

LEASE

by and between

THE CITY OF SAN JOSE
("Landlord or City")

and

HABITAT FOR HUMANITY SILICON VALLEY
a California nonprofit corporation
("Tenant")

San Jose, California

EXHIBITS TO LEASE

EXHIBIT “A” The Premises and the Common Areas

EXHIBIT “B” The San Jose Environmental Innovation Center

EXHIBIT “C” Insurance Requirements

EXHIBIT “D” Monitoring Well Locations

EXHIBIT “E” Tenant Handbook

LEASE

This Lease is made and entered into by and between THE CITY OF SAN JOSE, a municipal corporation of the State of California (hereinafter “**Landlord**” or “**City**”), and HABITAT FOR HUMANITY SILICON VALLEY, a California nonprofit corporation (“**Tenant**”).

1 Basic Lease Provisions and Definitions.

- 1.1 Tenant’s Name.
HABITAT FOR HUMANITY SILICON VALLEY, a California nonprofit corporation
- 1.2 Address of Premises.
1608 Las Plumas Avenue
San Jose, CA 95133
- 1.3 Floor Area of Premises.
Rentable Area is approximately 14,606 square feet as depicted on **Exhibit “A”**
- 1.4 Initial Lease Term.
Commences on July 1, 2011 “Commencement Date” and terminates on June 30, 2018 “Termination Date”
- 1.5 Options to Extend.
One (1) five-year option to extend
- 1.6 Monthly Rent.
- | | |
|------------------------------------|-------------------------|
| Commencement Date through month 28 | \$0 |
| Month 29 through month 60 | \$6,572.70 |
| Month 61 through month 72 | \$6,704.15 |
| Month 73 through month 84 | \$6,838.24 |
| If option exercised: | As per Section 5 |
- 1.7 Use.
The operation of a retail store selling quality new and nearly-new construction materials to the general public at a fraction of normal prices with the inventory donated by home improvement/building supply businesses and home building firms.

2 Leased Area and Parking and Other Common Areas.

- 2.1 Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord those certain premises deemed to consist of fourteen thousand six

hundred and six (14,606) square feet of retail space located at 1608 Las Plumas Avenue, San Jose, CA 95133 (hereinafter called the “**Premises**”), which Premises are shown on the attached **Exhibit “A”**. The real property in which the Premises is located is referred to as the **San Jose Environmental Innovation Center or “EIC Facility”**, and is described and shown on the attached **Exhibit “B”**.

2.2 Parking and Other Common Areas. Tenant shall have the nonexclusive right (unless otherwise provided in this Lease) in common with Landlord, other tenants, sublessees and their customers, employees and invitees to use the parking and other common areas as described on Exhibit “A” (Common Areas)). Tenant may mark off up to twelve (12) spaces for “pick ups and drop offs” for Tenant’s customers, however, these spaces are not exclusively reserved for Tenants. The location of these spaces is to be mutually agreed upon between the Landlord and Tenant upon delivery of the Premises.

2.3 Tenant Rules. Tenant agrees to abide by and conform to the rules and regulations as included within the Tenant Guidelines attached hereto as EXHIBIT “E” and to cause its employees, suppliers, shippers, customers, and invitees to so abide and conform.

3 **Term.** The term of this Lease shall commence on the Commencement Date and terminate seven (7) years thereafter (“**Termination Date**”), subject to the option to extend the term contained in **Section 5**. The period between the Commencement Date and the Termination date shall be referred to as the “**Initial Term.**”

4 **Payments to Landlord.** Beginning on the Commencement Date (“**Rent Commencement Date**”), Tenant agrees to pay Landlord as rent for the Premises, in the manner and at the times set forth in this Section, the base rent fee to be paid as described below (“**Monthly Rent**”). All payments shall be sent to the Landlord’s address below and shall be free from all credits, claims, demands, off-sets or counterclaims of any kind against Landlord:

City of San Jose
Office of Economic Development
Real Estate Services
200 East Santa Clara Street, 4th Floor
San Jose, CA 95113
Attn: Accounts Receivable

4.1. Monthly Rent. Monthly Rent shall be paid by Tenant according to the following schedule:

Commencement Date through month 28	\$0
Month 29 through month 60	\$6,572.70
Month 61 through month 72	\$6,704.15
Month 73 through month 84	\$6,838.24

Base Rent for the first year of the Option Term shall be increased by an amount equal to two percent (2%) of the Base Rent for the sixth (6th) year of the Initial Term. Thereafter, for each Lease year of the Option Term, Base Rent shall be increased by an amount equal to two percent (2%) per year.

4.2. Interest. Any payment due from Tenant to Landlord, including but not limited to rent, shall bear interest from the due date until the date paid at an annual rate equal to the lesser of: (a) ten percent (10%), or (b) the maximum annual interest rate allowed by law. In addition, Tenant shall pay Landlord all costs and expenses incurred by Landlord in the collection of such payments and interest.

4.3. Late Charge. For all rent due and owing after the Commencement Date, Tenant shall pay, without the necessity of prior demand or notice, to Landlord a late charge equal to five percent (5%) (“Late Charge”) of any installment of rent that is not received by Landlord within five (5) days after the due date for that payment. A Late Charge equal to five percent (5%) shall additionally be assessed to installments on payments of back rent, if said installments are not received by Landlord within five (5) days after the due date of such installment as set forth herein. Tenant and Landlord agree that these Late Charges represent a fair and reasonable estimate of the additional costs and expenses Landlord will incur by reason of a late payment of rent or back rent by Tenant. In no event shall this subsection be deemed or interpreted to grant Tenant a grace period or extension of time within which to pay any payment of rent or to prevent Landlord from pursuing or exercising any right or remedy available to Landlord for Tenant’s failure to pay a rent payment when due.

4.4. Method and Time of Payment. Commencing on the Rent Commencement Date and continuing thereafter during the term of this Lease, the Monthly Rent shall be paid by Tenant to Landlord on a monthly basis on or before the first day of each month.

5 Option to Extend. If this Lease shall not have been previously terminated and if Tenant is not in default under the terms of this Lease, then Tenant shall have the option to extend the term of this Lease on the same terms and conditions for one additional term (“Option Term”) at the expiration of the Initial Term as follows:

5.1. An additional term of five (5) years from the expiration of the Initial Term (“Option Term”); and

5.2. Said Option Term may be exercised only by the delivery of written notice by Tenant to Landlord at least ninety (90) days, but not more than one hundred eighty (180) days, in advance of the Termination Date of the Initial Term.

5.3. Monthly Rent payments during the Option Term shall be made according to **Section 4.1.**

6 Premises.

- 6.1. Use of Premises. The Premises shall be used during the term of this Lease for the sole purpose of conducting the business of a retail store for the sale of quality new and nearly-new construction materials to the general public. Tenant shall commence retail operation of the Premises upon completion of the Tenant Improvements specified in **Section 7** and shall remain open to the public no less than 5 days per week.

For compliance with the requirements of the New Markets Tax Credit Program, Tenant is prohibited from using the Premises for residential purposes, to conduct any trade or business consisting predominantly of the development or holding of intangibles for sale or license, to operate a golf course, country club, massage parlor, hot tub or suntan facility, racetrack or other gambling facility, a liquor store or a farming operation.

- 6.2. Condition of Premises. The parties hereby acknowledge that the EIC Facility is currently under construction with Landlord's completion and delivery of the Premises to Tenant anticipated to occur on December 1, 2012. In the event Tenant does not receive delivery of the Property by March 1, 2013, Tenant has the right to terminate this agreement without recourse or damage to Landlord. Tenant shall have the right to terminate by providing no less than 30 days written notice to the Landlord. Tenant's right to terminate ceases upon delivery of the Premises.

