (§34- NOTICES):**

**City of San Jose  
Real Estate Services  
200 E. Santa Clara, T-4  
San Jose, CA 95113**

**SECTION 2. DEFINITIONS.**

Each reference in the body of this Ground Lease 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 Ground Lease, such more specific provision shall control.

**“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” under this Ground Lease.

**“Environmental Laws” (§50 STANDARDS OF OPERATION)** 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 federal or state superlien or environmental clean-up statutes.

**“Event of Default”** or **“Events of Default”** shall have the meaning ascribed to it in Section 16.

**“Hazardous Materials” (§50 STANDARDS OF OPERATION, §27 HAZARDOUS MATERIALS – PROHIBITIONS & RESTRICTIONS)** shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any 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

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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) any substance, product, by-product, waste or any other material which 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.

“**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.

“**Ground Lease**” shall mean this Ground Lease between City and Tenant.

“**Ground Leased Premises**” shall have the meaning ascribed to it in Section 4, “PREMISES AND AUTHORIZED USE”.

“**Municipal Code**” means the San Jose 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.

“**Premises**” shall have the meaning ascribed to it in Section 4, “PREMISES AND AUTHORIZED USE” and more fully described in EXHIBIT 1.

“**Summary**” means Section 1 of this Ground Lease, “SUMMARY OF AGREEMENT TERMS”.

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

“**Term**” (**§3 TERM**) shall have the meaning ascribed to it in Section 3 below.

### **SECTION 3. TERM.**

#### **3.1 Term.**

This Ground Lease is entered into pursuant to the Settlement Agreement, which provides for the Term to be as follows:

The Ground Lease Term shall commence on the date that title to the property comprising the Ground Lease Premises is conveyed to City, and subject to the provisions of **Section 15** for a default by Tenant, shall continue until City determines that the Ground Lease must be terminated and the property vacated in order to begin the development of the 101/Mabury interchange, or for any other purpose. The City shall give at least six months written notice of the need to terminate the leasehold and take possession of the Ground Leased Premises. The parties agree that such written notice of termination shall not be given sooner than October 1, 2014, that on or after October 1, 2014 City may give such written notice of termination at any time, and that otherwise this Ground Lease shall expire no later than September 30, 2015, unless otherwise mutually agreed upon in writing between the parties.

### **3.2 Holdover.**

It is not the intent of this Ground Lease to create any tenancy by Tenant beyond the expiration or termination date hereinabove set forth. Any holding over after the expiration or earlier termination of the term of this Ground Lease shall be conditioned upon the approval of the City Council and on terms and conditions approved by the City Council.

## **SECTION 4. PREMISES AND AUTHORIZED USE.**

**4.1** City leases to Tenant, and Tenant leases from City, those premises described on **Exhibit 1**, attached hereto and incorporated herein by this reference (the "Ground Leased Premises" or "Premises") to be used by Tenant and Life Choices Treatment Services, Inc. ("Life Choices") for the Authorized Activities of operating a drug and alcohol rehabilitation facility as permitted pursuant to the Zoning Code and as authorized by the Reasonable Accommodation granted by the Planning Department on February 9, 2009; operation of this facility for this purpose would be deemed to be "grandfathered" under the City's Zoning Code should such Code be amended during the term of Tenant's tenancy hereunder to preclude a similar use. Furthermore, the City agrees that Tenant and Life Choices may continue to operate, in its current condition, the drug and alcohol rehabilitation facility presently located on the Premises and deems the Premises to be in compliance with the Zoning Code for such Authorized Activities. The City agrees that the Tenant and Life Choices' building, plant, and operations as currently structured are in compliance with the Zoning Code. Neither Tenant, nor any of its employees or agents, shall conduct, transact or otherwise carry on any business or service on the Premises that is not specifically authorized by this Ground Lease.

## **SECTION 5. STANDARDS OF OPERATION.**

- 5.1** Tenant shall not do anything, or permit anything to be done, in or about the Premises that might: (i) invalidate or be in conflict with, or cause cancellation of, the provisions of any insurance policies covering the Premises; (ii) result in a refusal by casualty insurance companies to insure the Premises in amounts and on terms and conditions required by City; (iii) subject City to any liability or responsibility for injury or damages to any person or property by reason of any activity, use, business operation or other practice conducted on the Premises.
- 5.2** Tenant shall not knowingly use or knowingly allow the use of the Premises for the purpose of unlawfully selling, serving, using, storing, transporting, keeping, manufacturing or giving away alcoholic beverages or any controlled substance specified in Division 10 of the California Health and Safety Code.
- 5.3** Disposal, Use and Storage of Hazardous Materials.
- Tenant shall not store, use or dispose of Hazardous Materials on the Premises, nor cause, permit or allow any officer, agent, employee, contractor, permittee or invitee of Tenant to store, use or dispose of Hazardous Materials on the Premises, with the exception of the uses of such Hazardous Materials incident to the normal and customary operation of a facility for the purposes authorized under this Ground Lease, e.g. janitorial and cleaning supplies or the use of gasoline, acid, oil or coolant for the purpose of operating vehicles on the Premises.
- 5.4** Any vehicles containing explosive materials or explosive liquids are expressly prohibited inside any structure on the Premises.

