

**LEASE AGREEMENT**

MASTER LEASE

by and between

TOWN OF LOS GATOS, a California municipal corporation

(**"Landlord"**)

and

FORBES MILL, LLC, a California limited liability company

(**"Master Tenant"**)

Los Gatos, California

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## **TABLE OF EXHIBITS**

<u>Exhibit A</u>	Legal Description of Premises
<u>Exhibit B</u>	Site Plan Showing Location of Premises
<u>Exhibit C</u>	Form of Notice of Lease Term Dates
<u>Exhibit D</u>	Condition of Premises Upon Delivery
<u>Exhibit E</u>	Insurance Requirements for Master Tenant and Subtenants
<u>Exhibit F</u>	Memorandum of Lease Agreement

## **MASTER LEASE**

This Master Lease ("Lease") is made and effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020 ("Effective Date"), by and between THE TOWN OF LOS GATOS, a California Municipal Corporation (hereinafter "Landlord" or the "Town"), and FORBES MILL, LLC, a California Limited Liability Company ("Master Tenant").

## **RECITALS**

A. The Town owns certain improved real property, commonly referred to as the Forbes Mill Property, legally described on Exhibit A attached hereto and made a part hereof, suitable for office, restaurant, retail and other commercial operations (the "Property"). The building situated on such real property shall be referred to as the "Forbes Mill Building."

B. The Town has solicited proposals to develop the Forbes Mill Building and the future development of the Property will require significant capital improvements to make the area usable for commercial operators.

C. Master Tenant has been selected by the Town to develop the Forbes Mill Building and to sublease space within the Property to subtenant(s) consented to by the Town.

Now therefore, in consideration of their mutual promises as set forth in this Lease, the Town and Master Tenant agree as follows:

### **SECTION 1. BASIC LEASE PROVISIONS AND DEFINITIONS.**

1.1 Master Tenant's Managing Member. Imwalle Asset Management, LLC, a California Limited Liability Company.

1.2 Premises and Address of Premises: The Premises consist of the Property and the Forbes Mill Building situated thereon. The address of the Premises is as follows:

75 Church Street,  
Los Gatos, CA 95030

1.3 Rentable Area of Forbes Mill Building. As depicted in Exhibit B, the Rentable Area of the Forbes Mill Building is approximately 3400 square feet.

1.4 Lease Term. As provided in Section 3 below, the Term of the Lease commences on the Commencement Date and terminates, unless earlier terminated 34 years and 11 months from the Commencement Date as provided in Section 3.1 below.

1.5 Lease Contingency. This Lease is contingent on the Master Tenant submitting the necessary applications and documents to the Town for approval of the improvements and use of the property, such as, but not limited to, general plan amendment, a proposed site plan, concept drawings for the site plan, massing diagrams, and renderings identifying the location, general configuration, and proposed design characteristics of the buildings, parking spaces, landscaping, property subdivision, and other aspects of the improvement and uses. The Master Tenant acknowledges that the Project Proposal requires approvals and entitlements from the Town and shall submit a formal application for the Planning Approvals. Costs and fees associated with the Planning Approvals review shall be borne by the Master Tenant. Nothing in this Agreement shall be construed to compel the Town to approve or make any findings with respect to Planning Approvals. If Master tenant is unable to obtain Planning Approvals, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party. Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

This Lease is also contingent on Master Tenant and a Subtenant having executed a binding initial Sublease for any portion of the Premises and occupancy by Subtenants (the "Contingency"). If the Contingency has not been satisfied or waived by Landlord on or before the date twelve (12) months following the Effective Date, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party. Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

1.6 Minimum Monthly Rent. The Minimum Monthly Rent shall be \$0.40 per Rentable Area of Forbes Mill Building (which equates to \$980 per month) payable to Landlord as provided in Section 4 below.

1.7 Percentage Rent. The Percentage Rent shall be that Rent specified in Section 4.3 below.

1.8 Capital Reserve Fund. For each month that Master Tenant pays to Landlord the Minimum Monthly Rent, Landlord shall deposit on a monthly basis to the account described in Section 8.6 below, the Minimum Monthly Rent received by Landlord.

1.9 Maintenance of Premises. The Master Tenant's obligations for Maintenance of the Premises are as set forth in Section 8 below.

1.10 Rent Commencement Date. The Rent Commencement Date shall be the date the first Subtenant opens for business on the Premises. The Rent Commencement Date shall be memorialized between Landlord and Master Tenant as set forth in Exhibit D (Form of Notice of Lease Terms).

1.11 Subtenant. The individual commercial operator(s) physically occupying the Premises to provide the services required under this Lease, as selected by Master Tenant and accepted by the Town (subject to Section 7.2 and Section 14.2 below). The Master Tenant cannot also be a Subtenant.

1.12 Permitted Uses. The operation of businesses providing office, retail, restaurant, and other services approved by Master Tenant and Town, and any other lawful use, except as otherwise prohibited under this Lease pursuant to Section 5.2.

1.13 Town Manager. The Town Manager of the Town ("Town Manager") or his or her designated representative, shall serve as the Town's principal contact and liaison for coordinating all Town requests of Master Tenant and responses to Master Tenant's requests, and shall assist in the implementation of the Town's obligations hereunder, during the term of this Lease. The Town Manager may change his or her authorized representative at any time by giving written notice of the change to Master Tenant.

1.14 Master Tenant's Work and Tenant Improvement Loan Amortization. "Master Tenant's Work" is defined in Section 6.2. "Tenant Improvement Loan Amortization" is defined in Section 6.3.

## SECTION 2. LEASED AREA.

2.1 Premises. Landlord hereby leases to Master Tenant, and Master Tenant hereby leases from Landlord the Premises referred to in Section 1.2 above, located at 75 Church Street, Los Gatos, California 90530, as depicted on Exhibit B.

## SECTION 3. TERM.

3.1 Term. The "Term" of this Lease shall commence as of the Effective Date ("Commencement Date") and shall end, unless earlier terminated or extended pursuant to the terms and conditions of this Lease, on the date 34 years and 11 months after the Commencement Date ("Termination Date").

#### SECTION 4. RENT.

4.1 General. From and after the Rent Commencement Date, Master Tenant agrees to pay Landlord as rent for the Premises, in the manner and at the times set forth in this Lease, the Minimum Monthly Rent and the Percentage Rent, as further described in this Section 4.

4.1.1 All rent payments shall be sent to the Landlord's address in Section 21.1 and shall be addressed to the attention of the Town Finance Department, and shall be free from all credits, claims, demands, off-sets or counterclaims of any kind against the Town.

4.1.2 Minimum Monthly Rent shall be paid by Master Tenant to Landlord on a monthly basis in advance on or before the first day of each month during the Term.

4.1.3 Percentage Rent shall be paid in arrears on or before April 15 each calendar year for the amount due and owing for the preceding calendar year (or 90 days after any Termination Date).

4.2 Minimum Monthly Rent. The Minimum Monthly Rent shall be the amount indicated in Section 1.6. Minimum Monthly Rent shall be paid in advance on or before the first day of each calendar month during the Lease Term.

#### 4.3 Percentage Rent.

4.3.1 Manner and Time of Payment. Percentage Rent shall equal 60% of the Sublease Income received by Master Tenant during each calendar year, remaining after Distribution of Sublease Income in accordance with Section 4.3.4(a) through Section 4.3.4(d) below.

4.3.2 Definition of Sublease Income. "Sublease Income" shall mean the sum of (a) all base rents actually received by Master Tenant from its Subtenants of the Premises (excluding reimbursements from Subtenants for any operating costs such as, but not limited to, taxes, insurance, utilities, and maintenance and repair costs, to the extent such reimbursements do not exceed Master Tenant's actual costs of such operating costs), (b) any interest earned on security deposits of Subtenants, (c) security deposits forfeited by Subtenants (to the extent applied to delinquent rentals owing by such applicable Subtenant) and any fees paid by Subtenants to Master Tenant for cancellation of their subleases; and (d) proceeds of business interruption or rental loss insurance actually collected by Master Tenant as a result of loss of sublease income. Sublease Income shall not include (i) the proceeds of any casualty insurance or condemnation awards, (ii) any management fee reimbursements received by Master Tenant from a Subtenant of the Premises, or (iii) the proceeds from any financing of any interest in the Premises or any Improvements. Sublease Income shall be determined on a cash basis for each calendar year.

4.3.3 Definition of Sublease Expenses. "Sublease Expenses" shall be determined on a cash basis for each calendar year and shall mean the sum of:

(a) all tenant improvement and remodeling costs paid by Master Tenant (other than costs of Master Tenant's Work or other Improvements, which will be repaid to Master Tenant through Tenant Improvement Loan Amortization Amounts);

(b) all leasing commissions paid by Master Tenant (excluding leasing commissions paid to Master Tenant or to persons or entities affiliated with Master Tenant);

(c) all legal and accounting expenses incurred and paid by Master Tenant in connection with the Premises and/or any Subleases;



(d) all possessory interest taxes and other property taxes paid by Master Tenant (to the extent not reimbursed to Master Tenant by Subtenants);

(e) all insurance costs paid by Master Tenant in connection with the Premises (to the extent not reimbursed to Master Tenant by Subtenants);

(f) all other costs incurred and paid by Master Tenant in connection with operating, maintaining, repairing, replacing, and subleasing the Premises, or applicable portion thereof, including, without limitation, costs incurred and paid by Master Tenant pursuant to Section 20.1 and/or Section 20.2(b) of this Lease (to the extent not reimbursed to Master Tenant by Subtenants).

Sublease Expenses shall not include any management fee of Master Tenant; however, Master Tenant may, through its agent or otherwise, collect a management fee on any sublease.

4.3.4 Distribution of Sublease Income. All Sublease Income shall be used by Master Tenant for the following uses and shall be distributed by Master Tenant in the following priority:

(a) First, to pay to Landlord the Minimum Monthly Rent as set forth in Section 4.2 above, which sum is payable by Master Tenant to Landlord whether or not Master Tenant collects and receives Sublease Income;

(b) Second, to pay Master Tenant its Sublease Expenses as defined in Section 4.3.3 above;

(c) Third, to pay Master Tenant funded Master Tenant Work Improvement Loans as provided by Section 6.3 below.

(d) Forth, to pay to Master Tenant the amount of Minimum Monthly Rent paid in that calendar year.

(e) Fifth, as provided by Section 4.3.1 above, to pay Percentage Rent to Landlord and the balance to Master Tenant.

4.3.5 Annual Statements. On or before April 15 of each calendar year, with the payment of Percentage Rent, Master Tenant shall furnish to the Town a statement (the "Annual Statement") duly certified by the Chief Financial Officer or the Managing Member or the equivalent of the Master Tenant, setting forth in reasonable detail the Sublease Income from the Premises and the amount of the Percentage Rent which was required to be paid to the Town during the preceding calendar year in accordance with the provisions of this Lease. The Annual Statement shall also contain a detailed breakdown showing how Master Tenant calculated Sublease Income and Sublease Expenses. In addition, Master Tenant shall provide to Landlord a copy of Master Tenant's federal income tax return promptly following filing same with the Internal Revenue Service. The amounts reported to Landlord by Master Tenant for Sublease Income and Sublease Expenses shall conform to the amounts reported on Master Tenant's federal income tax return filed with the Internal Revenue Service. Master Tenant's federal income tax return shall cover only income and expenses from the Premises and shall not include income and expenses from any other property.

4.3.6 Books and Records. Master Tenant shall keep and maintain at its headquarters full, complete and appropriate books, records and accounts relating to the Premises, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Master Tenant's calculation of the Percentage Rent. Books, records and accounts relating to Master Tenant's compliance with the terms, provisions, covenants and conditions of this Lease shall be kept and maintained on a cash basis (except as otherwise expressly provided herein), in accordance with generally accepted accounting principles consistently applied, and shall be consistent with the requirements of this Lease which provide for the calculation of Percentage Rent. All such books, records

and accounts shall be open to and available for inspection by the Town, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Master Tenant may be required to furnish any governmental agency which would evidence or substantiate Master Tenant's calculation of the Percentage Rent shall at all reasonable times be open for inspection by the Town at the place that the books, records and accounts of Master Tenant are kept. Master Tenant shall preserve records on which any statement of Percentage Rent is based for a period of not less than four years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to Subsection 4.3.6 hereof then pending.

