

## GROUND LEASE

THIS GROUND LEASE ("**Lease**") is made and entered into as of \_\_\_\_\_, 2019 ("**Effective Date**"), by and between THE CITY OF COMMERCE, a municipality organized under the laws of the State of California ("**Landlord**"), and SILVERADO MANAGEMENT AND HOLDING COMPANY, a Nevada corporation ("**Tenant**").

## RECITALS:

A. The Successor Agency to the Commerce Community Development Department ("**Successor Agency**") is the owner of that certain approximately 10.62 acres of unimproved real property located in the City of Commerce, County of Los Angeles, State of California, which is commonly known as 6233 Telegraph Road, is depicted on Exhibit "A" attached hereto ("**Site Plan**"), and is more particularly described on Exhibit "B" attached hereto ("**Property**").

B. The Successor Agency has agreed to sell the Property to City and City has agreed to purchase the Property from the Successor Agency.

C. The portion of the Property shown on the Site Plan as Parcels 1 and 2, which total approximately 1.8 acres, is referred to herein as the "**Premises**" (the Premises as defined in this agreement are contingent upon future amendments to the Purchase and Sale Agreement between the City of Commerce and Craig Realty Group and Wash-Tel); and the Premises is more particularly described on Exhibit "C" attached hereto.

D. Subject to (i) the City acquiring the fee interest in the Property, (ii) the subdivision of the Premises, and (iii) their mutual approval of all the applicable terms and conditions, Landlord and Tenant desire to provide a mechanism that will allow Tenant to construct improvements designated by Landlord (and approved by Tenant) upon the Premises for use, occupancy, and enjoyment by Landlord ("**Improvements**") pursuant to the terms of "**Master Lease**", which, technically, will be a sublease, entered into by Tenant, as "**Sublandlord**", and Landlord, as "**Subtenant**".

E. In furtherance of the foregoing, Landlord and Tenant wish to enter into this Lease with respect to the Premises.

## AGREEMENT

NOW, THEREFORE, incorporating the foregoing recitals and in consideration of the foregoing recitals and of the mutual covenants, conditions and agreements herein contained to be done, kept and performed, Landlord and Tenant hereby agree as follows:

## ARTICLE I

### PREMISES

1. Demise. Landlord, for and in consideration of the rents, covenants and agreements to be paid, kept, performed and observed by Tenant under this Lease, hereby demises and leases unto Tenant, and Tenant hereby leases from Landlord, the Premises upon and subject to the terms, covenants and conditions herein set forth. Landlord and Tenant mutually covenant as a material part of the consideration for this Lease to keep and perform each and all of said terms, covenants, and conditions. Upon the execution and delivery by the parties thereto of a Master Lease and the satisfaction or waiver of the conditions precedent to the effectiveness thereof, such Master Lease shall be subject to the terms of this Lease, except as otherwise expressly indicated therein, in which case, this Lease shall automatically be deemed modified to such extent.

1.2 Recorded Documents. This Lease, the interests of Tenant thereunder and the Premises are in all respects subject to and bound by all the terms and provisions of the recorded covenants, conditions and restrictions and any other recorded documents now affecting the Premises or hereafter affecting the Premises (collectively, the “**Restrictions**”); provided, however, that, except (a) in connection with obtaining financing secured by the fee interest in the Premises in accordance with this Lease, or (b) as required by law, Landlord shall not voluntarily record any further documents with respect to the Premises that would materially increase Tenant's obligations hereunder or materially decrease Tenant's rights hereunder or with respect to a Master Lease, without Tenant's prior written consent, which Tenant may withhold in its sole discretion. Tenant shall comply with all requirements of the Restrictions that apply to the Premises at Tenant's sole expense.