## **SECTION 6. RENT, FEES AND CHARGES.**

Tenant shall pay, as Rent, the sum of One Dollar (\$1.00) per month. In addition, Tenant shall pay for all utilities and services, as provided in **Sections 7 and 12.**

## **SECTION 7. MAINTENANCE OF PREMISES.**

### **7.1 Maintenance.**

- 7.1.1** Tenant shall be obligated at all times throughout the term of this Ground Lease, without cost to City, to maintain the Premises in good appearance, repair, and safe condition, except for ordinary wear and tear, and in a condition otherwise satisfactory to Director. Tenant shall maintain all improvements on the Premises whether installed by Tenant or City.

**7.1.2** City shall have no responsibility whatsoever for the maintenance or repair of any Improvements on the Premises, which responsibility and liability shall remain solely with Tenant.

**7.2 Trash and Refuse.**

Tenant, at its sole cost and expense, shall keep and maintain the areas occupied by Tenant 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 Premises in a clean and sanitary manner. Tenant, at its sole cost and expense, shall cause all dirt, rubbish, trash, garbage and other waste matter to be removed as needed from the Premises and deposited in suitable containers for regular removal from the Premises.

**7.3 Waste or Nuisance**

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

**SECTION 8. IMPROVEMENTS.**

**8.1 Construction of Improvements.**

Prior to the commencement of any improvement, alteration or construction upon the Premises, Tenant at its sole cost and expense shall obtain all necessary permits and approvals from all appropriate Departments of City and/or from any other governmental entity, as required by law. Tenant shall be responsible for the payment of all engineering, inspection and review fees required by City or any other governmental entity.

**8.2** All improvements, equipment, and fixtures, including the plans and specifications therefor, constructed or installed by Tenant, its agents, or contractors, shall conform in all respects to applicable statutes, ordinances, building codes, and rules and regulations.

**8.3 Remediation of Asbestos-Containing Materials.**

If, in the construction of any improvements to or upon the Premises, Tenant causes disturbance to or damage of any asbestos and/or asbestos-containing materials, Tenant shall be solely responsible for the costs of remedying the disturbance or damage, including, without limitation, the removal of any asbestos and asbestos-containing materials.

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

City holds no right, title or interest in any Improvements or personal property of Tenant's located on the Ground Leased Premises and acquires no right, title, or interest in such Improvements or personal property at any time by entering into this Ground Lease.

All improvements, alterations or construction of improvements made to the Premises by Tenant and additions and alterations thereto made upon the Premises shall be and remain the property of Tenant until the termination of this Ground Lease, at which time the improvements may, at the option of the Tenant, become the property of City. Tenant shall execute any documents which Director feels necessary to further evidence the transfer of title to improvements from Tenant to City, including a quitclaim deed and/or bill of sale. Any failure by Tenant to execute any such transfer documents, however, shall not limit or preclude the transfer of title from Tenant to City provided in this Section.

**SECTION 10. PAYMENT BOND – CONSTRUCTION.**

Prior to the commencement of any construction, alteration or repair hereunder which exceeds Five Thousand Dollars (\$5,000) in cost, Tenant shall furnish to City and file with the City Clerk, at no cost to City, a payment bond. In addition to the specific requirements set forth below, the bond shall be issued by a surety, be 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 Premises and/or improvements, be satisfactory to and approved by City's Risk Manager and Director, and be approved as to form by the City Attorney for City. Immediately upon completion of any improvement, Tenant shall record in the Official Records of the Santa Clara County Recorder a notice of completion complying with the requirement of California Civil Code Section 3093.

**10.1 Payment Bond**

The payment bond shall guarantee the prompt payment to all persons named in California Civil Code Section 3181, and of amounts due under the Unemployment Insurance Code, amounts required to be deducted, withheld or paid over to the Employment Development Department from the wage of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, and reasonable attorneys' fees. The payment bond shall protect City from any liens, liability, losses or damages arising therefrom, and shall name Tenant's contractor or contractors as principals, and City as obligee.

**SECTION 11. ACCEPTANCE OF PREMISES.**

**11.1** Tenant accepts the Premises "as is" and in good, safe and sanitary condition satisfactory for Tenant's use, subject to any improvements to be constructed by Tenant in accordance with Section 8. Tenant acknowledges that no representation or warranty has been made by City concerning the nature, quality

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or suitability of the Premises or the Premises for Tenant's business, or the existence of any Hazardous Materials in, on, upon, under or about the Premises or the Premises, and Tenant acknowledges that it shall have no rights against City by reason of such matters or any claimed deficiencies therein.

**11.2** Tenant acknowledges that City has made no representations or warranties with respect to the Premises, or this Ground Lease except as expressly set forth in this Ground Lease, and no rights, easements or licenses, implied or otherwise, are or shall be acquired by Tenant unless expressly set forth in this Ground Lease.