4.3.7 Town Audits. The receipt by the Town of any statement pursuant to Subsection 4.3.5 above, or any payment by Master Tenant or acceptance by the Town of any Percentage Rent for any period shall not bind the Town as to the correctness of such statement or such payment; provided, however, the Town shall accept the correctness of such statement if it conforms to the amounts shown on Master Tenant's federal income tax return for the period covered by such statement. Within four years after the receipt of any such statement, the Town or any designated agent or employee of the Town at any time and at the Town's cost (except as provided below) shall be entitled to audit the books, records and accounts pertaining to the Premises and the operation thereof. Such audit shall be conducted during normal business hours at the principal place of business of Master Tenant and other places where records are kept. Provided that Master Tenant has fully cooperated, any audit undertaken pursuant to this Subsection shall be completed within 180 days of the commencement thereof, subject to extensions of time for any periods of delay by any third party due to no fault of the Town or its auditors, and in no event later than four years after the Town's receipt of the statement or statements being audited. Immediately after the completion of an audit, the Town shall deliver a copy of the results of such audit to Master Tenant. The Town shall not be entitled to more than one audit for any particular year, unless it shall appear from a subsequent audit that fraud or concealment may have occurred with respect to the Sublease Income of a previously audited year. If it shall be determined as a result of such audit that there has been a deficiency in any Percentage Rent, then such deficiency shall become immediately due and payable with interest at the legal rate of 10% per annum, such payment to be determined as of and accruing from the date that said payment should have been made. In addition, if Master Tenant's statement for any calendar year shall be found to have intentionally understated Sublease Income by more than five percent and the Town is entitled to a supplementary payment as a result of said understatement, then Master Tenant shall pay, in addition to the interest charges referenced hereinabove, all of the Town's reasonable costs and expenses connected with any audit or review of Master Tenant's accounts and records.

4.4 Late Payment Fees. Any rentals, fees or charges required to be paid by Master Tenant pursuant to the terms of this Lease shall be paid on or before the dates specified in Subsection 4.1 above ("due date") without any requirement of notice from the Town and without deduction or offset. Master Tenant hereby acknowledges that late payment to the Town of any fee, charge or other sum due hereunder will cause the Town to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. If any such fee, charge or other sum due from Master Tenant is not received by the Town within 30 days after its due date (10 days for Minimum Monthly Rent), then Master Tenant shall pay to the Town a late payment fee equal to one percent per month of the amount not paid, calculated, for each day or portion thereof, from the due date until the date that payment is received by Town. The parties hereby agree that such late fee represents a fair and reasonable estimate of the cost that the Town will incur by reason of Master Tenant's late payment. The Town's acceptance of such late fees shall not constitute a waiver of Master Tenant's default with respect to such overdue amount or stop the Town from exercising any of the other rights and remedies granted hereunder or at law or in equity. A failure to pay any fee on the due date shall constitute an event of default under this Lease. Notwithstanding any right or remedy of the Town on account of any nonpayment by Master Tenant, the obligation to pay the outstanding amounts due shall survive termination of this Lease.

## SECTION 5. USE OF PREMISES.

5.1 Restricted Use. The Premises shall be used and occupied by Master Tenant, and any Subtenants approved by Town in accordance with Section 14 below only for Permitted Uses, and for no other purpose.

5.2 Prohibited Uses. Master Tenant shall not:

5.2.1 use or knowingly allow the use of the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees for any unlawful purpose; or

5.2.2 cause, maintain, or knowingly permit any nuisance in, on, or about the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; commit or suffer to be committed any physical waste in or upon the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.3 display or sell merchandise outside the defined exterior walls and doorways of the Forbes Mill Building; however, said restriction shall not apply to outside seating for a restaurant or other permitted use; or

5.2.4 cause or knowingly permit the undue accumulation of garbage, trash, rubbish or any other refuse in or about the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.5 use or knowingly permit the use of any advertising such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radio or broadcast within the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees in such a manner that any sounds reproduced, transmitted or produced shall be directed primarily beyond the interior of the Tati Building, and will keep all mechanical apparatus free of objectionable vibration and noise which may be transmitted beyond the interior of the Premises; or

5.2.6 Cause or knowingly permit obnoxious odors to emanate or be dispelled from the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.7 Cause or knowingly permit any use of the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees which violates any Town zoning code applicable to the Premises; or

The preceding to the contrary notwithstanding, Landlord agrees that if any Subtenant or any of Subtenant's agents, employees, contractors, other representatives or invitee acts or fails to act in any manner that causes Master Tenant to be in violation of any of the provisions of Section 5.2.1 through Section 5.2.7 above, then Master Tenant shall not be in breach or default under this Lease due to such act(s) or failure(s) to act by such applicable Subtenant or any of its agents, employees, contractors, other representatives or invitees so long as Master Tenant exercises commercially reasonable efforts to prevent such violation(s) from occurring and shall have taken steps in good faith within thirty (30) days after receipt of written notice from Landlord to remedy such failure and is continuing to so act with diligence and continuity and further, where possession of the Premises or portion thereof is necessary to cure a default under this Lease, Master Tenant will not be considered to be in default under this Lease as a result of a breach by a Subtenant or any of Subtenant's agents, employees, contractors, other representatives or invitee under its sublease so long as Master Tenant has sent notice of default to, and commenced legal action against the Subtenant and is diligently and continuously pursuing an unlawful

detainer action or other legal proceedings required to regain possession of the Premises or portion thereof from such Subtenant.

As used in the provisions of Section 5.2.1 through Section 5.2.7, the term “knowingly” includes what Master Tenant reasonably should have known with the exercise of reasonable inquiry and investigation.

5.3 Compliance with Laws. Master Tenant shall carry out, or cause to be carried out, all obligations under this Lease, including without limitation Master Tenant’s Work, in conformity with all applicable state, federal, and local laws and regulations, including all applicable state labor laws and standards; Town zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the Town of Los Gatos Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* (“Applicable Laws”). Master Tenant’s obligations under this Section 5.3 shall include the obligation to undertake all appropriate inquiries with state and federal governmental enforcement and regulatory agencies as necessary to fully comply with all Applicable Laws, including any applicable prevailing wage requirements in connection with the construction of the Master Tenant’s Work. Master Tenant also shall require that its Subtenants (to the extent expressly made applicable to such Subtenants) and their respective agents, employees, contractors and subcontractors, comply with all Applicable Laws in connection with the construction of the Subtenant’s Work and Improvements.

## SECTION 6. LEASEHOLD IMPROVEMENTS.

6.1 Condition of the Premises. Landlord shall deliver the Premises to Master Tenant on the Effective Date clean and free of debris, and in the condition of the Premises upon delivery as described in Exhibit D.

6.2 Leasehold Improvements. Master Tenant agrees to install, or cause to be installed, in the Premises all improvements, fixtures, furniture and equipment within the Premises, as reasonably necessary for Master Tenant to attract and retain high quality Subtenants. Within one hundred eighty (180) calendar days after the Effective Date, Master Tenant shall provide Landlord a detailed description of work it proposes to undertake to ready the Premises for initial lease up to Subtenants (“Initial Master Tenant’s Work”). In addition to providing Landlord all relevant information regarding a proposed Subtenant necessary for Landlord to evaluate and provide its consent to a proposed Subtenant pursuant to Section 14.2, Master Tenant shall provide Landlord a detailed description of the additional work, if any, to be undertaken by Master Tenant (“Additional Master Tenant’s Work”) as well as the work to be undertaken by a Subtenant (“Subtenant’s Work”) in connection with said applicable sublease.

The Initial Master Tenant’s Work and all Additional Master Tenant’s Work undertaken in connection with a sublease consented to by Landlord in accordance with 14.2 below, shall collectively be referred to herein as the “Master Tenant’s Work”. The term “Master Tenant’s Work” does not include “Subtenant’s Work” to be performed by Subtenants. It is acknowledged and agreed that the Subtenants of Master Tenant will install additional improvements, fixtures, furniture, and equipment as necessary for conduct of their operations, and shall all be responsible for complying with all applicable federal, state, and local statutes, laws, ordinances, rules, and regulations, and obtaining all necessary permits, to perform such work.

### 6.3 Master Tenant Work Improvement Loans.

6.3.1 As provided in Section 4.3.4 above, Master Tenant may utilize Sublease Income to repay itself for funds it advances or borrows from a third party lender for Master Tenant’s Work, and any subsequent Improvements within the Premises that are neither Subtenant’s Work nor funded by the Town’s Capital Reserve Fund (“Master Tenant Work Improvement Loans”), on the following basis:

(a) Interest. Interest shall be on the basis of actual days elapsed, at a fixed rate of 3% per annum if funded by Master Tenant, or at the actual rate of interest charged by Master Tenant's lender if funded by an independent, arm's length third-party lender, as of the date of each advance.

(b) Repayment Term. Whether funded by Master Tenant or a third-party lender, the repayment term shall be no greater than the Lease Term.

(c) Amortization. For each Master Tenant Work Improvement Loan funded by Master Tenant, interest only payments until the later of (i) first day of the month following the final advance under the loan, or (ii) the date subrent is due, and thereafter equal monthly payments of combined principal and interest necessary to fully amortize the loan over the remaining repayment term. If funded by a third-party lender, the loan shall be fully amortized in accordance with the terms of the loan.

6.4 Liens. All Master Tenant's Work and Subtenant's Work shall be completed free of mechanic's liens, with first-class materials and workmanship, and in compliance with all applicable rules, regulations, and laws applicable to the Premises.

6.5 Letter of Credit (LOC). All Master Tenant's Work or Subtenant's Work shall be approved by Landlord (which consent shall not be unreasonably withheld, conditioned or delayed). Such consent shall be deemed given if not denied in writing to Master Tenant within ten (10) business days following Landlord's receipt of such information required for Landlord to evaluate such applicable Master Tenant's Work or Subtenants Work. Master Tenant shall furnish to Town, at no cost or expense to the Town, a letter of credit ("LOC") in the amount not less than the sum of One Hundred Percent of the cost estimate of the Master Tenant's Work, in a form subject to the review and approval by the Town Manager or his or her designee (which approval shall not be unreasonably withheld, conditioned or delayed), which LOC shall secure Master Tenant's obligation to complete, and pay for the cost of completion of, the construction of the Master Tenant's Work within the time reasonably fixed by the Landlord, or such extension thereof as may be allowed. Master Tenant shall refrain from performing, or causing the performance of, any work related to the construction of Master Tenant's Work until Master Tenant furnishes a LOC satisfying this Section 6.5.

In the event Master Tenant fails to complete the Master Tenant's Work within the time fixed by Landlord or such extension period as determined by Landlord, and following Master Tenant's receipt of written notice of such failure from Landlord, Master Tenant fails to promptly commence action to complete the Master Tenant's Work within ten (10) calendar days of receipt of such notice, then Landlord may terminate this Lease for cause as specified in this Lease and Landlord shall be entitled to call on such LOC to the extent necessary to pay or reimburse Landlord for costs reasonably incurred by Landlord to complete the Master Tenant's Work (and the balance of such LOC proceeds or the LOC itself after payment or reimbursement to Landlord as provided immediately above shall be paid or returned to Master Tenant). In the event that Master Tenant fails to complete the Master tenant's Work within the time fixed by Landlord or such extension period as determined by Landlord, and following Master Tenant's receipt of written notice of such failure from Landlord, Master Tenant commences action to complete Master Tenant's Work within ten (10) calendar days of receipt of such notice but thereafter fails to diligently process such cure to completion, then, Landlord shall give a second, written notice to Master Tenant and if Master Tenant does not commence action to complete the Master tenant's Work within fifteen (15) days following Master Tenant's receipt of such second, written notice or thereafter diligently process such cure to completion, then Landlord may terminate this Lease for cause as specified in this Lease and Landlord shall be entitled to call on such LOC to the extent necessary to pay or reimburse Landlord for costs reasonably incurred by Landlord to complete Master Tenant's work (and the balance of such LOC proceeds or the LOC itself after payment or reimbursement to Landlord as provided immediately above shall be paid or returned to Master Tenant).

6.6 Ownership and Removal. All personal property not affixed in any way to the Premises including inventory, kitchen equipment, those nonstructural alterations as the Town approves for removal as were installed under this Lease and do not affect the structure of the Forbes Mill Building or the

Premises, together with Master Tenant's Trade Fixtures, (collectively, "Master Tenant's Property") shall remain the property of Master Tenant. Upon the termination or expiration of the Lease Term, if Master Tenant is not then in default under the Lease, Master Tenant may remove Master Tenant's Property from the Premises no later than the termination or expiration date. In addition, Master Tenant may remove from the Premises all items and Alterations installed by Master Tenant that are indicative of Master Tenant's business and may otherwise "de-identify" the Premises, as Master Tenant reasonably believes necessary or appropriate for the protection of Master Tenant's interest in Master Tenant's trademarks, trade names or copyrights. Master Tenant shall repair any damage to the Premises caused by such removal, including patching and filling holes. In no event shall Master 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.