Tenant agrees to accept the Premises delivered AS-IS, WHERE-IS condition substantially consistent with the Permit Set signed by the Director of Public Works December 16, 2010, which Tenant hereby acknowledges having reviewed and approved. Tenant shall provide Landlord a punch list regarding any substantial noncompliance of the Premises with the construction drawings and plans within five (5) days of delivery, or forever waive the right to acceptance of the Premises in AS-IS, WHERE-IS condition. The parties shall act in good faith to resolve any items on the punch list.

7 Leasehold Improvements.

- 7.1. Improvements. As consideration for the no rent from Commencement Date through month 28, Tenant agrees to install on the Premises all additional improvements, fixtures, furniture and equipment within the Premises, as reasonably necessary for the operation of Tenant's business, including but not limited to such items as racks, a mop sink, and lighting ("Tenant Improvements"). Upon receipt of the Notice of Acceptance, Tenant agrees to complete Tenant Improvements no later than ninety (90) days from receiving delivery of the Premises. These Tenant Improvements shall become the property of the Landlord upon termination of this Lease.

- 7.2. Landlord's Right to Review Plans. The Landlord shall have the right to review and approve all plans and drawings, including any material changes to the plans and drawings, for the Tenant Improvements, provided, however, that nothing herein shall relieve Tenant of any obligation to submit plans and submissions to City departments or other public agencies as required for construction of the Tenant Improvements. Landlord's approval of the Tenant Improvements may be based upon such conditions as Landlord deems necessary, including but not limited to Tenant's procurement of sufficient bonds for the Tenant Improvements.
- 7.3. Liens. All Tenant Improvements shall be completed free of mechanic's liens, with first-class materials and workmanship, and in compliance with all applicable permits, ordinances, rules, regulations, and laws applicable to the Premises.
- 7.4. Ownership and Removal. All personal property not affixed in any way to the Premises including inventory, together with Tenant's trade fixtures, (collectively, "**Tenant's Property**") shall remain the property of Tenant. Upon the termination or expiration of the Lease term, if Tenant is not then in default under the Lease, Tenant may remove Tenant's Property from the Premises no later than the termination or expiration date. In addition, Tenant may remove from the Premises all items installed by Tenant that are indicative of Tenant's business and may otherwise "de-identify" the Premises, as Tenant reasonably believes necessary or appropriate for the protection of Tenant's interest in Tenant's trademarks, trade names or copyrights. Tenant shall repair any damage to the Premises caused by such removal, including parching and filling holes. In no event shall Tenant remove or be required to remove any restrooms, flooring, ceilings, utility or electrical components located inside the walls or HVAC systems. All other utility systems will be capped and returned to a condition compatible with code requirements.
- 7.5. Abandonment. Any of Tenant's Property not removed from the Premises within fifteen (15) business days of the date the Lease terminates or expires shall be deemed abandoned and shall thereupon become the property of Landlord. Landlord may possess and dispose of such property as Landlord deems appropriate. This provision shall apply under all circumstances, including default by Tenant under this Lease.

8 Maintenance, Repairs, and Alterations.

- 8.1 Tenant's Obligations. Except for damage caused by fire or other casualty, whether or not insured or insurable, Tenant, at Tenant's sole cost and expense, shall keep the Premises in a first class condition and repair, including maintaining all plumbing, electrical and lighting facilities and equipment within the Premises, and all doors and plate glass windows (both interior and exterior) in the Premises, interior walls, any Tenant signage and any flooring. Except for interior structural and other items to be maintained and repaired by Landlord pursuant to **Section 8.2** below, Tenant, at its sole cost and expense, shall keep the entirety of the

interior of the Premises, including Tenant's fixtures, case goods and furnishings, in good condition and repair. Notwithstanding any provision to the contrary, Tenant's obligations under this Section shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Landlord, its agents, employees or servants, or of any other tenant of the Property; or (b) any repair or improvement caused by Landlord's failure to perform its obligations hereunder or under any other agreement between Landlord and Tenant.

- 8.2 Landlord's Obligations. Except for repairs and replacements to the Premises that Tenant must make under **Section 8.1** above, Landlord shall pay for and make all other repairs and/or replacements to the Premises. Landlord shall commence such repairs and/or replacements within thirty (30) days of receiving, from Tenant, written notice of the need for the repairs and/or replacements. Such repairs, replacements and maintenance's shall include the upkeep of the roof, roof structures and supports, HVAC, sprinkler system, gutters, downspouts, foundation, exterior walls, storefront, and all structural components of the Premises. Landlord shall also repair and maintain all sidewalks, landscaping and drainage systems on the Property and all utility systems (including mechanical, electrical, and HVAC systems) and plumbing systems which serve the Property as a whole. Landlord shall not be required to maintain the interior surface of exterior walls, windows, doors or plate glass and storefronts. In the event of an emergency, Tenant may give Landlord such notice as is practicable under the circumstances, and if Landlord fails to make such repairs immediately, Tenant may immediately undertake such repairs and submit an invoice for the reasonable costs thereof to Landlord for reimbursement. Notwithstanding any provision to the contrary, Landlord's obligations under this **Section** shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Tenant, its agents, employees or servants; or (b) any repair or improvement caused by Tenant's failure to perform its obligations hereunder or under any other agreement between Landlord and Tenant.
- 8.3 Surrender. Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord in as good order and condition as when Tenant took possession, except for ordinary wear and tear and damage caused by fire or other casualty, whether or not insured or insurable, and in a broom clean condition.
- 8.4 Landlord's Rights. If Tenant fails to perform Tenant's obligations under **Section 8.1** above, Landlord may, but shall not be required to, enter upon the Premises, after twenty-four (24) hours prior written notice to Tenant, and put the same in good order, condition and repair, and the actual costs thereof and an administrative fee of not less than 20% of the actual costs thereof, shall become due and payable as additional rent to Landlord together with Tenant's next Monthly Rent installment falling due after Tenant's receipt of an invoice for such costs.

8.5 Alterations. The installation of any additional leasehold improvements necessary for Tenant's operation of its business in the Premises shall be performed in accordance with **Section 7**. Tenant shall not thereafter make any alterations, improvements, additions, or utility installations in, on or about the Premises without Landlord's consent, which consent shall not be unreasonably withheld. Landlord shall provide a written response to the request within thirty (30) days after receipt; a failure to receive a written approval shall be deemed a denial. Notwithstanding the foregoing, during the Lease term, Tenant may replace and repair the improvements that were installed as Tenant Improvements in accordance with this Lease, without Landlord's prior consent, if such replacement and repair is consistent with the plans or design concept approved by Landlord in accordance with **Section 7.2**.

9 Compliance with Law. During the Lease term, Tenant, at its sole cost and expense, shall comply promptly with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances ("**Laws**") affecting the Premises or the improvements thereon, or any part thereof, or the use thereof, including those which require the making of any structural, unforeseen or extraordinary changes to the Premises, whether or not any such Laws which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Lease, or involve a change of policy on the part of the governmental body enacting the same. In connection with the foregoing, Tenant acknowledges that Landlord, acting not as Landlord but in its governmental capacity, has certain governmental regulatory authority over the Premises and agrees that "Law" as defined herein includes any legal requirement imposed by Landlord acting not as Landlord but in its capacity as a governmental regulatory body.

10 Signage and Displays. With respect to signage on the Premises, Landlord and Tenant agree as follows:

10.1 Landlord may allow Tenant to place one or more signs 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 Landlord. Any such signage shall be designed and installed in a manner that maintains existing building system warranties. Upon expiration or earlier termination of this Lease, Tenant shall remove Tenant's signs from the exterior of the Premises and restore the exterior of the Premises to its original condition, unless otherwise approved by Landlord.