#### **SECTION 12. UTILITY SERVICES.**

**12.1** Tenant has inspected and accepts the utility hookups in the Premises. Unless and except to the extent otherwise specifically provided by other provisions of this Ground Lease, Tenant shall secure any electrical, gas, water, sewer and telephone services to the Premises utilized by the Tenant as it may require. Any additional utility connections beyond those in the Premises at the time of Tenant's inspection are Tenant's responsibility. Installation of such additional utility connections shall be at Tenant's sole cost and expense and are subject to the provisions of **Section 8** regarding Tenant improvements. Any utilities provided by City shall be paid by Tenant on a pro-rated basis as established by City. Tenant shall, upon request by the Director, cap off all utility connections installed by Tenant and restore the affected areas to their original condition upon expiration or earlier termination of this Ground Lease. Notwithstanding the foregoing, the pro-rata payment provisions of this paragraph shall not apply in the event Tenant directly pays utility providers for utility services.

#### **SECTION 13. INTENTIONALLY OMITTED.**

#### **SECTION 14. SIGNS/ADVERTISING.**

Tenant may place a sign on the exterior of the Premises provided that any such sign is in accordance with the City's Sign Ordinance and the design and location of any such sign has been approved in advance in writing by the City. Any sign currently on the exterior of the Premises will not, however, require the City's approval and by virtue of this Ground Lease such sign is deemed to be in compliance with the City's Sign Ordinance and approval by City is hereby deemed granted. Any and all such advertising device or media shall be removed by Tenant at its sole cost and expense upon termination or expiration of this Ground Lease. Tenant will promptly restore to their original condition those portions of the Premises or Premises from which such advertising device or media have been so removed.

**SECTION 15. ASSIGNMENT OR TRANSFER.**

- 15.1** Tenant shall not assign, sublease, convey, sell, pledge, hypothecate, encumber by deed of trust, mortgage, or other instrument, or otherwise transfer this Ground Lease, the Premises or any part thereof, or any rights of Tenant hereunder, whether voluntarily or by operation of law, without the prior written consent of City, which consent will not be unreasonably withheld. Notwithstanding the foregoing, the parties agree that Tenant may continue to sublease the Premises to Life Choices, the current occupant of the Premises, or any other entity, to manage and operate a drug and alcohol rehabilitation facility not exceeding forty-five (45) beds without prior approval by the City. Subleasing of the Premises to any other individual or entity for any other purpose other than for managing a drug and alcohol rehabilitation facility shall require the City's prior written consent. In all cases, however, the Tenant shall inform the City in writing prior to subleasing the Premises regardless of whether prior written consent from the City is required pursuant to this Section.
- 15.2** A transfer within the meaning of this Section shall include, but is not limited to, the following: (i) the incorporation of an individual Tenant and the transfer of Tenant's rights hereunder to the corporation which is not wholly owned by Tenant; (ii) in the event that Tenant is a partnership, incorporation of Tenant and transfer of Tenant's rights hereunder to the corporation, or the withdrawal or addition of any partner to Tenant's partnership; (iii) in the event that Tenant consists of co-tenants, the incorporation of Tenant and transfer of its rights hereunder to the corporation, or the voluntary or involuntary transfer by any one or more co-tenants of his, her or its rights hereunder to his, her or its co-tenant or to a third person; (iv) in the event that Tenant is a corporation, the change in the ownership of fifty percent (50%) or more of the capital stock of Tenant; and (v) in the event that Tenant is an unincorporated association, the incorporation of Tenant and the transfer of its rights hereunder to the corporation, or the change in fifty percent (50%) or more of the membership of the association.
- 15.3** 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 Premises; (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 Ground Lease may be conditioned upon, among other things, the express written assumption by the proposed transferee of Tenant's obligations under this Ground Lease and/or performance of required or necessary repairs or maintenance to the Premises.

- 15.4 The consent of City to any transfer described in this Section shall not relieve Tenant 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.

## **SECTION 16. BREACH OF LEASE.**

### **16.1 Events of Default by Tenant**

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

- A. Tenant shall have failed to pay when due any rent, fee, charge or obligation of Tenant requiring the payment of money under the terms of this Ground Lease; or
- B. Tenant shall have violated the provisions of **Section 5.2**; or
- C. Tenant shall have failed to maintain any insurance required under **Section 19**; or
- D. Tenant shall have failed to perform any term, covenant, or condition of this Ground Lease to be performed by Tenant, except those referred to in the immediately preceding three subparagraphs, and Tenant shall have failed to cure same within ten (10) days after written notice from City; provided, however, that if the nature of Tenant's default is such that more than ten (10) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said ten (10) day period and thereafter diligently prosecutes such cure to completion and to the satisfaction of Director; or
- E. Any representation or warranty made by Tenant 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. Tenant shall have made a general assignment of its assets for the benefit of its creditors; or
- G. Tenant shall have assigned or otherwise transferred its interest in this Ground Lease in violation of the provisions contained in this Ground Lease whether voluntarily or by operation of law; or
- H. Tenant shall have failed to occupy the Premises or to maintain continuous operations at the Premises, in each case, for any thirty (30) consecutive

days, have been dispossessed by process of law or otherwise, or have otherwise abandoned the Premises; or

- I. A court shall have made or entered any decree or order: (i) adjudging Tenant to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of Tenant 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 Tenant in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of Tenant and such decree or order shall have continued for a period of sixty (60) days; or (v) Tenant shall have voluntarily submitted to or filed a petition seeking any such decree or order; or
- J. The sequestration or attachment of or execution or other levy on Tenant's interest in this Ground Lease or the Premises or any improvements located thereon shall have occurred and Tenant shall have failed to obtain a return or release of such property within sixty (60) days thereafter, or prior to sale pursuant to such levy, whichever first occurs; or
- K. Any lien shall be filed against the Premises because of any act or omission of Tenant, and shall not be discharged or contested by Tenant in good faith by proper legal proceedings within sixty (60) calendar days after receipt of notice thereof by City.