6.6.1 Subtenant's Personal Property. Landlord waives any statutory liens and rights of distress with respect to the personal property (non-affixed trade fixtures, equipment, inventory and merchandise) of each Subtenant from time to time located with the Premises, or applicable part thereof ("Subtenant's Personal Property"). This Lease (and each sublease entered into between Master Tenant and a Subtenant) does not grant a contractual lien or any other security interest to Landlord or in favor of Landlord with respect to Subtenant's Personal Property. In the event Landlord becomes the direct sublessor or landlord of a Subtenant, then, respecting any lender of any Subtenant having a security interest in any Subtenant's Personal Property ("Subtenant's Lender"), Landlord agrees: (i) to provide such Subtenant's Lender, upon written request of a Subtenant (accompanied by the name and address of Subtenant's Lender), with a copy of any default notice given to Subtenant under its sublease, concurrently with delivery of such default notice to Subtenant, and (ii) to allow Subtenant's Lender, prior to any termination of the sublease or repossession by Landlord of the applicable premises subleased by such Subtenant, the same period of time, after its receipt of such copy of default notice, to cure such default as is allowed the Subtenant under its sublease, and (iii) to permit Subtenant's Lender to enter the subleased premises for the purpose of removing Subtenant's Personal Property anytime within thirty (30) days after the effective date of any termination of the applicable sublease or any repossession of the subleased premises by Landlord (with Landlord having given Subtenant's Lender prior written notice of such date of termination or possession). Landlord will not be required to allow Subtenant's Lender to enter the subleased premises after entry of judgment in a forcible entry and detainer action, but agree to delay the filing of any such forcible entry and detainer action for thirty (30) days after delivery of written notice of such action to Subtenant's Lender, and will permit Subtenant's Lender to enter the subleased premises for the purpose of removing Subtenant's Personal Property any time within such thirty (30) days. Landlord further agrees to execute and deliver such instruments reasonably requested by Subtenant's Lender from time to time to evidence and effect this waiver and agreement of Landlord.

6.7 Abandonment. Any of Master Tenant's Property not removed from the Premises within sixty (60) 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 provided that Landlord shall not use or permit anyone holding under Landlord to use on the Premises (a) any trademark, trade name, millwork, copyrighted floor plan, copyrighted color palette, or sign used by Master Tenant in the Premises; or (b) any item similar to any other item protected by Master Tenant's intellectual property rights. This provision shall apply under all circumstances, including default by Master Tenant under this Lease.

## SECTION 7. MASTER TENANT OBLIGATIONS – OPERATION OF PREMISES.

7.1 Responsibility of Master Tenant. Master Tenant shall serve as the master developer and sublandlord for the Subtenants and shall be obligated to ensure that the Premises are properly and fully operated, in good condition, for the approved commercial uses. Master Tenant shall be the primary point of contact for the Town with regard to all operational, administrative, and compliance issues under this Lease.

7.2 Leasing Standards. Subject to the provisions of Section 14.1 and 14.2 below, Master Tenant shall use its commercially reasonable efforts, consistent with good property management practices, to obtain first class commercial Subtenants for the Premises. However, if after reasonable effort, Master Tenant is unable to attract Subtenants of similar type and quality on terms and conditions satisfactory to Master Tenant, Master Tenant may, subject to Section 14.2 below, sublease to Subtenants who may be considered less desirable in terms commercial type and quality. Landlord shall not unreasonably withhold its approval of any potential Subtenant who Master Tenant reasonably determines is the best available Subtenant on terms and conditions satisfactory to Master tenant.

7.3 Continuous Operations. Master Tenant shall use its commercially reasonable efforts, subject to the provisions of Section 7.2 above, to continuously sublet the Premises to approved Subtenants for commercial purposes during the term of this lease. If, for any reason, a Subtenant quits its business operations on the Premises, Master Tenant shall use its commercially reasonable efforts, in accordance with the provisions of Section 7.2 above, to promptly secure another Subtenant reasonably acceptable to Master Tenant and Landlord.

If for any reason during the first three (3) years after the Commencement Date the Premises in their entirety are left unleased for a continuous period of eighteen (18) months or more, then either the Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

If for any reason after the first three (3) years following the Rent Commencement Date the Premises are more than fifty percent (50%) unleased for six (6) consecutive months, then Landlord may require Master Tenant to prepare and provide to Landlord, for its review and approval, a marketing plan to lease said unleased space. Master Tenant shall prepare and provide said marketing plan to Landlord within thirty (30) calendar days following written notice from Landlord to prepare said marketing plan. Landlord shall complete its review and approval of the marketing plan within thirty (30) calendar days following its submission by Master Tenant to Landlord. If for any reason the Premises remain more than fifty percent (50%) unleased for six (6) consecutive months following Landlord's approval of the marketing plan, and Master Tenant can document to Landlord's reasonable satisfaction that Master Tenant has diligently, and in good faith, pursued the lease of said unleased space in accordance with the approved marketing plan, then Landlord shall provide Master Tenant no less than an additional six (6) month period of time to lease the unleased space. If following said additional period of time granted by Landlord, the Premises are more than fifty percent (50%) unleased, then either the Landlord or Master tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

If Landlord terminates the Lease pursuant to this Section 7.3, then Landlord shall assume the repayment of all outstanding Master Tenant Work Improvement Loans with the right to prepay such loans at Landlord's election without penalty. However, the Town's general fund shall assume no obligation for repayment of the Master Tenant Work Improvement Loans, which shall be repaid solely from future Sublease Income generated from the future operation of the Premises. Landlord's obligations under the immediately preceding sentence shall survive the termination of this Lease pursuant to this Section 7.3. If Master Tenant terminates the Lease pursuant to this Section 7.3, then Master Tenant shall assume the repayment of all outstanding Master Tenant Work Improvement Loans and no portion of Sublease Income or any other revenue generated by the Premises shall be obligated or utilized for repayment of said outstanding.

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

7.4.1 Landlord may allow Master Tenant may place a sign(s) on the exterior of the Forbes Mill Building to the extent such signage is allowed by law, provided that (i) the design and location of any such sign is approved in advance in writing by Landlord, and (ii) Master Tenant secures all

necessary permits and approvals from the Town and/or any other applicable governmental authority. Any such signage shall be designed and installed in a manner that maintains the existing building system warranties, if any, applicable to the Forbes Mill Building. Upon expiration or earlier termination of this Lease, Master Tenant shall remove Master Tenant's sign(s) from the exterior of the Forbes Mill Building, if applicable, and restore the exterior of the Forbes Mill Building to condition existing prior to the placement of such sign(s) on the exterior of the Forbes Mill Building, unless otherwise approved by Landlord.

7.5 Utilities. Master Tenant shall pay, or cause to be paid, for any and all costs, fees and expenses of water, gas, electricity, telephone, trash collection and recycling used by Master Tenant or any Subtenant in connection with the Premises during the Term of this Lease.

7.6 Deliveries. All deliveries shall be made at the hours not in violation of municipal ordinances.

7.7 Wireless Communications Equipment or Devices. The location of any equipment or device for the purpose of telecommunication or wireless access to services over the internet, by any party or for Master Tenant's or any Subtenants business operations, shall be coordinated with the Town and shall be subject to Town's reasonable approval.

7.8 PBID. Master Tenant will exercise commercially reasonable efforts to encourage its Subtenants to pay, if applicable, all Los Gatos Downtown Property Based Improvement District ("PBID") assessments for the Premises, which accrue during the term of this lease.

## SECTION 8. MAINTENANCE, REPAIRS, AND ALTERATIONS.

8.1 Master Tenant's Obligations. Subject to the provisions of Section 8.2 below, and except for damage caused by fire or other casualty, whether or not insured or insurable, Master Tenant, at Master Tenant's sole cost and expense, shall keep, or cause to be kept, the Premises, in good condition and repair, including maintaining and repairing, or causing to be maintained or repaired, as necessary, all Master Tenant's Work, and all plumbing, HVAC, electrical and lighting facilities and equipment within the Premises, and any Master Tenant signage, and all doors and plate glass windows (both interior and exterior), interior walls, and flooring in the Premises. Master Tenant shall provide a contract for regular maintenance of the HVAC with an HVAC company reasonably approved by Landlord. Master Tenant shall be required to implement a program, reasonably acceptable to Landlord, for control and elimination of rodents and vermin on or around the Premises. Master Tenant shall be required to maintain any Outdoor Use Areas located on the Premises. Master Tenant shall remove graffiti from the exterior of the Premises within a reasonable time and shall always otherwise keep the exterior of the Premises in a clean and well-maintained condition. Notwithstanding any provision to the contrary, Master Tenant's obligations under this Section 8.1 shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Landlord, its agents, employees or servants; (b) any repair or improvement caused by Landlord's failure to perform its obligations hereunder or under any other agreement between Landlord and Master Tenant or (c) any capital repairs or capital improvements not funded by the Capital Reserve Fund.

### 8.2 Landlord's Obligations.

8.2.1 Except for repairs and maintenance to the Premises that Master Tenant must make under Section 8.1 above, Landlord shall be responsible, at its sole cost and expense, for the remediation of any Hazardous Materials discovered in, on, or about the Premises during the work performed under Section 6 above or discovered thereafter, provided, said discovery and presence of Hazardous Materials are not directly arising out of or attributable to Master Tenant or any subtenants use and/or occupancy of the Premises. Further, Landlord shall be responsible for, at its sole cost and expenses, the roof structure, roof membrane and supports, HVAC (excluding Master Tenant's maintenance contract), sprinkler system, foundation, exterior walls, and all structural components of the Forbes Mill Building. In the event of an emergency, Master Tenant may give Landlord such notice as is practicable under the circumstances (if any), and if Landlord fails to make such repairs immediately,



Master 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 8.2.1 shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Master Tenant, Subtenants, or their agents, employees or servants; or (b) any repair or improvement caused by Master Tenant's failure to perform its obligations (including obligations which a Sublease obligates a Sublessee) hereunder or under any other agreement between Landlord and Master Tenant.

8.3 Surrender. Upon the expiration or termination of this Lease, Master Tenant shall surrender the Premises to Landlord in good order and condition, except for ordinary wear and tear, condemnation, and damage caused by fire or other casualty, whether or not insured or insurable, alterations and leasehold improvements made by Master Tenant and Subtenants, and in a broom clean condition.

8.4 Landlord's Rights. If Master Tenant fails to perform Master Tenant's obligations under Section 8.1 above, Landlord may, but shall not be required to, enter upon the Premises, after twenty (20) calendar days prior written notice to Master Tenant, and put the same in good order, condition and repair, and the actual costs thereof and an administrative fee of not more than 10% of the actual costs thereof, shall become due and payable as additional rent to Landlord together with Master Tenant's next Minimum Monthly Rent installment payment falling due after Master Tenant's receipt of an invoice for such costs; provided, however, Landlord shall not be able to exercise such remedies so long as Master Tenant commences to cure its failure within said twenty (20) day period and diligently pursues the cure to completion.

8.5 Improvements. The installation of the leasehold improvements necessary for Master Tenant's operation of its business in the Premises shall be performed in accordance with Section 6. Once such improvements are completed, Master Tenant shall not thereafter make any alterations, improvements, additions, upgrades or utility installations in, on or about the Premises, or install any further fixtures, furniture, or equipment therein (together, "Improvements") without Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that minor interior Improvements that do not exceed the amount of \$50,000, and do not otherwise require permits under Applicable Laws ("Minor Improvements"), shall not require Landlord's consent under this Lease. All other Improvements exceeding \$50,000 for construction, or which require permits under Applicable Laws, or involve alterations to the exterior of the Premises ("Major Improvements") shall be subject to Landlord's review and approval under this Lease. Landlord may review all proposed Improvements for their consistency with the final as-built plans for the Forbes Mill Building and may approve variations from such drawings in its reasonable discretion. Town Manager is authorized to make such determination to approve Major Improvements which otherwise comply with Applicable Laws under this Lease. Notwithstanding Landlord's approval of Major Improvements under this Lease, Master Tenant shall be required to obtain all required permits for such Major Improvements under Applicable Law.

8.6 Capital Reserve Fund. On or before the fifteenth day following Landlord's receipt of the Minimum Monthly Rent, Landlord shall deposit the Minimum Monthly Rent to the account described in this Section 8.6 ("Capital Reserve Fund").

8.6.1 Maintenance of Capital Reserve Fund. The Capital Reserve Fund shall be maintained in a state or nationally chartered bank, the Local Agency Investment Fund Pooled Money Investment Account, or other such institution acceptable to Landlord.