10.2 No merchandise shall be displayed except within the Premises.

10.3 Tenant shall comply with such reasonable rules and regulations with respect to the Premises and the Common Area as the Landlord may from time to time enact, provided that Landlord shall first notify Tenant in writing as to any such rules and regulations.

- 11 Taxes and Assessments/ Possessory Interest Tax.** Tenant acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. Tenant agrees to pay and discharge, during the term of this Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Premises, this Lease and any so-called value added tax), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the term of this Lease), fees, levies, water and sewer rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called “**taxes**”) which are or may be at any time or from time to time during the term of this Lease levied, charged, assessed or imposed upon or against the Premises or any improvements which are now or hereafter located thereon, or against any of Tenant’s personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of Tenant acquired pursuant to this Lease on account of any taxable possessory right which Tenant may have acquired pursuant to this Lease. Tenant shall pay or reimburse Landlord, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any taxes required to be paid by Tenant hereunder.
- 12 Utilities.** Tenant shall pay directly for gas, electricity and garbage while Landlord will pay all utilities that have a common account including water and sewer services.
- 13 Assignment and Subletting.** Tenant shall not assign, let or sublet the whole or any portion of the Premises.
- 14 Insurance; Indemnity.**
- 14.1 Tenant’s Insurance. Prior to commencing any work or operations under this Lease, Tenant at its sole cost and expense and for the full term of this Lease and any 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 “C”** on terms and conditions and in amounts as required by Landlord from time to time and with insurers acceptable to Landlord. Landlord shall not be obligated to take out insurance on Tenant’s property or Tenant’s improvements. Tenant shall provide Landlord with certificates of insurance or copies of all policies and such endorsements as may be required by Landlord. These requirements are subject to amendment or waiver if so approved in writing by the City’s Risk Manager.
- 14.2 Indemnification by Tenant. Tenant shall defend, indemnify, and hold Landlord and Landlord’s agents, officers, directors, employees, and contractors harmless

against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) arising out of Tenant's use of the Premises ("Claims"), including, but not limited to: (a) injuries occurring within the Premises; (b) any intentional acts or negligence of Tenant or Tenant's agents, employees, or contractors; (c) any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease; (d) any violation of any law, ordinance or regulation governing the use of the Premises or (e) the failure of any representation or warranty made by Tenant herein to be true when made. This indemnity does not include any Claims caused by the intentional or negligent acts or omissions of Landlord, Qualified Active Low-Income Community Business ("QALICB") or its agents, officers, contractors or employees. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination or expiration of the Lease.

15 Environmental Liability.

- 15.1 Environmental Law. The term "Environmental Law" means any federal, state, or local law, statute, ordinance, regulation or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions or Hazardous Substances.
- 15.2 Hazardous Substance. The term "Hazardous Substance" shall mean any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Environmental Law or by common law decision including, without limitation, chlorinated solvents; petroleum products or by products; asbestos; and polychlorinated biphenyl.
- 15.3 Release of Hazardous Substances. Except as provided below in **Section 15.4**, Tenant shall not store, dispose of, transport, generate or otherwise introduce any Hazardous Substance in, on or around the Premises. If any Hazardous Substance is deposited, released, stored, disposed, transported, generated or otherwise introduced by Tenant in, on, or around the Premises or the Property, Tenant, at Tenant's sole cost and expense, shall comply with all applicable laws, rules, regulations and policies of any governmental body with jurisdiction over the same, to remove, transport and dispose of such substances and perform all remediation and cleanup necessary or advisable to remediate any damage to persons, property or the environment as a result of the presence of such Hazardous Substances.
- 15.4 Tenant's Use of Hazardous Substances. Notwithstanding the above and provided that Tenant complies with all applicable Environmental Laws, Tenant shall have the right to use Hazardous Substances on the Premises to the extent such Hazardous Substances (i) are contained in household products, office supply products or janitorial products customarily used in the maintenance, rehabilitation,

or management of facilities similar to the Premises; or (ii) are commonly used by a significant portion of the population living within the region of the Premises.

15.5 Environmental Indemnity. Tenant shall protect, indemnify, and hold harmless Landlord and Landlord's agents, officers, directors, employees, and contractors from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees), and the costs of repairs and improvements necessary to return the Premises to the physical condition existing prior to Tenant's undertaking any activity related to any Hazardous Substance, directly arising out of or attributable to Tenant's or Tenant's agents, contractors, or employees use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. This indemnity shall survive the termination of this Lease. Landlord shall protect, indemnify, and hold harmless Tenant and Tenant's agents, contractors and employees from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees) and the costs of repairs and improvements necessary to return the Premises to the physical condition existing prior to undertaking any activity related to any Hazardous Substance directly arising out of or attributable to Landlord's or Landlord's agents, officers, directors, employees, and contractor's use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises.

15.6 Environmental Disclosure and Acknowledgement. Tenant acknowledges that Landlord has fully disclosed past contamination at the EIC Facility and acknowledges having received and reviewed the "Groundwater Monitoring Report Third Quarter 2010" dated October 27, 2010 prepared by RRM, Inc. at Landlord's behest for submittal to the State Regional Water Quality Control Board . The contamination is the result of a leaking 10,000-gallon underground storage tank associated with a former plastic bag manufacturing operation on the property from the late 1950's to the 1970's. The tank which was removed in 1986 reportedly contained bunker oil. Subsequent investigations performed by the Landlord indicated the soil and groundwater is contaminated with petroleum and solvent contamination. The State Regional Water Quality Control Board is overseeing the fuel leak investigation. Landlord has installed five (5) ground water monitoring wells on-site (MW-1 through MW-5) as depicted in **Exhibit D.**" The purpose of these wells is to monitor the extent of contamination in the groundwater. The wells are currently sampled on a semi-annual basis.

16 Damage to Premises.

16.1 Landlord's Option to Repair. If a material part of the Premises provided by Landlord shall, by reason of fire, earthquake, the elements, acts of God or other unavoidable casualty, be destroyed or so damaged as to become unusable in whole or in part and the damage can, by proceeding with reasonable diligence, be repaired within one hundred eighty (180) days from the date of such destruction or damage, Landlord may elect to promptly and diligently repair the damage (subject to the limitations set forth in **Section 16.2**) and this Lease shall remain in

full force and effect. If a material part of the Premises provided by Landlord is damaged, and the damage cannot, by proceeding with reasonable diligence, be repaired within one hundred eighty (180) days from the date of such destruction or damage, this Lease may be terminated by Landlord by written notice given to Tenant within thirty (30) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty.

- 16.2 Election to Terminate. If a material part of the Premises provided by Landlord is damaged, and the damage cannot, by proceeding with reasonable diligence, be repaired within one hundred eighty (180) days from the date of such destruction or damage, and Landlord has not terminated this Lease pursuant to **Section 16.1** above, then this Lease may be terminated by Tenant by written notice given to Landlord within thirty (30) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty. If Tenant does not make the foregoing election within the required period and Landlord has not terminated the Lease, then Landlord may elect to promptly and diligently repair the damage and this Lease shall remain in full force and effect (subject to the provisions of **Section 16.3** below regarding completion of Landlord's repairs).
- 16.3 Abatement of Rent. If a material part of the Premises provided by Landlord is damaged, and Landlord elects to repair them pursuant to the provisions of **Section 16.1**, the Monthly Rent payable pursuant to **Section 4.1** shall be abated from the date of the casualty and while such repairs are being made. If, however, Tenant is able to occupy and operate its business within a portion of the Premises, Monthly Rent shall be abated only for the portion of the Premises that Tenant cannot occupy and operate within. Such partial abatement shall be calculated on a square foot basis. The abatement of Monthly Rent shall be Tenant's sole remedy due to the occurrence of the casualty. Landlord shall not be liable to Tenant or any other person or entity for any direct, indirect or consequential damage due to or arising from the casualty.