## 16.2 Remedies.

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 Ground Lease, to which City may resort cumulatively, or in the alternative:

- A. City may, at any time without notice and without any obligation to do so (implied or otherwise), and upon condition that it be for the account and at the expense of the Tenant, and without a waiver of such breach, perform any act which if performed by Tenant 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, Tenant covenants to pay to City upon demand by City the sum or sums of money reasonably paid or incurred by City, together with interest at the rate of ten percent (10%) per annum plus costs and damages, as part of its rental fee due on the first (1st) day of the month which immediately follows City's demand therefor.
- B. Prior to April 1, 2015, the parties agree that City may seek damages or injunctive relief for any default hereunder, but may not terminate the Ground Lease. On or after April 1, 2015, in addition to any other remedy

that City may have, City may, at its election, terminate this Ground Lease upon written notice of termination in which event this Ground Lease shall terminate on the date set forth in such notice, provided, however, that the City will provide Tenant a minimum of sixty (60) days notice. Any termination under this paragraph shall not relieve Tenant from the payment of any sums then due to City or from any claim for damages or rent previously accrued or then accruing against Tenant. 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 Ground Lease, constitute a termination of this Ground Lease:

- (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 Ground Lease by Tenant, including, without limitation, action to maintain and preserve the Premises or any action taken to relet the Premises or any portions thereof for the account of Tenant and in the name of Tenant.
- C. This Ground Lease shall not terminate following an Event of Default and an abandonment of the Premises unless City gives Tenant written notice of its election to terminate this Ground Lease. 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 Tenant's right to possession unless City gives Tenant written notice of termination.
- D. In the event City terminates this Ground Lease, consequent to a default by Tenant, City shall be entitled to damages in the following sums:
- (i) The worth at the time of award of all unpaid rental fees as set forth in Section 6 above;
  - (ii) The worth at the time of award of the amount by which the unpaid rental fees which would have been earned after termination until the time of award exceeds the amount of such rental fee that Tenant proves could have been reasonably avoided;
  - (iii) Any other amount necessary to compensate City for all detriment or damage to the Premises proximately caused by Tenant's failure to perform its obligations under this Ground Lease, to fulfill its obligation to return the Premises to the City in the condition existing as of the date this Ground Lease was entered into, reasonable wear and tear excepted.

- (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%) 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 rate of ten percent (10%).
- E. No payment by Tenant, or receipt by City, of a lesser amount than any rent, fee, charge or other amount due by Tenant 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 Tenant, 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.

### **16.3 Event of Default by City.**

In the event that City terminates this Ground Lease without a default by Tenant prior to April 1, 2015, such termination shall be an Event of Default by City. Upon such Event of Default by the City, the Tenant and Life Choices shall have the following remedies, in addition to all other rights and remedies provided by law, equity or otherwise under this Ground Lease, to which Tenant and Life Choices may resort cumulatively, or in the alternative:

1. Lost profits arising between the time of Tenant's vacating of the Premises as a result of the City's default and April 1, 2015;
2. Moving and out of pocket expenses caused by the early termination;
3. Injunctive relief and declaratory relief; as allowed by law;
4. Attorney fees and costs;
5. Pre judgment and post judgment interest calculated at the rate of ten percent (10%).

### **SECTION 17. 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 Tenant 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 Tenant. The subsequent

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acceptance of any fee, rent or charges hereunder by City shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Ground Lease other than the failure of Tenant 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 18. INDEMNITY AND WAIVER OF CLAIM.**

### **18.1 Indemnification**

Tenant, 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, from and against any and all claims, demands, damages, obligations, liabilities, losses, costs, expenses, penalties, suits or judgments, at any time received, incurred or accrued by City, its officers, agents, employees, contractors or members of the public using Premises facilities, arising out of or resulting in whole or in part from any act (or failure to act) of Tenant, its officers, employees, contractors, agents, permittees or invitees, or which results from their noncompliance with any Laws respecting the condition, use, occupation or safety of the Premises or the Terminals, or any part thereof, or which arises from the Authorized Activities hereunder or which arises from Tenant's failure to do anything required under this Ground Lease, except as may arise from the sole active negligence or the willful misconduct of City, its officers, employees or agents. 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 pursuant to statutes, ordinances, regulations or other Laws. All of Tenant's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Ground Lease. In an action or claim against City in which Tenant 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 ("ADA") shall not limit Tenant's indemnification under this provision.

### **18.2 Assumption of Risk**

Tenant agrees to and covenants that it shall voluntarily assume any and all risk of loss, damage or injury to the person or property of Tenant, its directors, officers, employees, agents, and contractors which may occur in, on, or about the Premises 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, its officers, employees or agents. The indemnification obligations of Tenant shall include the obligation of Tenant to defend, indemnify, protect and hold harmless City, its officers, agents or employees, from and against fines, costs, claims, damages, obligations, suits, judgments, penalties, proceedings, causes of action, losses, liabilities or costs arising under the ADA, which arise from Tenant's activities under this Ground Lease.