8.6.2 Use of Capital Reserve Fund. Landlord may use monies in the Capital Reserve Fund to fund capital improvements to maintain the quality of the Premises or other purposes reasonably related to this Lease, subject to the reasonable consent of Master Tenant. The use of monies in the Capital Reserve Fund shall be controlled and directed by Landlord in its sole discretion, with input by Master Tenant, but will be used primarily for capital improvements to the Premises. Unused amounts in the Capital Reserve Fund on the Termination Date will be retained by the Town.

8.6.3 Master Tenant shall utilize Sublease Income to repay Landlord for funds it advances from the Capital Reserve Fund for uses identified in Section 8.6.2 above ("Capital Reserve Fund Improvement Loans"), on the following basis:

(a) Interest. Interest shall be on the basis of actual days elapsed, at a fixed rate of 4% per annum, as of the date of each advance.

(b) Repayment Term. The repayment term shall be the lesser of ten years or the initial term of the applicable Sublease if the Capital Reserve Fund Improvement Loan is related to Subtenant Work.

(c) Amortization. For each Capital Reserve Fund Improvement Loan, interest only payments until the later of (i) first day of the month following the final advance under the loan, or (ii) the date subrent is due if the Capital Reserve Fund Improvement Loan is related to Subtenant Work, and thereafter equal monthly payments of combined principal and interest necessary to fully amortize the loan over the remaining repayment term.

## SECTION 9. INSURANCE.

9.1 General. Prior to commencing any work or operations under this Lease, and for the full term of this Lease and any extensions thereof, Master Tenant and any Subtenants, at each parties' sole cost and expense, 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 Master Tenant and its Subtenants, agents, employees and contractors, meeting at least the minimum insurance requirements set forth in Exhibit E on terms and conditions and in amounts as reasonably required by Town from time to time and with insurers reasonably acceptable to the Town and within commonly applicable industry standards for the type of operation. The Town shall not be obligated to take out insurance on Master Tenant's or Subtenant's property, including the Master Tenant's Work. Master Tenant shall be responsible for obtaining property insurance to cover the cost of repair or replacement of the Master Tenant's Work. Master Tenant and its Subtenants shall provide the Town with certificates of insurance or copies of all policies and such endorsements as may be reasonably required by the Town. These requirements are subject to reasonable amendment or waiver if so approved in writing by the Town Manager. From time to time at the request of the Finance Department of the Town of Los Gatos, Master Tenant shall provide a written statement of the replacement cost of the Master Tenant's Work.

During the term of the Lease, Landlord shall maintain general liability insurance in an amount of no less than \$2,000,000 per occurrence for bodily injury, property damage and personal injury, as well as property insurance covering the cost of repair or replacement of the Premises (excluding therefrom the Master Tenant's Work).

## SECTION 10. INDEMNIFICATION BY MASTER TENANT.

10.1 General. Master Tenant shall defend, indemnify, and hold Landlord and Landlord's agent, 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) in connection with any and all third party claims to the extent arising out of Master 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 Master Tenant or Master Tenant's officers, agents, employees, subtenants, or contractors; (c) any breach or default in the performance of any obligation on Master Tenant's part to be performed under this Lease; (d) any violation by Master Tenant or any of its officers, agents, employees, subtenants or contractors of any law, ordinance or regulation governing the use of the Premises, (e) any injuries (including death of any person), claims, or causes of action relating to or involving the sale of alcoholic beverages on the Premises; or (f) the failure of any representation or warranty made by Master Tenant herein to be true when made. This indemnity does not include any Claims caused by or arising out of the intentional or

negligent acts or omissions of Landlord 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 of the Lease.

## SECTION 11. ENVIRONMENTAL LIABILITY.

11.1 Environmental Law. The term "Environmental Law" means collectively: (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, *et seq.*, (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*, (iv) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, (v) the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*, (vi) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, *et seq.*, (vii) the Clean Water Act, as amended, 33 U.S. Code § 1251, *et seq.*, (viii) the Oil Pollution Act, as amended, 33 U.S.C. § 2701, *et seq.*, (ix) California Health & Safety Code § 25100, *et seq.* (Hazardous Waste Control), (x) the Hazardous Substance Account Act, as amended, Health & Safety Code § 25300, *et seq.*, (xi) the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, as amended, Health & Safety Code § 25404, *et seq.*, (xii) Health & Safety Code § 25531, *et seq.* (Hazardous Materials Management), (xiii) the California Safe Drinking Water and Toxic Enforcement Act, as amended, Health & Safety Code § 25249.5, *et seq.*, (xiv) Health & Safety Code § 25280, *et seq.* (Underground Storage of Hazardous Substances), (xv) the California Hazardous Waste Management Act, as amended, Health & Safety Code § 25170.1, *et seq.*, (xvi) Health & Safety Code § 25501, *et seq.*, (Hazardous Materials Response Plans and Inventory), (xvii) Health & Safety Code § 18901, *et seq.* (California Building Standards), (xviii) the Porter-Cologne Water Quality Control Act, as amended, California Water Code § 13000, *et seq.*, (xix) California Fish and Game Code §§ 5650-5656, (xx) the Polanco Redevelopment Act, as amended, Health & Safety Code § 33459, *et seq.*, (xxi) Health & Safety Code § 25403, *et seq.* (Hazardous Materials Release Cleanup), and (xxii) any other federal, state or local laws, ordinances, rules, regulations, court orders or common law related in any way to the protection of the environment, health or safety, or industrial hygiene.

11.2 Hazardous Materials. "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Laws, including any material or substance which is defined as "hazardous," "extremely hazardous," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance" or "hazardous material" under any Environmental Laws, including, without limitation, chlorinated solvents, petroleum, or any fraction thereof, friable asbestos, and polychlorinated biphenyls.

11.3 Release of Hazardous Materials. Except as provided below in Section 11.4, Master Tenant shall not store, dispose of, transport, generate or otherwise introduce any Hazardous Material in, on or around the Premises. If any Hazardous Material is deposited, released, stored, disposed, transported, generated or otherwise introduced by Master Tenant in, on, or around the Premises, Master Tenant, at Master 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 Materials.

11.4 Master Tenant's Use of Hazardous Materials. Notwithstanding the above and provided that Master Tenant complies with all Applicable Laws and Environmental Laws, Master Tenant shall have the right to use Hazardous Materials on the Premises to the extent such Hazardous Materials (i) are contained in restaurant and/or household products, office supply products or janitorial products customarily used in the maintenance, rehabilitation, operation 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, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine, so long as Master Tenant provides the appropriate warning, if required to do so under any Applicable Law or Environmental Law.

11.5 Environmental Indemnity. Master Tenant shall protect, indemnify, and hold harmless Landlord and Landlord's officer's employees, agents, representatives, contractors, and subcontractors 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 Master Tenant's undertaking any activity related to any Hazardous Substance, directly arising out of or attributable to Master Tenant's or Master Tenant's agents', contractors', employees' or Subtenants' use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. Landlord shall protect, indemnify, and hold harmless Master Tenant and Master Tenant's employees, agents, parents, representatives, subtenants, contractors, subcontractors and subsidiaries 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, or applicable portion thereof, 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', contractors', or employees' use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. The provisions of this Section 11.5 shall survive the termination of this Lease.

## SECTION 12. TAXES AND ASSESSMENTS/ POSSESSORY INTEREST TAX.

12.1 General. Master Tenant acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. Master Tenant agrees to pay and discharge, as additional rent for the Premises 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 Master 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 Master Tenant acquired pursuant to this Lease on account of any taxable possessory right which Master Tenant may have acquired pursuant to this Lease. Master 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 Master Tenant hereunder.

## SECTION 13. PROHIBITION AGAINST CHANGE IN MASTER TENANT AND CONTROL OF MASTER TENANT AND THE PREMISES, AND TRANSFER OF MASTER TENANT'S RIGHTS UNDER THIS LEASE.

13.1 Qualifications of Master Tenant. Master Tenant acknowledges that the qualifications and identity of Master Tenant, including in particular Master Tenant's Managing Members, are of particular concern to the community and the town, in view of the following:

13.1.1 The importance of the proper subleasing of the Premises to the general welfare of the community;

13.1.2 The reliance by the Town upon Master Tenant to assure the quality of the Premises and its use, operation and maintenance;

13.1.3 The fact that a change in Master Tenant or control of all or a portion of Master Tenant, or any act or transaction involving or resulting in a change in Master Tenant is for practical purposes a Transfer or disposition of the Premises; and

13.1.4 The importance to the Town and the community of the standards for the use, operation and maintenance of the Premises and associated areas.

13.2 Acknowledgment of Importance of Qualifications. Master Tenant further recognizes that it is because of such qualifications and identity that the Landlord is entering into this Lease with Master Tenant. No voluntary or involuntary successor-in-interest of Master Tenant shall acquire any rights or powers under this Lease except as expressly set forth in this Lease.

13.3 Completion of Master Tenants Work. Prior to the completion of Master Tenant's Work, Master Tenant shall not (i) assign all or any part of its rights or obligations under this Lease, (ii) lease or sublease any portion of the Premises (other than subleases of portions of the Premises to permitted Subtenants as otherwise provided in the Lease), (iii) make or permit to be made any changes in the composition of Master Tenant's ownership, limited liability company status, or members, or (iv) effect any transaction which would in any way change the Master Tenant's ownership, management, control or obligations relating to the Premises.

13.4 Permitted Transfers. Following the period described in Section 13.3 above (i.e. completion of Master Tenant's Work), Master Tenant may, with the prior review and approval of the Town Manager (which shall not be unreasonably withheld, conditioned or delayed), make changes in the composition of Master tenant's ownership, corporate or other entity status, shareholders, members or partners (if applicable), provided that Master Tenant's managing Member, retains the power to control Master Tenant's active, day-to-day management responsibilities ("Day-to-Day management"). For purposes of the immediately preceding sentence, "control" shall mean the power to direct or cause the direction of the Day-to-Day Management of the Master tenant. Five years from the Commencement Date, provided Master Tenant has performed all of its obligations under this Lease, Master Tenant may appoint, with the consent of Landlord which shall not be unreasonably withheld, a new Master Tenant Managing Member.

13.5 Notification of Changes in Ownership or Control. During the term of this Lease, the Master Tenant shall promptly notify the Town of any and all changes whatsoever in the Master tenant's ownership, corporate or other status, management or control of the Master tenant and the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

13.6 Termination for Transfer. This Lease shall terminate pursuant to Section 18 if there is any voluntary or involuntary assignment or Transfer other than provided in in Section 13.4 or as otherwise expressly provided in this Lease.

## SECTION 14. ASSIGNMENT AND SUBLETTING.

14.1 General. Except for those Subtenants approved by Town as provided herein, Master Tenant shall not assign, let or sublet the whole or any portion of the Premises.

14.2 Conditions for Landlord's Consent to Subtenants. Landlord's decision to grant or withhold its consent to a Subtenant may be based upon standards relevant to the type of subtenant and its proposed operation, including but not limited to: (i) experience or lack of experience in operating a retail establishment; (ii) the operating standards of such subtenant and whether it will provide the premium caliber of facilities and services acceptable to Landlord; (iii) the financial capacity to perform the provisions of this Lease and produce a fair return to Landlord; (iv) the experience of the proposed subtenant; (v) the ability of the Master Tenant and subtenants to perform the provisions of this Lease. However, Landlord shall not unreasonably withhold, condition or delay its approval of any potential Subtenant who Master tenant reasonably determines is the best available Subtenant on terms and conditions satisfactory to Master tenant, so long as Master tenant has made reasonable efforts to attract the highest quality potential Subtenants available on terms and conditions satisfactory to Master tenant.

14.3 Conditions for Landlord's Consent to Assignment. Landlord's decision to grant or withhold its consent to any assignment of this Lease by Master tenant shall be at the Landlord's sole and exclusive discretion, but otherwise may be based upon standards of commercial reasonableness, including but not limited to the financial capacity, experience and ability of assignee to perform the provisions of the Lease.

14.4 Approval by Town Manager. Any such consent, if given by Landlord, shall be in writing and may be approved by the Town Manager on behalf of Landlord.