17 Condemnation.

- 17.1 Total Condemnation. If, during the term of this Lease, the whole of the Premises shall be taken pursuant to any condemnation proceeding or a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is not suitable for the purposes for which Tenant was using the Premises prior to the taking, then this Lease shall terminate as of the date that actual physical possession of the Premises is taken, and after that date, both Landlord and Tenant shall be released from any future obligations arising under this Lease.
- 17.2 Partial Condemnation. If, during the term of this Lease, only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is suitable for the purposes for which Tenant was using the Premises prior to the taking in the sole discretion of Tenant, then this Lease shall, as to the part so taken, terminate as of the date that actual physical possession of such portion

of the Premises is taken, and after that date, both Landlord and Tenant shall be released from any future obligations under this Lease with respect to such portion of the Premises taken.

- 17.3 Condemnation Award. If the whole or any part of the Premises are taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award except that portion allocable to any personal property of Tenant or any unsalvageable trade fixtures or furnishing owned by Tenant, any amounts specifically awarded or agreed upon by the Tenant and the condemning authority for the unamortized portion of Tenant's leasehold improvements and moving expenses, shall be the property of Tenant.
- 17.4 Effect of Termination. In the event this Lease is canceled or terminated pursuant to any of the provisions of this **Section 17** all rentals and other charges payable on the part of Tenant to Landlord hereunder shall be paid either as of the date upon which actual physical possession shall be taken by the condemner, or as of the date upon which Tenant ceases doing business in, upon or from the Premises, whichever first occurs; and the parties shall thereupon be released from all further liability hereunder, except for any liability arising prior to the date upon which actual physical possession shall be taken by the condemner.

18 Default and Remedies.

- 18.1 Tenant's Default. Notwithstanding Section 20, if: (i) Tenant shall fail to pay any rent or other monies due under this Lease after the same are due, and such failure shall continue for ten (10) days after receipt of written notice thereof to Tenant, or (ii) Tenant shall fail to perform any other term, covenant, or condition herein contained, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless Tenant shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity, or (iii) the Tenant's interest herein or any part thereof be assigned or transferred, either voluntarily or by operation of law, without permission of the Landlord when such permission is required by the terms of this Lease, whether by judgment, execution, death or any other means, or (iv) the Tenant shall file any petition or institute any proceedings under any bankruptcy act, state or federal, or if such petition or proceeding be filed or be instituted or taken against the Tenant and such petition remains undischarged for a period of ninety (90) days; or if any receiver of the business or of the property or assets of Tenant shall be appointed by any court (except a receiver appointed at the instance or request of the Landlord) and Tenant fails to obtain dissolution of the receiver within ninety (90) days after appointment of the receiver; or (v) Tenant shall make a general or any assignment for the benefit of its creditors; or (vi) Tenant shall abandon or vacate (other than a temporary cessation of operations in connection with renovations of the Premises to which Tenant has obtained Landlord's approval as required by the terms hereof) the Premises; then in any of such events Landlord shall have the following options:

- a. To collect, by suit or otherwise, each installment of rent or other sum as it becomes due hereunder, or to enforce by suit or otherwise, any other term or provision hereof on the part of Tenant required to be kept or performed; and/or,
- b. To reenter the Premises, remove all persons therefrom, take possession of the Premises and of all equipment, fixtures and personal property thereon or therein, and either with or without terminating this Lease to make commercially reasonable efforts to relet the Premises or any portion thereof (but nothing contained herein shall be construed as obligating Landlord to relet the whole or any portion of the Premises) for such term or terms (which may be for a term extending beyond the term of the Lease) and at such reasonable rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; and/or
- c. To terminate this Lease, in which event Tenant agrees immediately to surrender possession of the Premises and to pay to the Landlord any unpaid rent or other amounts due to Landlord pursuant to this Lease.

18.2 **Landlord's Default.** If Landlord fails to comply with or defaults in the performance of any provision of the Lease, Tenant shall have the right (but not the obligation) in addition to any and all other rights and remedies available to Tenant at law or in equity, to cure such nonconformance or default on behalf of Landlord, upon thirty (30) days prior written notice to Landlord, except in an emergency, Tenant may cure such nonconformance or default without such written notice so long as Tenant makes reasonable efforts to notify Landlord of such emergency. Upon receipt from Tenant of notice of such cure and demand for payment, Landlord shall repay any expenditure made by Tenant within thirty (30) days of written request therefore.

19 **Holding Over.** If Tenant shall hold over the term of this Lease, without Landlord's prior written consent, such holding over shall be construed as a tenancy from month to month, on the same terms and conditions as this Lease, and at one hundred fifty percent (150%) of the Monthly Rent in effect during the final full month of the term of this Lease.

20 **Landlord's Right to Terminate.** Landlord has the right starting in the 29th month of the initial term of this agreement to terminate, with or without cause, with one hundred eighty (180) days prior written notification to Tenant.

21 **Time of the Essence.** Time is of the essence hereof, and waiver by the Landlord or Tenant of a breach of any term, covenant or condition herein contained, whether express or implied, shall not constitute a waiver of any subsequent breach thereof, or a breach of any other term, covenant, or condition herein contained, and acceptance of rent hereunder shall not be a waiver of any breach, except a breach of covenant to pay the rent so accepted. No acceptance by Landlord of any partial payment of any sum due hereunder shall be deemed

an accord and satisfaction or otherwise bar Landlord from recovering the *full* amount due, even if such payment is designated “payment in full,” bears any restrictive endorsement, or is otherwise conditionally tendered. The times for Tenant’s performance of any obligations set forth in this Lease may be extended by the Landlord’s Director of Economic Development or designee, if he/she finds at his/her sole discretion that Tenant has been delayed for reasons not in Tenant’s control. Any such extension shall be in writing.

22 **Successors and Assigns.** Subject to the provisions of **Section 13** hereof, this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the parties hereto.

23 **Notices.** Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party shall be in writing and shall be deemed served when personally delivered to the party to whom they are directed, or in lieu of the personal service, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed to:

Tenant at: Habitat For Humanity Silicon Valley
513 Valley Way
Milpitas, CA 95035
Attn: Jennifer Simmons, Executive Director

Landlord at: City of San Jose
Office of Economic Development
Real Estate Services
200 East Santa Clara Street, 4th Floor
San Jose, CA 95113

with a copy to: City of San Jose
Office of the City Attorney
200 East Santa Clara, 16th Floor
San Jose, CA 95113
Attention: City Attorney – OED-Real Estate Services

or to such other address as either party may designate by notice in accordance with this Section.

24 **Landlord’s Access.** Landlord and its agents shall have the right to enter the Premises upon seventy two (72) hours prior written notice for the purpose of inspecting the same, and making such alterations, repairs, improvements or additions to the Premises as are deemed necessary or desirable consistent with this Lease. Notwithstanding the foregoing, in the event of an emergency requiring Landlord’s entry into the Premises, Landlord may give Tenant shorter notice in any manner that is practicable under the circumstances. When entering or performing any repair or other work in the Premises, Landlord, its agents, employees and/or contractors (a) shall identify themselves to Tenant’s personnel

immediately upon entering the Premises, and (b) shall not, in any way, materially or unreasonably affect, interrupt or interfere with Tenant's use, business or operations on the Premises or obstruct the visibility of or access to the Premises.

Tenant also grants to Landlord, a non-exclusive temporary right of entry and limited access to the Property. This limited grant of access to the Property is strictly limited to the ingress and egress necessary to: i) collect soil and groundwater samples from and maintain the five existing groundwater monitoring wells, ii) install five temporary soil boring and collect from those borings soil, soil gas and grab samples of groundwater, the location of which are depicted on **Exhibit D** (the location of such borings being approximate until such time as approved by Regional Water Quality Control Board ("RWQCB") for the purpose of testing such soil, gas and groundwater samples, and iii) install and maintain any additional monitoring wells or temporary borings as may be required for Landlord to comply with RWQCB and other state or federal regulations.