### 18.3 Waiver of Claim

Tenant, as a material part of the consideration to be rendered to City under this Ground Lease, hereby waives all claims or causes of action against City, its officers, agents, contractors or employees which 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 Premises, and for injuries or death to persons on or about the Premises, 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 the willful misconduct of City, its officers, agents, contractors or employees, Tenant hereby waives any and all claims or causes of action which it may now or hereafter have against City, its officers, agents, contractors or employees (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 Premises; (b) for any loss, injury or damage arising or resulting from any negligent act or omission of any other tenant, subtenant, contractor, airline, Tenant or occupant of the Premises, or any person who uses the Premises with or without the authorization or permission of City; and (d) for any loss or damage to the property of, or injury or damage to Tenant, its officers, agents, employees, contractors, subtenants or any other person whomsoever, from any cause or causes arising at any time because of Tenant's uses or occupancy of such building or of the Premises, or its operations thereon.

## **SECTION 19. INSURANCE.**

### 19.1 Required Insurance Coverage

Prior to commencing any work or operations under this Ground Lease, Tenant at its sole cost and expense and for the full term of this Ground Lease 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 Tenant and its agents, employees and contractors, meeting at least the minimum insurance requirements set forth in Exhibit 2 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 Tenant's property. Tenant 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, Tenant shall provide a written statement of the replacement cost of the Tenant Improvements, with a copy to the Director.

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**SECTION 20. 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 Tenant, Tenant's contractors, agents, employees and invitees.

**SECTION 21. RIGHT TO ENTER.**

City reserves and shall have the right by its officers, employees, agents and contractors to enter into and upon the Premises at all reasonable times (and in emergencies at all times):

- 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 Ground Lease;
- 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 Premises;
- C. To post notices of nonresponsibility for improvements, alterations or repairs if and when City shall desire to do so;

**SECTION 22. TAXES; ABSENCE OF LIENS.**

**22.1 Payment by Tenant**

Tenant 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 shall be levied, imposed, or assessed upon any of Tenant's leasehold interest, upon Tenant's business, or upon Tenant for the privilege of conducting business within the Premises, or upon any other property of Tenant within the Premises. 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 Tenant to City under the provisions of this Ground Lease.

**22.2 Possessory Interest**

Tenant recognizes and understands that this Ground Lease 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 Tenant may be subject to the payment of real property taxes levied on such interest. If any possessory interest tax is levied on the Premises, the Ground Leasehold Improvements and/or Tenant's estate created by this Ground Lease, Tenant 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

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entity, shall in any way reduce or substitute for the rent, charges or fees required to be paid as a condition of this Ground Lease 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. Tenant shall be responsible for any possessory interest taxes as may be assessed in accordance with California law.

### **22.3 No Liens**

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

### **22.4 Indemnity for Tenant's Failure to Comply**

Tenant shall protect, defend, indemnify and hold City, including the Premises, and any Ground Leasehold improvements now or hereafter on the Premises, free and harmless from and against any liability, loss, or damage resulting from any taxes, assessments, or other charges required by this Ground Lease to be paid by Tenant 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.

### **22.5 Payment by City**

If Tenant fails to pay any tax or charge required by this Section to be paid by Tenant, City may, but is not obligated to, on five (5) days' prior written notice to Tenant, pay, discharge, or adjust such tax or charge for Tenant's benefit. In such event, Tenant, on receipt of written demand of City, shall reimburse City promptly for the full amount paid by City, including interest, in paying, discharging or adjusting such tax or charge together with interest thereon from its due date at the rate of ten percent (10%) per annum until paid.

### **22.6 Contest of Tax or Charge**

**22.6.1 Notice of Contest.** In the event that Tenant desires, in good faith, to contest or review by appropriate legal or administrative proceedings any tax or charge specified hereunder, Tenant, at least ten (10) 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 its intention to contest such tax or charge.

**22.6.2 Procedure for Contest.** Tenant 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 Ground Lease has expired or terminated) without delay at Tenant's sole cost and expense.

**22.6.3 Payment Upon Final Determination.** Within the applicable period of time allowed by law after the final determination of the amount of tax due, Tenant shall pay the amount determined to be due, together with all costs, expenses and interest (whether or not this Ground Lease has then expired or terminated).

**22.6.4 Failure to Pay Constitutes Event of Default.** The failure to pay any tax or charge hereunder shall constitute an Event of Default, and the obligation to pay the same shall survive the termination of this Ground Lease.

### **SECTION 23. QUIET ENJOYMENT.**

Subject to the provisions of this Ground Lease, City covenants that Tenant, on paying the rentals and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Premises.

### **SECTION 24. DAMAGE OR DESTRUCTION.**

#### **24.1 Destruction Covered by Insurance**

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

#### **24.2 Destruction Not Covered by Insurance**

In the event the improvements on the Premises are damaged by any casualty not covered under an insurance policy required to be maintained pursuant to this Ground Lease, then City (through Director) may, at City's option, give written notice to Tenant within thirty (30) days after the date of occurrence of such damage, of City's intention to cancel and terminate this Ground Lease as of the date of the occurrence of the damage unless the Tenant undertakes to repair any such damage or destruction at its own expense and does so with reasonable dispatch.