14.5 Recognition Agreement. In connection with each Sublease consented to by Landlord, Landlord shall agree in writing in favor of the applicable Subtenant that if this Lease terminates, then Landlord shall attorn to such applicable Subtenant on the terms and conditions of such Subtenant's sublease. In the event of such attornment, Landlord shall assume all of the Master Tenant's obligations under the applicable sublease accruing from and after the date the Master Lease terminates. Landlord shall indemnify, defend and hold Master Tenant harmless from and against any and all claims, damages, liabilities, demands, actions, causes of action, judgments, injuries, liens, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) arising from any breach or default by Landlord of any of its assumed obligations under the applicable sublease; however, such indemnification, defense and hold harmless obligation shall not be applicable to any claims, damages, liabilities, demands, actions, causes of action, judgments, injuries, liens, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) to the extent arising from any breach by Master Tenant of any obligations of the sublessor under the applicable sublease occurring prior to the date Landlord attorns to the applicable Subtenant under the terms of the applicable Subtenant's sublease. Landlord's obligations under this Section 14.5 shall survive the termination of this Lease.

## SECTION 15. MORTGAGE OF LEASEHOLD.

15.1 Prohibited Encumbrances. Except as permitted in Section 0 below, Master Tenant shall not:

15.1.1 Engage in any financing or other transaction placing any mortgage or deed of trust upon the Property, or upon Master Tenant's leasehold estate therein or the improvements constructed thereon; or

15.1.2 Place or suffer to be placed upon Master Tenant's leasehold estate or the improvements thereon any lien, levy, attachment or other encumbrance (other than a lien upon said leasehold estate for taxes and assessments levied but not delinquent or payable with penalty); provided, however, the foregoing notwithstanding, Master Tenant shall have the right to contest or appeal the validity of any such lien, levy, encumbrance or attachment, provided that Master Tenant shall first furnish adequate security to the reasonable satisfaction of Landlord to protect the Premises during the pendency of such contest or appeal.

Any such mortgage, deed of trust, levy, attachment, encumbrance or lien (collectively, "encumbrance") not permitted pursuant to the terms of this Lease and caused or created by Master Tenant shall be deemed to be a violation of this covenant on the date of its execution or filing of record, regardless of whether or when it is foreclosed or otherwise enforced, unless Master Tenant shall, within twenty (20) days of such date of execution or filing of record, remove such encumbrance or provide adequate security to the reasonable satisfaction of Landlord to protect the Premises and the improvements thereon from such encumbrance.

15.2 Permissible Encumbrances.

15.2.1 Anything in this Lease to the contrary notwithstanding, with Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Master Tenant's

Work may be funded by debt, and accordingly Master Tenant may assign or encumber the estate created by this Lease, by way of leasehold mortgages, leasehold deeds of trust, or otherwise.

15.2.2 With Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Master Tenant may assign or encumber the estate created by this Lease by way of not more than two leasehold mortgages and/or leasehold deeds of trusts at any one time encumbering Master Tenant's leasehold interests, provided that such leasehold mortgages and/or leasehold deeds of trusts comply with the requirements of this Section 15. Landlord shall have no obligation to make any changes to this Lease to accommodate any Permitted Mortgagee but agrees to work with Master Tenant in good faith in Master Tenant's efforts to obtain a Permitted Mortgage.

15.2.3 The fee title to the Premises cannot be encumbered pursuant to this Section 15; only the leasehold interest of the Master Tenant under this Lease (including, without limitation, Master Tenant's interest in the Premises, Master Tenant's Work, Subtenant's Work and Master Tenant's Property and any personal property of any Subtenant) may be so encumbered.

15.2.4 An encumbrance permitted by this Section 15 shall be referred to as a "Permitted Mortgage." The holder of a Permitted Mortgage is herein referred to as a "Permitted Mortgagee."

15.3 Notice to Landlord. Except when Landlord's prior approval or consent shall be required, Master Tenant shall notify Landlord within twenty (20) days of the time of creation of any lien or encumbrance which has been created on or attached to Master Tenant's leasehold estate therein or the Master Tenant improvements thereon, whether by act of Master Tenant or otherwise. If such lien or encumbrance is not created by an act of Master Tenant, Master Tenant shall notify Landlord of such creation as of the time Master Tenant first knows of such creation or attachment.

15.4 Mortgages Subordinate to Lease. Any mortgage permitted under Section 15 hereof shall be subject and subordinate to this Lease and, except as otherwise expressly provided herein or in any separate written agreement between Landlord and a Permitted Mortgagee, the rights of Landlord hereunder.

15.5 Extent of Encumbrance. A Permitted Mortgage shall encumber no interest in property other than Master Tenant's interest in the leasehold and improvements to the Premises, including without limitation, Master Tenant's interest in the Premises, Master Tenant's Work, Subtenant's Work and Master Tenant's Property, and any personal property of any Subtenant.

15.6 Disposition of Insurance Proceeds and Condemnation Awards. A Permitted Mortgage shall contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards in the manner provided in this Lease. In the event that the Premises, or any portion thereof, are damaged or destroyed or condemned by power of eminent domain, in whole or in part, to the extent required by the provisions of the Permitted Mortgage, the proceeds therefrom shall be held by the Permitted Mortgagee, to be applied in the case of damage or destruction pursuant to the terms of the Permitted Mortgage with any excess to be paid to Landlord and Tenant as their interests may appear and to be applied in accordance with Section 17.3 hereof in the case of condemnation.

15.7 Permitted Mortgagee. Except as otherwise approved in writing by Landlord, a Permitted Mortgage may be given only to a responsible bona fide institutional lender. For the purposes hereof, the term "institutional lender" shall mean any one of the following lending institutions: a commercial or savings bank; a state bank or national bank; a trust company; an insurance company; a savings and loan association; a building and loan association; a credit union; an investment banking firm; an educational institution; a pension, retirement or welfare fund; a charity; a real estate investment trust ("REIT") but only if the REIT is publicly traded and registered with the U.S. Securities & Exchange Commission, and the amount of the Permitted Mortgage does not exceed two percent of the value of the REIT's assets; an endowment fund or foundation authorized to make loans in the State of California; or any other responsible financial institution.

15.8 Continuing Terms and Covenants. Except as otherwise expressly provided in this Lease or in a separate document executed by Landlord, all rights acquired by said Permitted Mortgagee under said Permitted Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder, none of which covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of such Permitted Mortgage, except as expressly provided in this Lease or in a separate document executed by Landlord. Notwithstanding any foreclosure of any Permitted Mortgage and so long as this Lease has not been terminated, unless and until a Permitted Mortgagee takes possession of the Premises (subject to any Subleases then in existence, if applicable) and to the extent Master Tenant is receiving the revenues from the Premises, Master Tenant shall remain liable for the payment of Minimum Monthly Rent, Percentage Rent and all other payments payable pursuant to this Lease, and for the performance of all of the terms, covenants and conditions of this Lease which by the terms hereof are to be carried out and performed by Master Tenant.

15.9 Affirmation of Lease in Bankruptcy. In the event of the filing of a petition in bankruptcy by the Master Tenant, and the Master Tenant rejects this Lease under Section 365 of the Bankruptcy Code, the Landlord shall, upon the request of a Permitted Mortgagee, affirm this Lease, and the Landlord will enter into a new Lease on the same terms and conditions with the Permitted Mortgagee immediately upon Master Tenant's rejection of this Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Lease and the Master Tenant does not affirm it, a Permitted Mortgagee will have the authority to affirm the Lease on behalf of the Master Tenant and to keep the Lease in full force and effect.

15.10 Notice Required. Master Tenant shall submit to Landlord within the times set forth in this Section 15 a written notice of its intention to enter into a Permitted Mortgage, and shall submit to Landlord such information and detail as will enable Landlord to determine the compliance of such intended Permitted Mortgage with the provisions of this Section 15 and this Lease. If Landlord has not objected to the intended Permitted Mortgage on the grounds of noncompliance with provisions of this Lease within 45 days of receipt by Landlord of such notice and information, the intended Permitted Mortgage shall be deemed to comply with the provisions of this Section 15 and this Lease and be deemed approved by Landlord, provided that in no event shall any such deemed approval act or operate to subordinate Landlord's fee title to the Property to the Permitted Mortgage. Master Tenant shall thereafter promptly submit to Landlord final documents in connection with such Permitted Mortgage upon their execution or receipt by Master Tenant, or upon the funding of the loan secured by the Permitted Mortgage, for review by Landlord for compliance with the provisions of this Section 15 and this Lease.

15.11 Landlord's Right to Cure Master Tenant's Defaults on Leasehold Mortgages. Master Tenant agrees that any Permitted Mortgage shall provide:

15.11.1 That the Permitted Mortgagee shall in writing by certified or registered mail (or recognized overnight courier service) give notice to Landlord of the occurrence of any event of default under said Permitted Mortgage; and

15.11.2 That Landlord shall be given at least 30 days' notice of default in debt service payments or any other obligation of Master Tenant under a Permitted Mortgage before such Permitted Mortgagee will initiate any mortgage foreclosure action or accelerate the indebtedness or exercise its power of sale. If any payments required to be made under the provisions of the Permitted Mortgage shall not be paid, or any other act or omission shall occur which constitutes a default under the terms of such Permitted Mortgage, Landlord may cure such default during any period that Master Tenant is in default thereunder, provided that Landlord shall comply with the provisions of Section 18 hereof calling for prior notice to Master Tenant except in cases of emergency where earlier action is required, notifying Master Tenant of Landlord's intention to cure such default on Master Tenant's behalf. Landlord shall not commence to cure such default if (a) Master Tenant shall have cured such default within said 30-day period, or (b) except for defaults in the payment of money, Master Tenant shall have commenced to cure such default and is diligently pursuing such cure in full compliance with the terms of the Permitted Mortgage, or (c) Master Tenant shall have obtained from the Permitted Mortgagee a written extension of



time in which to cure such default, together with a separate written extension of time granting Landlord reasonable additional time to cure said default if said default is not cured within said extended time, and executed copies thereof are delivered to Landlord. Any Permitted Mortgage shall further expressly provide that, in the event Master Tenant fails to cure any default thereunder, Landlord shall have a reasonable period of time (considering the nature of the default) to cure such default following the expiration of all periods (including any extensions of time and periods during which performance is waived) allowed for Master Tenant's cure of such default.

15.11.3 If Landlord shall elect to cure any default under a Permitted Mortgage, Master Tenant shall pay the costs reasonably incurred by Landlord in curing such default to Landlord, together with interest thereon at the "Reference Rate" of the Bank of America plus three percent and not to exceed the maximum rate for which the parties may lawfully contract, as Additional Rent. Master Tenant hereby authorizes Landlord, in Landlord's name, without any obligation or duty to do so, to do any act or thing required of or permitted to Master Tenant to prevent any default under said Permitted Mortgage or any acceleration thereof, or the taking of any portion of the security for the Permitted Mortgage by foreclosure or other action to enforce the collection of the indebtedness, and Master Tenant agrees to indemnify and hold Landlord harmless from any costs, damages, expenses or liabilities (including reasonable attorneys' fees) resulting from Landlord exercising its rights pursuant to this Section 15. Notwithstanding any provisions of this Lease to the contrary, if Landlord shall elect to cure any default under a Permitted Mortgage and such Permitted Mortgage is non-recourse to Master Tenant, Master Tenant shall not be obligated to reimburse Landlord for any costs incurred by Landlord, provided; however, any payments made by Landlord shall be payable to the extent Master Tenant is receiving rental payments under this Lease and such payments to Landlord shall be payable prior to any other payments.

15.12 Notice to Landlord. No Permitted Mortgagee shall have the rights or benefits mentioned in this Section 15 nor shall the provisions of this Section 15 be binding upon Landlord, unless and until the name and address of the Permitted Mortgagee shall have been delivered to Landlord, notwithstanding any other form of notice, actual or constructive.

15.13 Rights and Obligations of Permitted Mortgagees. If Master Tenant, or Master Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section 15, then, so long as any such Permitted Mortgage shall remain unsatisfied of record, the following provisions shall apply:

15.13.1 Landlord, upon serving upon Master Tenant any notice of default pursuant to the provisions of Section 18 hereof, or any other notice under the provisions of or with respect to this Lease, shall also serve a copy of such notice upon any Permitted Mortgagee at the address of such Permitted Mortgagee provided pursuant to Section 15.12 above, and no notice by Landlord to Master Tenant hereunder shall affect any rights of a Permitted Mortgagee unless and until thirty (30) days after a copy thereof has been so served to such Permitted Mortgagee. Notwithstanding any event of default by Master Tenant under this Lease, Landlord shall have no right to terminate this Lease unless Landlord shall have given the Permitted Mortgagee written notice of such default and Permitted Mortgagee shall have failed to remedy such default as provided below or acquire Master Tenant's estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof, as all set forth in, and within the time specified by this Section 15.13.