- 25 Legal Relationship.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint ventures or any association between Landlord and Tenant. Landlord and Tenant expressly agree that neither the method of computation of rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.
- 26 Agency Acknowledgment.** Landlord and Tenant acknowledge that Cassidy Turley CPS (Todd Beatty) is acting solely as the agent for Tenant in this transaction and that the Real Estate Services group of the Office of Economic Development of the City of San Jose is solely representing Landlord and that neither represents the other's principal. Landlord and Tenant acknowledge that Cassidy Turley CPS (Todd Beatty) is only representing the Tenant in this transaction and does not owe the duties of an agent to the Landlord.
- 27 Consents.** Whenever the right of approval or consent is given to a party pursuant to this Lease, the party shall not unreasonably withhold, condition or delay its consent unless this Lease expressly provides otherwise. All approvals and reviews required of Landlord under this Lease may be undertaken and/or given by Landlord's Director of Economic Development or designee.
- 28 Non-discrimination.** Tenant shall not restrict the rental, use, occupancy, tenure, or enjoyment of the Premises or any portion thereof, on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin of any person. During the term hereof, any contracts or subleases relating to the construction, use or occupancy of the Premises or any portion thereof, shall contain or be subject to substantially the following nondiscrimination and nonsegregation clauses:

"There shall be no discrimination against or segregation of, any person, or group of persons, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, himself

or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, or vendees of the land.”

- 29 **General.** The terms “**Landlord**” and “**Tenant**” herein or any pronouns used in place thereof shall mean and include the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and their and each of their respective heirs, executors, administrators, successors and permitted assigns, according to the context hereof. The headings of Sections herein are inserted only for convenience and reference and shall in no way define or limit the scope or intent of any provisions of this Lease. This Lease shall be construed under the laws of the State of California, and venue shall be in San Jose, California.
- 30 **Quiet Enjoyment.** Upon payment of the rent as aforesaid and upon the observance and performance by Tenant of all of the terms and provisions to be observed by Tenant under this Lease, Tenant shall peaceably hold and enjoy the Premises for the term hereof without hindrance or interruption by Landlord or any other person, except as herein expressly, provided.
- 31 **Force Majeure.** If any act required to be performed by Landlord or Tenant hereunder, shall be delayed due to strikes, riots, acts of God, shortages of labor or materials, national emergency, governmental restrictions, laws or regulations, or any other causes beyond either party’s control, such delay shall not be a violation of this Lease and the time within which such act is required to be performed shall be extended for a period of time equal to the period of such delay.
- 32 **Regulatory Authority.** Tenant acknowledges that, at any time when the City is the Landlord hereunder, Landlord shall have certain governmental regulatory authority over the Premises. Tenant agrees and expressly acknowledges that any approval or consent required or permitted hereunder by the City, acting in its capacity as Landlord under this Lease, (1) is distinct from any approval or consent of such entity acting in the capacity of governmental regulatory authority, whether or not related to the same matter, and (2) shall not compromise, diminish or in any way limit the authority of such entity to give, deny or condition its approval or consent when acting as a governmental regulatory authority.
- 33 **City Ethics Requirements.**
- 33.1 **Prohibition of Gifts.**
- a. 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.
 - b. B. Tenant agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.

- c. C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Lease by Tenant. In addition to any other remedies Landlord may have in law or equity, Landlord may terminate this Lease for such breach as provided in Section 18 of this Lease.

33.2 Disqualification of City Employees. Tenant is familiar with the provisions relating to the disqualification of former officers and employees of City in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code (“Revolving Door Ordinance”). Tenant shall not utilize either directly or indirectly any officer, employee, or agent of Tenant to perform services under this Lease, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

34 Subordination. This Lease shall, at Landlord’s option, be subordinate to any mortgage, deed of trust or ground lease that may exist or hereafter be placed upon the Premises or any part thereof and to any and all advances to be made thereunder and to the interest thereon and to all renewals, replacements and extensions thereof, provided, however, so long as Tenant performs its obligations under this Lease, no foreclosure of, deed given in lieu of foreclosure of, sale, and no procedures taken under the encumbrance shall affect Tenant’s rights under this Lease and the holder of such encumbrance shall agree to recognize this Lease and all of the Tenant’s rights hereunder. Tenant shall upon written demand by Landlord execute such instruments as may reasonably be required at any time and from time to time to subordinate the rights and interest of Tenant under this Lease to the lien of any such ground lease, mortgage or deed of trust, or, if requested by Landlord, to subordinate any such ground lease, mortgage or deed of trust to the Lease, so long as such instrument includes reasonable non-disturbance protection; provided, however, that Tenant shall, in the event any proceedings are brought for the foreclosure of any such mortgage or deed of trust on termination of such ground lease, attorney to the purchaser upon foreclosure sale or sale under power of sale or the landlord under such ground lease, and shall recognize such purchaser or ground lessor as Landlord under this Lease, and so long as Tenant is not in default hereunder, no such termination or foreclosure shall terminate this Lease or otherwise affect Tenant’s rights hereunder.

35 Costs and Expenses. Whenever this Lease provides that either party shall be entitled to recover fees, costs or expenses from the other, such fees, costs or expenses shall be reasonable in nature.

36 No Relocation. Tenant agrees it is not entitled to relocation assistance or benefits based on its tenancy under this Lease, and waives any right to claim any such benefits as a result of termination of this Lease.

37 Authorizations. Where this Agreement requires or permits Landlord to act and no officer of the City is specified, City’s Manager or the designated representative of City’s Manager (including the Director of Economic Development) has the authority to act on Landlord’s behalf.

38 **Entire Agreement.** This Lease and the exhibits attached hereto (which are incorporated herein by this reference) represent the entire agreement between the parties concerning the subject matter hereof, and supersede any prior written or verbal agreements or understandings with respect thereto.

39 **Property Interest Subject to Change.** The parties acknowledge that at the time the City enters into this Lease, the City is in the process of securing additional financing through the New Markets Tax Credit Program (“NMTC”) to complete construction of the EIC Facility. The structure of the proposed NMTC financing transaction would require the City to enter into a ground lease of the EIC Facility with a QALICB. The QALICB would also be required to enter into a master lease of the EIC Facility with the City. Notwithstanding the NMTC financing, all rights and obligations of the parties to each other under this Lease shall remain the same.

Notwithstanding the generality of **Section 34**, Tenant shall cooperate in good faith with any reasonable request of the Landlord to execute any and all agreements necessary to complete the NMTC financing transaction provided the agreements will not adversely impact Tenant’s rights under this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

THE CITY OF SAN JOSE, a Municipal Corporation of the State of California Approved as to form:

Rosa Tsongtaatarii
Deputy City Attorney

By: _____
Dennis D. Hawkins, CMC
City Clerk

Date: _____

TENANT:

HABITAT FOR HUMANITY SILICON VALLEY.
a California nonprofit corporation

By: _____
Name: Jennifer Simmons
Title: Executive Director

EXHIBIT "A"