### **SECTION 25. COMPLIANCE WITH LAWS.**

**25.1** Tenant shall, at its sole cost and expense, comply with and conform to all Laws applicable to or affecting, directly or indirectly, Tenant, the Premises, or Tenant's Authorized Activities under this Ground Lease. Further, Tenant shall not do anything in, on or about the Premises, 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

Premises, or any part thereof, or any of their contents, or that will cause a cancellation of any insurance policy covering the Premises or any part thereof, or any of their contents. Tenant agrees to observe and obey all rules and regulations adopted by City from time to time with respect to the use of the Premises. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceedings against Tenant, whether City be a party thereto or not, that Tenant has violated any such law, statute, ordinance, rule, regulation, order or requirement in the use of the Premises or the Premises shall be conclusive of that fact as between City and Tenant.

In connection with its operations in or about the Premises, Tenant 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 Premises.

#### **SECTION 26. SURRENDER OF PREMISES.**

- 26.1 On the last day, or sooner termination of this Ground Lease, Tenant shall quit and surrender, in good condition and repair (ordinary wear and tear excepted), the Premises. The Premises shall be surrendered to City in vacant condition, with no individuals, persons, or entities in occupancy of the Premises
- 26.2 Tenant shall, on or before the end of the term of this Ground Lease, remove all personal property owned by it from the Premises. All such property not so removed prior to any vacation, abandonment, dispossession or surrender of the Premises shall be deemed, at the option of Director, to have been abandoned by Tenant. City may, at the option of Director, retain any such property so abandoned by Tenant or remove and/or dispose of such property. Tenant shall reimburse City for any costs or expenses incurred by City in removing and/or disposing of such property promptly upon demand by City.

#### **SECTION 27. HAZARDOUS MATERIALS - PROHIBITIONS AND RESTRICTIONS.**

Tenant shall at all times comply with the provisions of this Ground Lease, including those provisions of **Exhibit 3**, regarding Hazardous Materials.

#### **SECTION 28. STATEMENTS, RECORDS AND INFORMATION.**

Tenant represents and warrants to City that all statements, records, reports, certifications and other information submitted by Tenant to City have been true and accurate and covenants that all future statements, records, reports, certifications and other information submitted by Tenant to City will be true and accurate in all respects.

#### **SECTION 29. GIFTS.**

Tenant 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 San Jose Municipal Code. Tenant agrees not to offer any City officer or designated employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited

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by Chapter 12.08 shall constitute a material breach of this Ground Lease by Tenant. In addition to any other remedies City may have at law or in equity, City may terminate this Ground Lease for such breach as provided in Section 16 of this Ground Lease.

**SECTION 30. 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 31. REPRESENTATIONS AND WARRANTIES.**

If Tenant is a partnership or joint venture, at least two (2) partners or each of the joint ventures, as the case may be, shall execute this Ground Lease on behalf of Tenant.

**SECTION 32. AMERICANS WITH DISABILITIES ACT.**

Tenant shall be solely and fully responsible for complying with the ADA in connection with: (i) the Premises or any portion thereof and its operations thereon; (ii) removing physical barriers on the Premises; (iii) providing auxiliary aids and services for use of the Premises, where necessary or required; and (iv) modifying its policies, practices and procedures to comply with the ADA. Tenant shall develop a workplan to correct or avoid any violations or non-compliance with the ADA. Tenant 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 Tenant's activities under this Ground Lease shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. Tenant agrees to indemnify, defend and hold the City harmless from any and all costs incurred by City with respect to Tenant's failure to comply with the ADA.

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

**SECTION 33. NO RELOCATION BENEFITS.**

Tenant acknowledges and agrees (i) that the possession and occupancy of the Property created by this Ground Lease is of a temporary nature; (ii) that City is allowing Tenant's use and occupancy of the Property only on an interim basis prior to City's planned future use of the Property; (iii) that Tenant 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 Tenant shall not acquire, as a result of this Ground Lease and Tenant's use and occupancy of the Property, any right to any relocation benefits or payments, whatsoever. Tenant 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.

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

## **SECTION 34. MISCELLANEOUS.**

### **34.1 Consent**

Unless expressly stated otherwise, whenever in this Ground Lease 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.

### **34.2 Controlling Law**

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

### **34.3 Entire Agreement**

This instrument contains all of the terms and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in-interest.

### **34.4 Exhibits and Addenda**

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 Ground Lease as if set forth fully herein.

### **34.5 Force Majeure**

Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Ground Lease which results from an act of God, acts of superior governmental authority, a strike, a boycott, a shortage of items, or any other cause beyond the reasonable control of such party.

### **34.6 Headings**

The headings of the several paragraphs and sections of this Ground Lease 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 Ground Lease and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

### **34.7 Joint and Several**

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

### **34.8 Material Considerations**

Each and every term, condition, covenant and provision of this Ground Lease is and shall be deemed to be a material part of the consideration for the parties' entry into this Ground Lease, and any breach hereof by Tenant shall be deemed to be a material breach. Each term and provision of this Ground Lease to be performed by Tenant shall be construed to be both a covenant and a condition.