15.13.2 In case Master Tenant shall have failed to cure any default hereunder within the period provided for Master Tenant to cure such default, Landlord shall so notify any Permitted Mortgagee of such failure and any Permitted Mortgagee shall, within thirty (30) days of receipt of such notice have the right, but not the obligation, to remedy such default or cause the same to be remedied, and Landlord shall accept such performance by or at the instance of the Permitted Mortgagee as if the same had been made by Master Tenant; provided, however, that if the breach or default is with respect to the Master Tenant's Work, nothing contained in this Section or any other Section or provision of this Lease shall be deemed to permit or authorize such Permitted Mortgagee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the improvements beyond the extent necessary to conserve or protect the improvements or construction

already made without first having expressly assumed the obligation to Landlord to complete, in the manner provided in this Lease, the improvements on the Premises or the part thereof to which the lien or title of such Permitted Mortgagee relates.

15.13.3 For the purposes of this Section 15 no event of default, other than an event of default due to a default in the payment of money, shall be deemed to exist under Section 18 hereof with respect to the performance of work required to be performed, or of acts to be done or of conditions to be remedied, if steps shall, in good faith, have been commenced by Master Tenant or a Permitted Mortgagee within the time permitted therefor to rectify the same and shall be prosecuted to completion with diligence and continuity as Section 18 hereof provides.

15.13.4 Anything herein contained to the contrary notwithstanding, upon the occurrence of an event of default, other than an event of default due to a default in the payment of money (for which the Permitted Mortgagee shall have no more than thirty (30) days following receipt of written notice from Landlord to cure such monetary default), Landlord shall take no action to effect a termination of this Lease without first giving to any Permitted Mortgagee written notice thereof and a reasonable time thereafter which shall not be less than ninety (90) days within which to either (a) obtain possession of the mortgaged property (including possession by a receiver), or (b) institute, prosecute and complete foreclosure proceedings or otherwise diligently acquire Master Tenant's interest under this Lease. A Permitted Mortgagee, upon acquiring Master Tenant's interest under this Lease, shall be required promptly to cure all defaults then reasonably susceptible to being cured by such Permitted Mortgagee; provided, however, that: (1) such Permitted Mortgagee shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults shall have been cured; (2) nothing herein contained shall preclude Landlord, subject to the provisions of this Section 15, from exercising any rights or remedies under this Lease with respect to any other default by Master Tenant (subject to Permitted Mortgagee's cure rights set forth in this Section 15), during the pendency of such foreclosure proceedings; and (3) such Permitted Mortgagee shall agree with Landlord, in writing, to comply during the period of such forbearance with such of the terms, conditions and covenants of this Lease as are reasonably susceptible to being complied with by such Permitted Mortgagee (however, consistent with the provisions of Section 15.13.10 below, the provisions of this clause (3) shall not obligate such Permitted Mortgagee to cure any defaults of the Master Tenant, or to expend any monies or to take any actions to comply with the terms, conditions or covenants of this Master Lease, prior to such Permitted Mortgagee acquiring Master Tenant's interest under this Lease). Any default by Master Tenant not reasonably susceptible to being cured by such Permitted Mortgagee, or the occurrence of any of the events specified in Section 18, shall be deemed waived by Landlord upon completion of such foreclosure proceedings or upon such acquisition of Master Tenant's interest in this Lease, except that any such events of default which are reasonably susceptible to being cured after such completion and acquisition shall then be cured with reasonable diligence. Such Permitted Mortgagee, or its designee or other purchaser in foreclosure proceedings, may become the legal owner of the leasehold estate of this Lease through such foreclosure proceedings or by assignment of this Lease in lieu of foreclosure. A Permitted Mortgagee or its designee or other party which becomes the legal owner of the leasehold estate of this Lease through foreclosure proceedings or by an assignment of this Lease in lieu of foreclosure shall be deemed by such acquisition to have assumed all of Master Tenant's rights and obligations under this Lease accruing during the period of such Permitted Mortgagee's or its designee's ownership of the leasehold estate of this Lease. If a Permitted Mortgagee is prohibited by any process or injunction, or any bankruptcy, insolvency or other judicial proceeding involving Master Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified for commencing or prosecuting such foreclosure or other proceedings in the nature thereof, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that the Permitted Mortgagee shall have fully cured any default in the monetary obligations of Master Tenant under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due, and provided that the Permitted Mortgagee shall diligently attempt to remove any such prohibition.

15.13.5 In the event of the termination of this Lease prior to the natural expiration of the then current Term due to default of Master Tenant or operation of law (except by eminent domain) as

provided in Section 18, including, without limitation, due to any rejection of this Lease in any bankruptcy, insolvency or other debtor relief proceeding, Landlord shall immediately serve upon the holder of the senior Permitted Mortgage written notice that the Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. The senior Permitted Mortgagee or its nominee, purchaser or assignee shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

(a) Upon the written request of said Permitted Mortgagee, within sixty (60) days after service of such notice that the Lease has been terminated, or within sixty (60) days after the expiration of this Lease if Master Tenant was unable to renew the Term hereof, Landlord shall enter into a new lease of the Property and improvements thereon with such holder, or its designee or assignee, as follows:

(i) Such new lease shall be the same priority as this Lease, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term and at the rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and the use provisions for restaurant and food service purposes specified above. Such new lease shall require that the tenant perform any unfulfilled obligation of Master Tenant under this Lease which is reasonably susceptible to being performed by such tenant. Upon the execution of such new lease, the tenant named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Property, and the preparation, execution and delivery of such new lease. Upon the execution and delivery of the new lease, title to all leasehold improvements (including, without limitation, all of the Master Tenant's Work) as well as all Master Tenant's Property, shall automatically vest in the Permitted Mortgagee or its nominee as the new Master Tenant under this Lease until the expiration of the term or sooner termination of the new lease.

(ii) Effective upon the commencement of the term of any new lease executed pursuant to this Subsection 15.13.5, all subleases then in effect shall be assigned and transferred without recourse by Landlord to the tenant under such new lease, and all monies on deposit with Landlord which Master Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by the tenant under such new lease for the purposes of and in accordance with the provisions of such new lease, unless credited against expenses in accordance with Subsection 15.13.5(a)(i) above.

15.13.6 Any notice or other communication which Landlord shall desire or is required to give to or serve upon the holder of a Permitted Mortgage under this Lease shall be in writing and shall be served by certified mail, return receipt requested, addressed to such holder at the address provided for pursuant to Section 15.12 hereof, or at such other address as shall be designated by such holder in writing given to Landlord by certified mail, return receipt requested. Any notice or other communication which the holder of a Permitted Mortgage under this Lease shall desire or is required to give to or serve upon Landlord shall be deemed to have been duly given or served if (a) sent by certified mail, return receipt requested, addressed to Landlord at Landlord's address as set forth in Subsection 21.1 of this Lease or at such other addresses as shall be designated by Landlord by notice in writing given to such holder by certified mail, return receipt requested, and (b) sent by certified mail, return receipt requested, to the Landlord's other mortgages, if any.

15.13.7 Anything herein contained to the contrary notwithstanding, the provisions of this Section 15 shall inure only to the benefit of the holders of Permitted Mortgages. Neither a Permitted Mortgagee nor any other holder or owner of the indebtedness secured by a leasehold mortgage or otherwise shall be liable upon the covenants, agreements or obligations of Master Tenant contained in this Lease, unless and until such Permitted Mortgagee or that holder or owner acquires the interest of Master Tenant.

15.13.8 During such period of time that any Permitted Mortgage is in existence, Landlord shall not agree to any mutual termination or accept any surrender of this Lease (except upon the expiration of the term of this Lease, or upon the earlier termination of this Lease (x) in connection with a casualty or condemnation in accordance with the provisions of this Lease, or (y) by reason of a default by Master Tenant that is not cured or remedied within the applicable notice and cure period set forth in this Lease in accordance with the provisions of this Lease, in either case subject to the Permitted Mortgagee's rights under this Lease, including, without limitation, the provisions of this Section 15.13), nor shall Landlord consent to any amendment or modification of this Lease, without the prior consent of a Permitted Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed and shall be given within ten (10) business days of written request therefor.

15.13.9 Landlord shall mail or deliver to Permitted Mortgagee at the address of Permitted Mortgagee provided to Landlord a duplicate copy of all notices which Landlord may from time to time give to Master Tenant pursuant to this Lease.

15.13.10 Foreclosure of a Permitted Mortgage or any sale thereunder, whether by judicial proceedings or by virtue of any power of sale contained in the Permitted Mortgage, or any conveyance of the leasehold estate created hereby from Master Tenant to Permitted Mortgagee by virtue or in lieu of foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease. Upon such foreclosure, sale or conveyance, Landlord shall recognize the Permitted Mortgagee, or any other foreclosure sale purchaser, as Master Tenant hereunder and such party shall attorn to Landlord, be subject to the provisions regarding assignment set forth in Section 15.14 below and shall fully perform Master Tenant's obligations hereunder. The preceding to the contrary notwithstanding, a Permitted Mortgagee shall have no liability for Master Tenant's obligations under this Lease unless and until it becomes the Master Tenant under this Lease by means of foreclosure or deed in lieu thereof or pursuant to any new lease obtained pursuant to the terms above, and thereafter the Permitted Mortgagee or its successor or assign or designee shall be liable under this Lease or such new lease only for the period of time that such Permitted Mortgagee or its successor, assign or designee remains tenant hereunder or thereunder. Nothing herein shall be construed to obligate any Permitted Mortgagee to remedy any default of Master Tenant, and any failure of a Permitted Mortgagee to complete any such cure after commencing the same shall not give rise to any liability of the Permitted Mortgagee to Landlord or Master Tenant.

15.14 Assignment by Mortgagee. If any Permitted Mortgagee shall acquire title to Master Tenant's interest in this Lease by foreclosure of a mortgage thereon, or by assignment in lieu of foreclosure or by an assignment from a designee or wholly-owned subsidiary corporation of such mortgagee, or under a new lease pursuant to this Section 15, such Permitted Mortgagee or its successor, assign or designee may assign such lease and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such lease contained on Master Tenant's part to be performed and observed from and after the date of such assignment, provided that Landlord shall receive an executed counterpart copy of such assignment, together with the name and address of the assignee.

## SECTION 16. DAMAGE TO PREMISES.

16.1 Landlord's Obligation to Repair. If subsequent to completion of Master Tenant's Work, a material part of the Premises provided by Landlord in Exhibits B and D, 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 365 days from the date of such destruction or damage, Landlord shall promptly and diligently repair the damage (subject to the limitations set forth in Section 20.2) and this Lease shall remain in full force and effect. If a material part of the Premises provided by Landlord in Exhibits B and D, are damaged, and the damage cannot, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, this Lease may be terminated by Landlord by written

notice given to Master 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 subsequent to completion of Master Tenant's Improvements a material part of the Premises provided by Landlord in Exhibits B and D, are damaged, and the damage cannot, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, and Landlord has not terminated this Lease pursuant to Subsection 16.1 above, then this Lease may be terminated by Master Tenant by written notice given to Landlord within sixty (60) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty. If Master Tenant does not make the foregoing election within the required period and Landlord has not terminated the Lease, then Landlord shall promptly and diligently repair the damage and this Lease shall remain in full force and effect (subject to the provisions of Subsection 16.3 below regarding completion of Landlord's repairs). If Landlord is required or elects to repair the Premises under the provisions of Subsection 16.1 and fails to complete such repair within 365 days after the casualty described in Subsection 16.1 above (or at least to complete such repair, within such 365 day period, to the extent that permits substantial resumption of Master Tenant's business (and the businesses of the Subtenants in existence as of the date of the damage or destruction) in the Premises, provided that Landlord thereafter continuously and diligently pursues any remaining required repairs to completion), then thereafter Master Tenant, at Master Tenant's option, may terminate this Lease by giving Landlord written notice of Master Tenant's election to do so at any time prior to the substantial completion of such repair. In such event this Lease shall terminate as of the date of Master Tenant's notice.

16.3 Abatement of Rent. If a material part of the Premises provided by Landlord in Exhibits B and D, is damaged, and Landlord is required or elects to repair them pursuant to the provisions of Subsection 16.1, the Minimum Monthly Rent and Percentage Rent payable pursuant to Section 4 shall be abated from the date of the casualty until such Premises is sufficiently restored to allow Master Tenant to occupy the Premises and operate within the same manner as existed immediately prior to such damage or destruction. If, however, Master Tenant is able to occupy and operate its business within a portion of the Premises, Minimum Monthly Rent or Percentage Rent shall be abated only for the portion of the Premises that Master Tenant cannot occupy and operate within in the same manner as existed immediately prior to such damage or destruction. Such partial abatement shall be calculated on a square foot basis. The abatement of Minimum Monthly Rent and Percentage Rent (and Master Tenant's right to terminate this Lease as provided in Subsection 16.2 above, shall be Master Tenant's sole remedies due to the occurrence of the casualty. Landlord shall not be liable to Master Tenant or any other person or entity for any direct, indirect or consequential damage due to or arising from the casualty.