PREMISES AND COMMON AREAS

Building Plan

SJEIC
Building
Plan

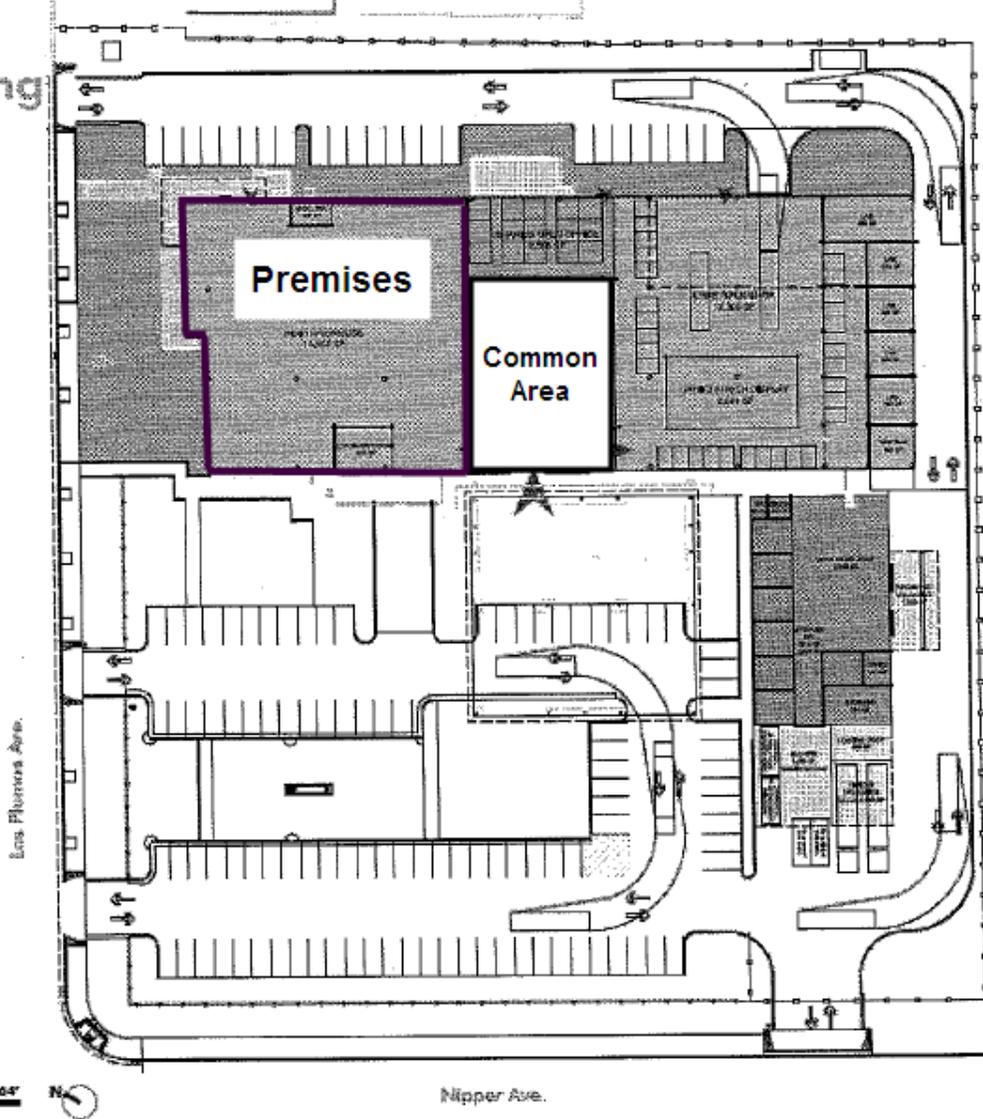


EXHIBIT "B"

THE PROPERTY

1608 Las Plumas Avenue, San Jose, CA 95133
APN 254-03-022

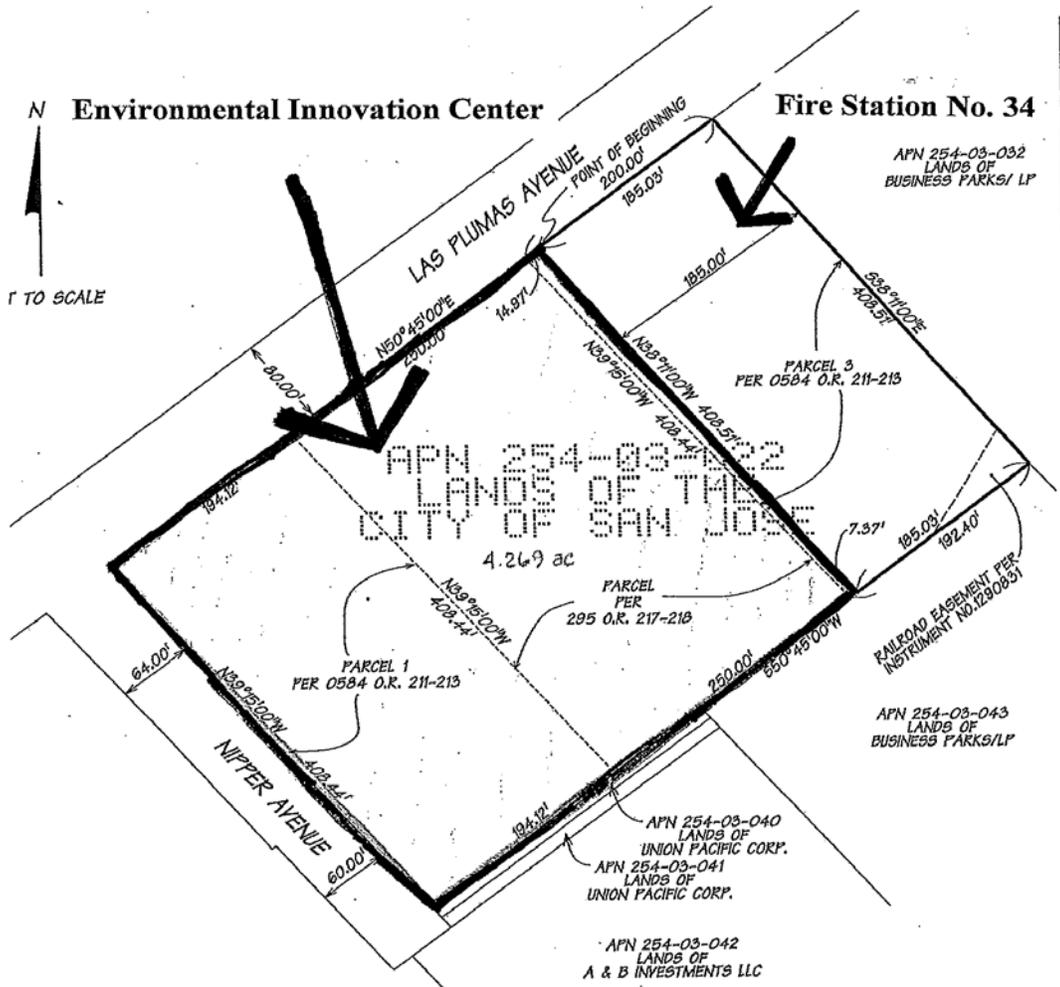


EXHIBIT "C"

TENANT'S INSURANCE REQUIREMENTS

Upon receipt of the Premises from the CITY pursuant to the Lease Agreement Section 6.2 between the CITY and the TENANT, TENANT, at TENANT'S sole cost and expense, shall procure and maintain for the duration of this LEASE 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 CG 0001) including premises operations, products and completed operations, contractual liability, Fire Legal Liability; and
2. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
3. The coverage provided by Commercial Automobile Insurance coverage described in Insurance Services Office Form Number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles; and
4. Property insurance against all risks of loss to any tenant improvements or betterments, tenants stock, equipment, furniture and fixtures; and
5. Plate glass insurance; and
6. Builders Risk during build outs, remodels or tenant improvements and betterments

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: \$1,000,000 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.
2. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident.
3. Commercial automobile liability insurance insuring all owned, non-owned and hired vehicles used in the conduct of TENANT'S 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.