### **34.9 Modification of Ground Lease**

This Ground Lease shall not be modified, unless the parties first agree to and approve of such modification in writing.

### **34.10 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 Tenant or persons claiming under Tenant, shall have any rights hereunder resulting therefrom or otherwise.

### **34.11 Number and Gender**

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

### **34.12 Recordation**

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

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### **34.13 Resolutions**

Tenant shall submit a copy of any corporate resolution, if requested by City, which authorizes any director or officer to act on behalf of Tenant or which authorizes Tenant to enter into this Ground Lease.

### **34.14 Severability**

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

### **34.15 Successors and Assigns**

The provisions of this Ground Lease shall, subject to the provisions concerning transfer, apply to and bind the successors and assigns of the parties hereto.

### **34.16 Tenant not an Agent of City**

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

### **34.17 Time of Essence**

Time is of the essence of this Ground Lease and each of its provisions, and failure to comply with this provision shall be a material breach of this Ground Lease.

### **34.18 Venue**

In the event that suit shall be brought by either party hereunder, the parties agree that venue shall be exclusively vested in the state courts of California in the County of Santa Clara or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern District of California, San Jose, California.

## **SECTION 35. NOTICES.**

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other, shall be in writing and shall be addressed as follows:

If to City, the same shall be addressed to:

City of San Jose  
Real Estate Services  
200 E. Santa Clara St., T-4  
San Jose, CA 95113

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If to Tenant, the same shall be addressed to:

Licking Enterprises LLC  
1249 Robbia Court  
Sunnyvale, CA 94087

All notices shall be sufficiently given and served upon the other party if sent by first-class U.S. mail, postage prepaid, or by facsimile to the facsimile numbers 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.

Executed as of the day and year first written above.

APPROVED AS TO FORM:

\_\_\_\_\_

Senior Deputy City Attorney

"CITY"  
CITY OF SAN JOSE,  
a municipal corporation

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

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

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

"TENANT"  
LICKING ENTERPRISES, LLC.

By: John Licking

Name: JOHN LICKING

Title: PRES

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**EXHIBIT 1**  
**DESCRIPTION OF PREMISES**

ORDER NO. : 0616006906-SL

The land referred to is situated in the County of Santa Clara, City of San Jose, State of California, and is described as follows:

**PARCEL ONE:**

All of Lots 13, 14, 15 and 16, in Block 1, as shown upon that certain Map entitled, "Map of the Property of the San Jose Pioneer Homestead Association", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on May 24, 1869 in Book "C" of Miscellaneous Records, Page 342.

EXCEPTING FROM said Lots 14, 15 and 16 all that portion thereof lying Northeasterly of the Southwesterly line of the Bayshore Highway as said line was established in the Deed from Carlo Bianchi, et ux, dated August 10, 1939, recorded October 14, 1939 in Book 949 of Official Records, Page 342.

ALSO EXCEPTING THEREFROM the following described parcel of land:

Commencing at the Westerly corner of said Lot 13, being on the property line common to the lands, now formerly of Carlo Bianchi, and of Hazel Marianelli, et al; thence along said common property line North 51° 07' 26" East 79.78 feet to the Southerly line of the existing State Highway in Santa Clara County, Road IV-SCI-68SJS; thence along said Southerly line from a tangent that bears South 71° 54' 39.8" East along a curve to the right with a radius of 5574.72 feet, through an angle of 2° 12' 23.1" an arc length of 214.68 feet, thence South 39° 50' 12" West 198.43 feet to the property line common to the lands, now or formerly of Carlo Bianchi and Silvio De Mattei; thence along last said common property line North 38° 32' 41" West 221.02 feet to the point of commencement.

**PARCEL TWO:**

A portion of that certain parcel of land conveyed to the State of California by State Deed No. 14081, recorded August 1, 1955 in Book 3240 of Official Records, Page 105, of Santa Clara County, said portion being described as follows:

Commencing at the most Easterly corner of said parcel of land; thence along the Southeasterly line of said Parcel South 51° 27' 19" West, 231.36 feet to that certain course described as "South 38° 32' 41" East, 99.31 feet", in Parcel 11 of Relinquishment No. 22157 to the City of San Jose, recorded June 5, 1961 in Book 5188, at Page 240, Official Records, of Santa Clara County; thence along said course North 38° 32' 41" West, 19.31 feet to the Northeasterly terminus of the course described in said Parcel 11 with the length of 71.53 feet; thence along the Northeasterly prolongation of last said course North 39° 50' 12" East, 236.20 feet to the Northeasterly line of said Parcel (3240 OR 105); thence along said line South 38° 32' 41" East, 66.87 feet to the point of commencement.

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Licking Enterprises  
Document No. T-18554/578403\_7

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

**EXHIBIT 2**  
**INSURANCE**

At all times during this lease TENANT, at TENANT'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 TENANT's operation and use of the leased premises.

**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 Fire Legal Liability; 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.
3. Workers' Compensation insurance as required by the California Labor Code; and
4. Employers Liability insurance; and
5. 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**

TENANT shall maintain limits no less than:

1. Commercial General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. 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. Fire Legal Liability \$100,000; and
2. Commercial automobile liability insurance insuring all owned, non-owned and hired vehicles used in the conduct of Tenants business and operated upon or parked upon common area with limits of liability not less than \$1,000,000 combined single limit for both bodily injury and property damage.