16.4 Application of Insurance Proceeds. If any part of the Master Tenant's Work or any other leasehold improvements constructed by or on behalf of Master Tenant is damaged or destroyed, and at the time of such damage or destruction, the leasehold interest of the Master Tenant hereunder, or applicable portion thereof, was encumbered by a Permitted Mortgage, then the proceeds of insurance allocable to such Master Tenant's Work or other leasehold improvements constructed by or on behalf of Master Tenant first shall be applied to pay off or pay down the loan encumbered by the Permitted Mortgage unless the applicable Permitted Mortgagee allows such insurance proceeds to be used to restore such Master Tenant's Work or other leasehold improvements.

## SECTION 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 Master 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 Master 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 Master Tenant was using the Premises prior to the taking in the sole discretion of Master 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 Master 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 the value of Master Tenant's leasehold interest of the unexpired term of this Lease, any Master Tenant's Property, Subtenant's Personal Property and/or any unsalvageable trade fixtures or furnishings owned by Master Tenant, any amounts specifically awarded or agreed upon by the Master Tenant and the condemning authority for the unamortized portion of Master Tenant's leasehold improvements and each Subtenant's leasehold improvements shall be the property of Master Tenant (except that the portion of the condemnation award allocable to each Subtenant's Personal Property and each Subtenant's leasehold improvements shall be awarded to Master Tenant or the applicable Subtenant(s), as their interests may appear, or as provided in the applicable Sublease) ("Master Tenant's Award"). The foregoing notwithstanding, if the whole or a portion of the Premises shall be taken pursuant to any condemnation proceeding and at that time the leasehold interest of the Master Tenant, or applicable portion thereof, was encumbered by a Permitted Mortgage, then Master Tenant's Award first shall be applied to pay off or pay down the loan encumbered by the Permitted Mortgage. Master Tenant shall require in any sublease of the Premises, that any Subtenant waive any and all rights against any public entity and/or the Landlord for any portion of the condemnation award relating to the Subtenant(s) value of the leasehold interest of any unexpired term.

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 Master 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 Master 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.

## SECTION 18. DEFAULT, REMEDIES, AND TERMINATION.

18.1 Master Tenant's Default. If: (i) Master Tenant shall fail to comply with any of the provisions herein providing for the construction of the Master Tenant's Work, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless Master 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 (ii) Master 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 Master Tenant, or (iii) Master 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 Master 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 and further, where possession of the Premises or portion thereof is necessary to cure a default under this Lease, Master Tenant will not be considered to be in default under this Lease as a result of a breach by a Subtenant under its sublease so long as Master Tenant has sent notice of default to, and commenced legal action against the Subtenant and is diligently and continuously pursuing an unlawful detainer action or other legal proceedings required to regain possession of the Premises or portion thereof from such Subtenant, or (iv) the Master Tenant's interest herein or any part thereof be assigned or transferred, either voluntarily or by operation of law, except pursuant to a Permitted Transfer or Section 14.2 or Section 15, whether by judgment, execution, death or any other means, or (v) the Master 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 Master Tenant and such petition remains undischarged for a period of 90 days; or if any receiver of the business or of the property or assets of Master Tenant shall be appointed by any court (except a receiver appointed at the instance or request of the Landlord) and Master Tenant fails to obtain dissolution of the receiver within 90 days after appointment of the receiver; or (vi) Master Tenant shall

make a general or any assignment for the benefit of its creditors; or (vii) Master Tenant shall abandon (other than a temporary cessation of operations in connection with renovations of the Premises to which Master Tenant has obtained Landlord's approval, if applicable, as required by the terms hereof) the Premises; or (viii) Master Tenant has made any written or oral representation to the Landlord in connection with this Lease that Master Tenant knows was false in any material respect as of the date made or submitted, Master Tenant knew or should have known that the Landlord would rely on such false representation, and the Landlord relies on such false representation to its detriment in any material respect, then in any of such events Landlord shall have the following options, subject to the provisions of Section 15:

18.1.1 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 Master Tenant required to be kept or performed; and/or

18.1.2 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. In addition to the foregoing, Landlord shall have the right, but not the obligation to, make such alterations and repairs to the Premises, or to divide or subdivide the Premises, as may be required or occasioned by any such reletting. Provided, however, Landlord's right to make alterations, repairs or improvements to the Premises after Master Tenant's default shall be limited to those alterations, repairs, and/or improvements necessary for the purpose of reletting the Premises. In the event Landlord relets the Premises, or any portion thereof, it shall execute any such lease in its own name, but the Master Tenant in such lease of reletting shall be under no obligation whatsoever to see to the application by Landlord of any rent collected by Landlord for the account of Master Tenant, nor shall Master Tenant hereunder have any right or authority whatsoever to collect any rent as the Master Tenant in the lease of reletting. Upon any such reletting, the rents received on any such reletting shall be applied first to the expenses of reletting and collecting, including necessary renovations and alterations of the Premises and reasonable attorneys' fees and any real estate commissions actually paid, and thereafter toward payment of all sums due or to become due to Landlord hereunder; if a sufficient sum shall not be thus realized to pay such rent and other charges, Master Tenant shall pay to Landlord monthly any deficiency, and Landlord may sue therefor as each such deficiency shall arise, but if the Premises are relet for an amount in excess of that necessary to pay such rent and other charges, Master Tenant shall not be entitled to any such excess; and/or

18.1.3 To terminate this Lease, in which event Master Tenant agrees immediately to surrender possession of the Premises and to pay to the Landlord as the amount of damage sustained by Landlord by reason of Master Tenant's breach of this Lease, the following:

(a) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Master Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Master Tenant proves could be reasonably avoided.

As used in Sections 18.1.3(a) and 18.1.3(a) above, the term "worth at the time of award" is computed by allowing interest from the date such amount becomes due and payable at one percent (1%) per annum above the rate which the Bank of America announces publicly at its San

Francisco or Los Angeles executive offices as its "Reference Rate" for unsecured commercial loans.

As used in Section 18.1.3(b) above, the term "worth at the time of the award" is computed by discounting the amount determined pursuant to Section 18.1.3(b) at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

18.1.4 Pursuant to its rights of re-entry, Landlord may remove all persons from the Premises (but not any Subtenants to which Landlord is obligated to attorn) using such force as may be reasonably necessary therefor and may, but shall not be obligated to, remove all property therefrom, including, but not limited to, Master Tenant's property (but not any Subtenant's Personal Property), and may, but shall not be obligated to, enforce any rights Landlord may have against said property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of Master Tenant or the owners or owner thereof, or to treat all or portions of said property as having no value and to dispose of said property accordingly. Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Master Tenant to pay any rent or other sum of money thereafter to accrue hereunder, or Master Tenant's liability for damages under any of the provisions hereof, by any such re-entry, or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord shall have notified Master Tenant in writing that Landlord has so elected to terminate this Lease. Master Tenant covenants and agrees that the service by Landlord of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of, or at any time subsequent to, the service of such notice, and Landlord's election be evidenced by written notice thereof to Master Tenant) be deemed to be a termination of this Lease, or the termination of any liability of Master Tenant hereunder to Landlord.

18.2 Landlord's Default. If Landlord fails to comply with or defaults in the performance of any provision of the Lease, Master Tenant shall have the right (but not the obligation) in addition to any and all other rights and remedies available to Master Tenant at law or in equity, to cure such nonconformance or default on behalf of Landlord, upon 30 days prior written notice to Landlord and to any mortgagee of Landlord, if the name and address of such mortgagee has been previously provided to Master Tenant by Landlord, except in an emergency, Master Tenant may cure such nonconformance or default without such written notice so long as Master Tenant makes reasonable efforts to notify Landlord of such emergency. Upon receipt from Master Tenant of notice of such cure and demand for payment, Landlord shall repay any expenditure made by Master Tenant within 30 days of written request therefor. If Landlord fails to make such repayment within such 30 day period, then, anything herein to the contrary notwithstanding, Master Tenant may offset the amount owed it by Landlord pursuant to this Section 18.2 against the Minimum Monthly Rent and/or Percentage Rent payable by Master Tenant to Landlord hereunder until fully offset.

## SECTION 19. TOWN REQUIREMENTS.

19.1 Non-discrimination. Master 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."



19.2 Enforcement of Town Requirements. In enforcing Section 19.1, Landlord may require Master Tenant to terminate the sublease of any Subtenant that fails to comply with that Section. Failure of Master Tenant to commence actions to terminate the subleases of noncomplying Subtenants within 90 days of notice from Landlord shall constitute an event of default by the Master Tenant.

## SECTION 20. COMPLIANCE WITH LAW.

20.1 General. During the Lease term, Master 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") pertaining to Master Tenant's use of the Premises or the improvements thereon, 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, Master 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.

20.2 Regulations Requiring Modifications to Premises. If, under its regulatory authority, Town adopts new laws, rules or ordinances that are generally applicable to commercial buildings and which require upgrades, changes, or modifications to the Premises in order to comply with such Town-adopted laws, rules, or regulations, then the cost or expense of compliance shall be as follows:

(a) Town shall bear the cost or expense of compliance to the extent that such laws, rules or regulations require modifications to the structure or shell of the Premises in the condition delivered to Master Tenant in Exhibit D.

(b) During the first ten years following the Rent Commencement Date, Master Tenant shall bear the cost or expense of compliance to the extent that such new laws, rules, or regulations require modifications to Master Tenant's Work and any subsequent alterations thereto. After the tenth year following the Rent Commencement Date, Landlord and Master Tenant shall split equally all such costs.

## SECTION 21. GENERAL PROVISIONS.

21.1 Notices, Demands, and Communications Between the Parties. All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, by email, by overnight courier service, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

Town:	Town of Los Gatos 110 E. Main Street Los Gatos, CA 95030 Attention: Town Manager Email: <a href="mailto:manager@losgatosca.gov">manager@losgatosca.gov</a>
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With copy to:	Town of Los Gatos 110 E. Main Street Los Gatos, CA 95030 Attention: City Attorney Email: <a href="mailto:attorney@losgatosca.gov">attorney@losgatosca.gov</a>
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To Tenant:

Forbes Mill, LLC

223 West Main Street Suite B  
Los Gatos CA 95030  
Attn: Donald Imwalle, Jr.  
Email: [don@imwalledev.com](mailto:don@imwalledev.com)  
CC: [jimfoley@pennantproperties.com](mailto:jimfoley@pennantproperties.com)  
[Jason@farwellrashkis.com](mailto:Jason@farwellrashkis.com)

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

A copy of any notice of a legal nature, including, but not limited to, any claims against Town, its officers or employees shall also be served in the manner specified above to the following address:

Town of Los Gatos  
City Attorney's Office  
110 E. Main Street  
Los Gatos, CA 95030

Notice shall be deemed effective on the date of personal delivery by hand or the date of receipt of facsimile transmission (with verification of receipt) or email, or if sent by overnight courier service, then one business day after delivery of such notice to such courier service or, if mailed, three days after deposit in the mail.

21.2 Warranty Against Payment of Consideration for Agreement. Master Tenant warrants that it has not paid or given, and will not pay or give, any third party (other than Colliers International who introduced Landlord and Master Tenant to one another) any money or other consideration for obtaining this Agreement.

21.3 Non-liability of Town Officials and Employees. No member, official, or employee of the Town shall be personally liable to Master Tenant or any successor in interest of Master Tenant, in the event of any default or breach by the Town or for any amount which may become due to Master Tenant or to its successor, or on any obligations under the terms of this Agreement.

21.4 Enforced Delay; Extension of Time of Performance. The specific provisions of this Agreement to the contrary notwithstanding, except for payment of any monetary payments required under this Agreement, neither party shall be in default under this Agreement if an obligation to perform is delayed due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; inability to obtain or delay in obtaining materials due to lack of supply; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or enjoining to the performance of the terms of this Agreement. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten days of the commencement of the cause. The foregoing notwithstanding, the total time period excused under this Section shall not exceed two years.

21.5 Approvals and Town Manager's Authority. Approvals required of the Town (except for approvals expressly identified herein as being in the sole discretion of the Town) or Master Tenant shall not be unreasonably withheld, and approval or disapproval shall be given within a reasonable time. The Town Manager or his/her designee shall have the authority to act on behalf of the Town with regard to any and all actions required of the Town under this Lease. Such actions include but are not limited to the issuance of approvals and disapprovals and execution of all documents, including minor amendments to this Lease.