4. Property insurance against all risks of loss including but not limited to fire, vandalism and malicious mischief, and other perils at the Landlord's discretion, in an amount equal to 100% of the replacement cost of all furniture, fixtures, stock and equipment, including fixtures, improvements and betterments installed by TENANT, in the leased Premises.
5. Plate glass insurance covering the full replacement value of plate glass, frames and lettering thereon within and part of the leased Premises, including safety glazing material endorsement
6. During the period of the TENANT'S build out, remodeling or any TENANT Improvements and Betterments, TENANT shall carry Builders' Risk insurance under which the leased Premises and work in process are insured against loss or damage are insured against loss or damage resulting from the acts or omissions of TENANT, its agents and contractors in the course thereof.
7. Builder's Risk: Completed value of the project. No deductible shall exceed \$25,000

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 Automobile Liability Coverages
 - a. The City of San Jose its officers, agents, employees and volunteers 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, volunteers and contractors. At such time as QALICB is granted a ground lease of the site and enters into a Master Lease with CITY, TENANT shall include QALICB as additional insured as part of these Insurance Requirements.
 - 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 or TENANTS 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 TENANTS.
- 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 waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors

2. Workers' Compensation, Employers' Liability and Property Insurance

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors

3. Builders' Risk policies shall contain the following provisions:

- a. City of San Jose shall be named as loss payee.
- b. The insurer shall waive all rights of subrogation against the City of San Jose, its officers, employees, agents and contractors

4. 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. Sub-Tenants

TENANT shall include all contractors, subcontractors and subtenants as insured under its policies or shall obtain separate certificates and endorsements for each subtenant.

G. 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, 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. 2nd 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 TENANT and TENANT shall comply with the change within thirty (30) days of the date of receipt of the notice.

During the period of the Tenant's build out, remodeling or any Tenant Improvements, TENANT and TENANT'S contractors, and/or professional consultants are required to provide the following:

INSURANCE

CONTRACTOR/CONSULTANT, at CONTRACTORS/CONSULTANTS sole cost and expense, shall procure and maintain for the duration of this LEASE insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONTRACTOR/ CONSULTANT , its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; 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 automobile; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.
4. Professional Liability Errors and Omissions appropriate to consultants profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.
(For Contractors or Subcontractors performing any type of design or engineering services or other professional services including but not limited to, surveying, sampling, testing and similar activities)
5. Builders' Risk refer to Tenants requirements above.

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

CONTRACTOR/CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$5,000,000 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; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors and Omissions \$2,000,000 Aggregate Limit; and
5. Builder's Risk: Completed value of the project. No deductible shall exceed \$25,000. Refer to Tenants requirements above.

C. Deductibles and Self-Insured Retentions

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

D. Other Insurance Provisions

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

1. Commercial General Liability and Automobile Liability Coverages:
 - a. The City of San Jose its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, leased or used by CONTRACTOR; and automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY its officers, employees, agents and contractors. At such time as QALICB is granted a ground lease of the site and enters into a Master Lease with CITY, TENANT shall include QALICB as additional insured as part of these Insurance Requirements.
 - b. CONTRACTOR'S insurance coverage shall be primary insurance as respects CITY its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY its officers, employees, agents or contractors shall be excess of CONTRACTOR'S insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by CONTRACTOR shall not affect coverage provided CITY its officers, employees, agents, or contractors.
 - d. Coverage shall state that CONTRACTOR'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 waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors

3. Builders Risk refer to requirements listed in Tenants requirements above.

4. 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. Duration

1. Commercial General Liability and Professional Liability coverages shall be maintained continuously for a minimum of five (5) years after completion of work under this AGREEMENT.

2. If any of such coverages are written on a claims-made basis, the following requirements apply:

a. The policy retroactive date must precede the date work commenced under this AGREEMENT.

b. If the policy is cancelled or non-renewed and coverage cannot be procured with the original retroactive date, AUDITOR must purchase an extended reporting period equal to or greater than five (5) years after completion of work under this AGREEMENT.

F. Acceptability of Insurers

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

G. Verification of Coverage

CONTRACTOR 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, 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. 2nd Floor Wing
San Jose, CA 95113-1905

H. Subcontractors

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

EXHIBIT "D"

Monitoring Well Locations

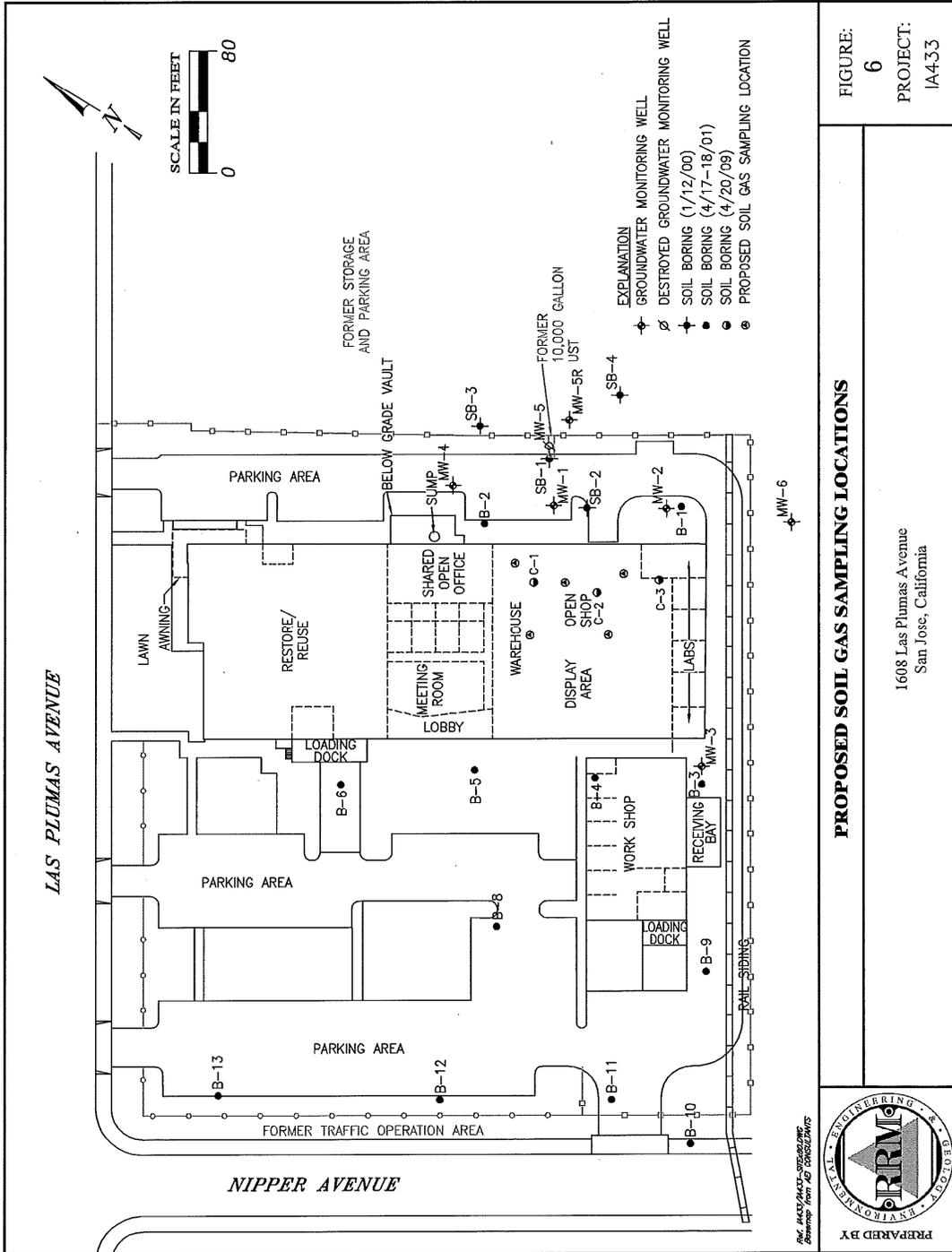


EXHIBIT “E”

**TENANT
HANDBOOK**

Dear Tenants:

Building and maintaining good landlord-tenant relations is one of our most important goals. To this end, the City of San Jose has produced this Tenant Handbook.