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; and

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 officer, employees, agents and TENANTS; or TENANT 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 general liability policy is to contain, or be endorsed to contain, the following provisions:

1. **Commercial General Liability and Commercial Automobile Liability**
  - a. The City of San Jose its officers, agents, employees and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, TENANT; products and completed operations of TENANT; premises owned, leased or used by TENANT; and automobiles owned, leased, hired or borrowed by TENANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents, and contractors.
  - b. TENANT's insurance coverage shall be primary insurance as respects CITY its officers, employees, agents and TENANTS. Any insurance or self-insurance maintained by CITY, its officers, employees, agents and contractors shall be excess of TENANT's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies by TENANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
  - d. Coverage shall state that TENANT'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 officials, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San Jose, 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; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Acceptability of Insurers

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

F. Verification of Coverage

TENANT 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.

Proof of insurance shall be either emailed in pdf format to: [Riskmgmt@sanjoseca.gov](mailto:Riskmgmt@sanjoseca.gov), or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Human Resources  
Risk Management  
200 East Santa Clara St. 2<sup>nd</sup> Floor Wing  
San Jose, CA 95113-1905

H. Review of Coverage

These insurance requirements shall be subject to review by City's Risk Manager. Should the Risk Manager require any change in coverage, any such change shall be noticed in writing by City to Licensee and Licensee shall comply with the change within thirty (30) days of the date of receipt of the notice.

**EXHIBIT 3**  
**HAZARDOUS MATERIALS**

Hazardous Material" Defined. For purposes of this Ground Lease, the term "Hazardous Material" means any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, ("HMTA") 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq. ("TOSCA"); the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25300 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the Porter-Cologne Water Quality Control Act, California Water Code Sections 13000 et seq., all as amended, (the above-cited California State statutes are collectively referred to as "the State Toxic Substances Laws") or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability (including, but not limited to response, removal and remediation costs) or standards of conduct or performance concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter may be in effect; (b) any substance, product, waste or other material of any nature whatsoever which whose presence in and of itself may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of a state or federal court, (iii) petroleum or crude oil, including but not limited to petroleum and petroleum products contained within regularly operated motor vehicles and (c) asbestos. The term "Hazardous Materials" shall not include reasonable quantities for lawful and customary use of office supply products, janitorial supply products, and other products used by Tenant during its tenancy hereunder so long as used in a lawful manner.

RD: MDC  
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EXHIBIT 4

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

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

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MEMORANDUM OF GROUND LEASE AGREEMENT

THIS MEMORANDUM OF GROUND LEASE AGREEMENT made and entered into this 14<sup>th</sup> day of APRIL, 2011 by and between the City of San Jose, a municipal corporation of the State of California ("City") and Licking Enterprises LLC, a corporation authorized to do business in the State of California ("Tenant"). City leases to Tenant and Tenant leases from City the use of certain Premises located at 1157 East Taylor Street, San Jose, California.

The leased premises are 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 dated APRIL 14, 2011 ("Ground Lease"). The Ground Lease Term shall commence on the date that title to the property comprising the Ground Lease Premises is conveyed to City and shall continue until City determines that the Ground Lease must be terminated and the property vacated in order to begin the development of the 101/Mabury interchange, or for any other purpose. The City shall give at least six months written notice of the need to terminate the leasehold and take possession of the Ground Leased Premises. The parties agree that such written notice of termination shall not be given sooner than October 1, 2014, that on or after April 1, 2015, City may give such written notice of termination at any time, and that otherwise this Ground Lease shall expire no later than September 30, 2015, unless otherwise mutually agreed upon in writing between the parties.

The Ground Lease Agreement and Exhibits are on file with the City Clerk's Office of the City of San Jose. The purpose of this Memorandum of Ground Lease Agreement is to give notice of the

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Licking Enterprises  
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RD: MDC  
04/13/11

existence of the Ground Lease Agreement, which itself constitutes the agreement between the parties.

Executed by the parties on the date set forth above.

"CITY"

APPROVED AS TO FORM

CITY OF SAN JOSE, a municipal corporation of the State of California

\_\_\_\_\_  
Senior Deputy City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"TENANT"

LICKING ENTERPRISES, a corporation authorized to do business in California

By: John Licking  
Authorized Representative

**CORPORATE SECRETARY CERTIFICATE**

This certificate shall be executed by the secretary or assistant secretary of a corporation.

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ secretary  
Name of Secretary or Assistant Secretary  
of the corporation named in the attached agreement; that \_\_\_\_\_  
Name of Person who Signed Agreement  
signed the agreement on behalf of the corporation as the \_\_\_\_\_ of  
Title of Person who Signed the Agreement  
the corporation; and that the agreement was duly signed for and in behalf of the corporation by authority of its Board of Directors, and is within the scope of its corporate powers.

\_\_\_\_\_  
Signature of Secretary or Assistant Secretary

\_\_\_\_\_  
Corporate Seal

\_\_\_\_\_  
Date

## ACKNOWLEDGEMENT

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
Paragraph is true and correct.

WITNESS my hand and official seal

Signature \_\_\_\_\_ (Seal)

S