21.6 Holding Over. If Master 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 150% of the Minimum Monthly Rent or the monthly Percentage Rent, whichever is higher, in effect during the final full calendar of the term of this Lease.

21.7 Time of the Essence. Time is of the essence hereof, and waiver by the Landlord or Master 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 Master Tenant's performance of any obligations set forth in this Lease and the Exhibits may be extended by the Landlord's Town Manager, if he finds, at his sole discretion, that Master Tenant has been delayed for reasons not in Master Tenant's control. Any such extension shall be in writing.

21.8 Successors and Assigns. Subject to the provisions of Section 14 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.

21.9 Landlord's Access. Landlord and its agents shall have the right, subject to the rights of the Subtenants then in effect, to enter the Premises upon 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 Master 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 Master Tenant's personnel immediately upon entering the Premises, and (b) shall not, in any way, materially or unreasonably affect, interrupt or interfere with Master Tenant's (or any of its Subtenants') use, business or operations on the Premises or obstruct the visibility of or access to the Premises.

21.10 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 venturer or any association between Landlord and Master Tenant. Landlord and Master 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 Master Tenant other than the relationship of Landlord and Master Tenant.

21.11 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 Town Manager.

21.12 General. The terms "Landlord" and "Master 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 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 in the applicable courts located in Santa Clara County, California.

21.13 Quiet Enjoyment. Upon payment of the rent as aforesaid and upon the observance and performance by Master Tenant of all of the terms and provisions to be observed by Master Tenant under

this Lease, Master 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.

21.14 Regulatory Authority. Master Tenant acknowledges that, at any time when the Town is the Landlord hereunder, Landlord shall have certain governmental regulatory authority over the Premises. Master Tenant agrees and expressly acknowledges that any approval or consent required or permitted hereunder by the Town, 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.

21.15 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.

21.16 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.

21.17 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

21.18 Joint and Several. If Master Tenant is more than one party, then the parties and entities who comprise Master Tenant under this Agreement from time to time, are jointly and severally liable to the Town for the performance of all of the promises and obligations of Master Tenant under this Agreement. In the event of any default by Master Tenant hereunder, the Town may proceed against any one or more of the aforementioned parties who comprise Master Tenant without waiving its rights to proceed against any of the others.

21.19 Memorandum of Agreement. The parties hereto shall execute, acknowledge and record the Memorandum of Agreement, in the form attached hereto as Exhibit F, within ten days after the Rent Commencement Date.

21.20 CASp Inspection. Pursuant to California Civil Code Section 1938, Landlord hereby discloses, and Tenant hereby acknowledges, that the Premises has not been inspected by a Certified Access Specialist ("CASp"). California Civil Code Section 1938 also requires that this Lease contain the following statement:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs to correct violations of the construction related accessibility standards within the premises."

In accordance with the foregoing, Master Tenant, upon at least thirty (30) days' prior written notice to Landlord, shall have the right to require a CASp inspection of the Premises. If Master Tenant requires a CASp inspection of the Premises, then: (i) Landlord and Tenant shall mutually agree on the

arrangements for the time and manner of the CASp inspection during such thirty (30) day period; (ii) Master Tenant shall be solely responsible to pay the cost of the CASp inspection as and when required by the CASp. It is understood by the parties that Landlord shall not be required to perform, or cause to be performed, any and all repairs needed to correct violations of the construction related accessibility standards within or relating to the Premises and Master Tenant can terminate this lease if it is determined, by Master Tenant that any repairs to correct violations would be too costly. .

21.21 First Right of Refusal. If Landlord receives from a third party a bona fide offer to purchase the Premises, before Landlord may accept such an offer, Landlord must first give written notice to Master Tenant of said offer. Master Tenant shall have thirty (30) days from the date of receipt of said offer, to provide Landlord with written acceptance of the offer, upon the same terms and conditions as set forth therein (but in addition thereto, such sale shall include all rights of Landlord in and to this Lease). If Master Tenant accepts said offer, closing shall take place within sixty (60) days from the date of acceptance. Master Tenant may elect to assign Master Tenant's rights to purchase the Premises to the parent of or a subsidiary of the Master Tenant, or other entity wholly owned by Master Tenant or its Managing Member. If Master Tenant fails to accept said offer within the thirty (30) days provided herein, Landlord may proceed to sell to said third party in accordance with the terms of the offer. If Landlord has not consummated a sale within one hundred eighty (180) days after the expiration of Master Tenant's option rights hereunder, the restrictions and options herein provided shall be restored and shall continue in full force and effect, and so long as these restrictions and options remain in effect the Landlord shall not thereafter sell or transfer the Premises without first giving Master Tenant notice as herein provided and otherwise complying with the foregoing provisions.

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

LANDLORD:

THE TOWN OF LOS GATOS

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

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

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

Approved as to form:

Attest:

\_\_\_\_\_  
Town Attorney

\_\_\_\_\_  
Town Clerk

MASTER TENANT:

Forbes Mill, LLC,  
a California Limited Liability Company

By: Imwalle Asset Management, LLC  
a California Limited Liability Company

By: \_\_\_\_\_  
Don Imwalle, Jr., Managing Member

Exhibit A

Legal Description of Premises

Exhibit B

Site Plan of Premises



Exhibit C

Form of Notice of Lease Term Dates

[On Town Letterhead]

[Date]

Forbes Mill, LLC  
223 West Main Street Suite B  
Los Gatos, CA 95030  
Attn: Donald Imwalle, Jr.  
Email: [don@imwalledev.com](mailto:don@imwalledev.com)  
CC: [jimfoley@pennantproperties.com](mailto:jimfoley@pennantproperties.com)  
[Jason@farwellrashkis.com](mailto:Jason@farwellrashkis.com)  
Re: Master Lease – 75 Church Street, Los Gatos, CA 95030

Dear Mr. Imwalle:

In accordance with that certain Master Lease dated \_\_\_\_\_, 2020, by and between the Town of Los Gatos and Forbes Mill, LLC for the above referenced property, this letter is to confirm that the Rent Commencement Date as defined in Section 1.11 of the Master Lease is [insert date]. Please countersign this letter in the space below to acknowledge your agreement.

Please don't hesitate to contact me should you have any questions.

Sincerely yours,

\_\_\_\_\_, Town Manager

Acknowledged and Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_,  
on behalf of

Forbes Mill, LLC,  
a California Limited Liability Company

By: Imwalle Asset Management, LLC  
a California Limited Liability Company

By: \_\_\_\_\_  
Don Imwalle, Jr., Managing Member

Exhibit D

Condition of Premises Upon Delivery

**[TO BE INSERTED]**

## Exhibit E

### Insurance Requirements for Master Tenant and Subtenants

Master Tenant is required to procure and provide proof of the insurance coverage required by Master Tenant as outlined in this Exhibit in the form of certificates and endorsements. Master Tenant shall obtain and maintain insurance against claims which may arise from or in connection with the activities of Master Tenant and its Subtenants, including agents, invitees, employees, and contractors of Master Tenant and its Subtenants, and must remain in full force and effect at all times during the period covered by the Lease Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. If Master Tenant fails to provide any of the required coverage in full compliance with the requirements set forth herein, Town may, at its sole discretion, terminate the Lease for default. Master Tenant further understands that the Town reserves the right to reasonably modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Master Tenant, at any time as deemed necessary to protect the interests of the Town.

(A) **Insurance Types and Limits.** The following insurance types and limits are required unless otherwise specified in the Lease Agreement:

- (1) **Commercial General Liability Insurance ("CGL"):** Master Tenant shall maintain CGL and shall include coverage for liability arising from Master Tenant and its Subtenants, including invitees, employees, agents, or contractors of Master Tenant and its Subtenants, against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage.
  - i. **Liquor Liability:** Master Tenant shall maintain Liquor Liability, either under its CGL policy or as a separate policy, providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) each claim.
- (2) **Workers' Compensation Insurance and Employer's Liability:** Master Tenant shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of One Million Dollars (\$1,000,000.00) for any one accident or occurrence. If Master Tenant is self-insured, Master Tenant must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- (3) **Automobile Liability:** Master Tenant shall maintain Automobile Liability covering all owned, non-owned and hired automobiles, against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage.
- (4) **Property:** Master Tenant shall maintain All Risk Property coverage for the appropriate limit to cover all personal property of Master Tenant, in, on, or about the Premises, covering the full replacement cost of such personal property to include furniture, installed fixtures, improvements, equipment, inventory and any other personal property of the Master Tenant. Master Tenant, and not any of the Subtenants, also shall maintain All Risk Property coverage for the full replacement cost of the Master Tenant's Work.

- i. **Business Interruption:** Master Tenant shall maintain adequate protection against business interruption and loss of income, either as part of a comprehensive Business Owner's Policy or under its Property Insurance.

(B) **Required Endorsements.** Master Tenant shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the Town of Los Gatos and the Town's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) General Liability:

- a. "Additionally Insured" - The Town of Los Gatos, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
- b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing;
- c. "Separation of Insureds" - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(C) **Subtenants.** Master Tenant must ensure that each Subtenant is required to maintain the equal or greater insurance coverages required in this Exhibit, including those requirements related to the additional insureds and waiver of subrogation. However, Subtenants which do not engage in the sale and/or serving of alcohol in, on, or about the Premises, are not required to maintain Liquor Liability. Also, Subtenants shall not be obligated to insure the Master Tenant's Work.

(D) **Qualification of Insurers.** All insurance required pursuant to this Lease Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A-" or better and a financial size rating of "VII" or better.

(E) **Certificates.** Master Tenant shall furnish the Town with copies of all policies or certificates maintained by Master Tenant as outlined herein, whether new or modified, promptly upon receipt. Further, upon request by the Town, Master Tenant shall furnish the Town with copies of all policies or certificates maintained by Subtenants as outlined herein, whether new or modified. No policy subject to the Master Tenant's Lease with the Town shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to Town, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to Town. Certificates, including renewal certificates, may be mailed electronically to \_\_\_\_\_ or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

Town of Los Gatos  
Attn: Risk Management  
110 E. Main Street  
Los Gatos, CA 95030



Exhibit F

Memorandum of Lease Agreement

**RECORDING REQUESTED BY**

**AND WHEN RECORDED RETURN TO:**

Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95037  
Attn: Town Manager

THIS DOCUMENT IS EXEMPT FROM  
RECORDING FEES PURSUANT TO CALIFORNIA  
GOVERNMENT CODE §§ 6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**MEMORANDUM OF LEASE AGREEMENT**

This Memorandum of Lease Agreement (this "**Memorandum**") is dated as of \_\_\_\_\_, 202\_\_, and is between the Town of Los Gatos, a California municipal corporation ("**Landlord**"), and Forbes Mill, LLC, a California limited liability company ("**Master Tenant**").

Recitals

A. Landlord and Master Tenant entered into that certain Lease Agreement, effective \_\_\_\_\_, 2020 ("**Lease**"), pursuant to which Landlord leased to Master Tenant and Master Tenant leased from Landlord the space located on the real property described in the attached Exhibit A (the "**Premises**").

B. Landlord and Master Tenant desire to execute this Memorandum to provide constructive notice of Master Tenant's rights under the Lease to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Agreement

1. Term. Landlord leases the Premises to Master Tenant for an initial term of thirty-four years and eleven months (34 years 11 months) commencing on the Commencement Date of \_\_\_\_\_, 202\_, and expiring on \_\_\_\_\_, 205\_.

2. Lease Terms. The lease of the Premises to Master Tenant is pursuant to the Lease, which is incorporated in this Memorandum by reference.

3. Assignment. Except as otherwise expressly provided in the Lease, Master Tenant's rights and obligations under the Lease may not be assigned without Landlord's prior written consent, which consent may be granted or withheld by Landlord in its sole and exclusive discretion, and any assignment without this consent will be void.

4. Successors and Assigns. This Memorandum and the Lease are binding and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease on assignment.

5. Governing Law. This Memorandum and the Lease are governed by California law.

Executed as of the date first above written.

LANDLORD:

**Town of Los Gatos,**  
a California municipal corporation

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

MASTER TENANT:

**Forbes Mill, LLC,**  
a California Limited Liability Company

By: Imwalle Asset Management, LLC  
a California Limited Liability Company

By: \_\_\_\_\_  
Don Imwalle, Jr., Managing Member

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_ ss.

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, 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)



## **EXHIBIT A**

### **Legal Description of the Premises**

[Need legal description of Premises]