This handbook is a practical guide for tenants regarding their responsibilities.

Should you need additional information or have questions, please contact the City's Real Estate Division of the Office of Economic Development ("OED-Real Estate Services") at (408) 975-7309.

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GENERAL RULES AND REGULATIONS

1. Treat leased property with the same respect as you would your own.
2. Keep windows and doors that admit natural light uncovered and free from obstructions.
3. Sidewalks, driveways, entrances, corridors, elevators, stairways and fire escapes of the building must not be obstructed by the tenants or used for any purpose other than ingress and egress.
4. Keep clear all areas to be cleaned. The janitorial staff is instructed not to touch any papers, files or records that are lying on desks, file cabinets or bookcases.
5. Damage to Premises. In case of any destruction or damage done to walls, doors, windows, elevators, plumbing fixtures, lighting fixtures, HVAC equipment or any other part of the building which is caused by carelessness, negligence or improper conduct on the part of the tenant, its agents, employees, clients or invitees, the tenant shall make the repair or replace damaged parts of the building at their expense to the satisfaction of the City. All work performed must be preapproved by the City and meet all applicable codes.
6. Walls and Doors. No tenant may mark, paint, hang or affix a sign, placard, picture, advertisement, name or notice to the interior or exterior walls or doors without written consent of the landlord. Landlord reserves the right to remove any such sign without notice and at the tenant's expense.
7. Intended Use of Premises. The tenant may not use the occupied premises, or any part of it, for any purpose other than its intended use without the written consent of the landlord.
8. Noises and Disturbances. Tenants may not make or permit any improper noises or disturbances of any kind, which might disturb other occupants in the building.
9. Smoking. Smoking is strictly prohibited.
10. Alcohol. No serving of alcohol will be permitted without written consent of the landlord.
11. Additional Locks. No additional locks may be placed upon any doors of the premises. Upon termination of the lease, the tenant must surrender all keys of the building to the landlord. If not adhered to, tenant will be billed for the costs to re-key the space.
12. Telecommunications Equipment. The landlord must first approve any installation of electrical signaling, telegraphic, telephonic equipment or other wire and/or equipment required by the tenant. The installation will be done at the cost and expense of the tenant.
13. Bicycles and Vehicles. No bicycles or vehicles of any kind may be brought into or stored in the building unless specifically permitted.
14. Animals. No animals such as dogs, cats, birds, etc. (with exception of Seeing Eye dogs for the visually impaired or for disabled persons) will be permitted in the building.
15. Heating Units. Portable electric heating units are prohibited in the building.

16. Contact OED-Real Estate Services for assistance, if you need additional electrical outlets. Extension cords are a fire or tripping hazard and are not authorized.
17. Lock all personal items away at the end of the day. All personal items brought to the building (furniture, plants, pictures, clocks, etc.) are the tenant's responsibility.
18. Refrain from removing paper towels, toilet tissue, and other janitorial supplies from restrooms or supply closets.
19. Remember that any verbal agreement(s) made between you and the landlord is to be put in writing, signed by both parties, and included as an amendment to the lease. If any agreement is not in writing, it may not be enforceable.
20. Report items of concern to OED-Real Estate Services.

EMERGENCY PROCEDURES

Bomb Threat

- ***Telephone Threat***

When a bomb threat is made over the telephone, obtain the following information from the caller:

- Exact location of the device
- Time set for explosion
- Description of the device
- Reason the caller has placed the bomb
- Exact words used by the caller
- Keep this information as confidential as possible
- Notify the Police Department – Call 911
- Notify OED-Real Estate Services.

In the event you are asked to evacuate the building, move away from the building to allow for clear passage of emergency personnel. Do not re-enter the building until advised by the Police and/or OED-Real Estate Services.

- ***Suspicious Packages or Mail Bombs***

Letter bombs are usually sent through the mail addressed to a specific individual in the company, usually disguised to look like some sort of gift or a small package. Letter bombs have the power to kill or maim anyone close to them if they go off. Letter bombs are usually a large size manila envelope ¼” to ½” thick and are fairly rigid. They have been mailed from cities or small towns in the United States, as well as from foreign countries. They are usually mailed to a person by title, such as Chairman, President, Manager, Security Officer, etc.

If a letter is suspected to be a letter bomb:

- Clear everyone out of the area for at least 25 feet around it
- Notify the Police Department – Call 911
- **DO NOT HANDLE IT UNDER ANY CIRCUMSTANCES**
- **DO NOT ATTEMPT TO DEACTIVATE IT YOURSELF**

Earthquake

Before an Earthquake

- Secure objects such as files, office equipment, bookshelves and other potentially dangerous objects
- Be familiar with your immediate work area and floor plan. This will help you react effectively when it is necessary to find the closest and safest shelter point.

During an Earthquake

- Get under a sturdy table or desk and hold on or move towards the center of the building. The building core is the strongest part of the structure.
- Keep your back to all glass objects if you cannot avoid them completely.
- Be aware of falling debris. Cover your head as much as possible.
- Do not panic. A clear mind will help you through the dilemma.

After the Earthquake

- Remain calm and stay in your area (unless an emergency dictates otherwise).
- Look for injured people and administer first aid where needed.
- Use telephone for emergencies only.
- Be alert for after shocks. Their intensity can produce further damage. Respond to the after shock as though it is the original earthquake.

Evacuation

- Normally, it is not recommended to evacuate a building after an earthquake. Outside, one may experience falling glass from the building.
- However, if an evacuation is required, use the stairs. Do not use the elevator. Walk down at a steady pace. Do not run.

Evacuation

If it becomes necessary to evacuate the building due to a large fire or a great amount of smoke, the items below are of extreme importance:

- Keep calm; do not panic.
- Use the stairs. Enter the stairwells and proceed to ground level – keep to the right of the stairwell, as emergency response teams may be entering the stairwell.
- Walk rapidly; do not run.
- Before opening any doors, feel the door. If it is hot, do not open.
- If possible, close all doors along the way, as this will slow the spread of a fire.

- If you are caught in smoke: Crawl along the floor, as the air is cleaner and cooler, take short breaths, and breathe through your nose. If forced to make a dash through smoke or flames, hold your breath.
- Do not go back to get personal belongings.

BUILDING SECURITY

Hours of Operation

- Monday thru Sunday
9:00 a.m. to 6:00 p.m.

Building Access

- Access badges are required for all tenants. The first badge will be provided free of charge; thereafter there will be a \$10.00 charge for lost or damaged badges.
- Tenants will be issued keys to their respective areas. There will be a \$10.00 charge for replacement keys.
- Doors will be locked at close of business each day. Doors at the back of the building will be the only access after hours. Building is alarmed at all times after hours and weekends. Tenants will be issued an Alarm Code to gain access during these times. Should a tenant set off the alarm, see paragraph #30 of the lease for the current penalty's for false alarms.
- Tenant staff must escort all clients/guests, etc. from the lobby to tenant's space.
- After close of business meetings/events: Board Room doors ***may not*** be propped open. A tenant staff member must be posted at the doors to let attendees into the Board Room area.

HOUSEKEEPING

Break Room

- Must be kept neat and clean at all times.
- Refrigerators are provided and maintained by Habitat for Humanity.
- Any food kept in the refrigerators must be labeled and dated.
- Tenants need to make sure remove perishable items from the refrigerator on a weekly basis.
- Items left unattended and/or unlabeled on the tables will be considered "community property."
- There is no garbage disposal; therefore, sink screens must be rinsed on a regular basis.

ROOM RESERVATION

- Use applicable room reservation system.