1.3 Due Diligence. Provided that no event of default has occurred and is continuing hereunder and Tenant has obtained and provided the liability insurance coverages required by this Lease, from and after the Commencement Date (as defined below) and until the date that is ninety (90) days thereafter (the “**Due Diligence Date**”) or the earlier of the termination of this Lease, Tenant and its agents, consultants, contractors and subcontractors shall have the right to conduct or make any and all inspections, tests, studies, investigations, analyses, reports, surveys, searches and the like of, on or about the Premises as may be necessary or desirable to determine the suitability of the Premises for Tenant's proposed use (the “**Site Diligence**”); provided, however, that the scope of any test or analysis which requires physical sampling, testing or drilling into the subsurface of all or any part of the Premises shall be subject to the requirement that Tenant dispose of all such test samples in accordance with applicable law and at no cost or liability to Landlord and restore the affected portion of the Premises to its original condition prior to the Due Diligence Date. At the reasonable request and expense of Tenant, Landlord shall cooperate with the Site Diligence and promptly provide to Tenant information, materials, data and reports available to Landlord which Tenant may request and which is not subject to confidentiality or other similar restrictions (“**Due Diligence Material**”), all of which shall be provided as a courtesy and without any liability to Landlord. Tenant shall obtain or cause its consultants to obtain, at Tenant's sole cost and expense, prior to commencement of any investigative activities on the Premises, a policy of commercial general

liability insurance covering any and all liability of Tenant and Landlord with respect to or arising out of any investigative activities with liability limits of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, personal injury and property damage liability. Such policy of insurance shall be kept and maintained in force during the occurrence of such activities. Tenant's liability shall not be limited by the amount of any insurance coverage.

Tenant shall deliver to Landlord, without any representation or warranty whatsoever, a copy of all results from the Site Diligence obtained and/or prepared pursuant to the provisions of this Section 1.3, and which shall also be addressed to Landlord. Tenant shall keep the results of all such Site Diligence confidential except as required by law. Tenant hereby indemnifies and holds the Premises, Landlord and Landlord's officers, directors, shareholders, participants, affiliates, employers, representatives, invitees, agents and contractors free and harmless from and against any and all claims, liabilities, losses, damages, causes of action, judgments, liens, costs and/or expenses including reasonable attorneys' fees (collectively, "**Claims**") arising out of or resulting from the exercise of its rights under this Section 1.3 by Tenant, its agents, consultants, contractors and subcontractors. Tenant shall keep the Premises and the Premises free and clear of any mechanics' liens or materialmen's liens related to the exercise of such rights. The Tenant's indemnification obligations set forth in this Section 1.3 shall survive any termination of this the Lease pursuant to Section 1.4 provided, however, in no event shall Tenant be liable to Landlord or be required to indemnify Landlord in respect of the mere discovery of any condition relating to the Premises.

#### 1.4 Termination Rights.

1.4.1 Tenant's Right to Terminate. If Tenant, in its sole discretion, is dissatisfied with the results of Tenant's due diligence with respect to the Premises or with respect to any amendments and/or modifications made to this Lease pursuant to Section 25.26, then Tenant shall have the right to terminate this Lease by delivering written notice thereof prior to the Due Diligence Date; otherwise, Tenant shall be deemed to have irrevocably waived such right.

1.4.2 Landlord's Right to Terminate. If Landlord and Tenant do not, in their respective sole discretion, agree upon the form of, and execute, a Master Lease, on or before June 30, 2020 (which date either party shall have the right to extend until December 31, 2020, by delivering written notice to the other party by June 1, 2020) (as applicable, the "**Deadline**"), then Landlord shall have the right to terminate this Lease any time thereafter (but before the execution of a Master Lease), by delivering written notice thereof to Tenant.

1.5 No Representations. Except as expressly provided in this Lease, Landlord makes no representations or warranties of any kind or nature as to the Premises nor as to the nature, size, location, or time of construction of any structures thereon. Landlord makes no representations or warranties that Tenant will be able to obtain any licenses, permits or other authorizations necessary or required to conduct the uses permitted herein on the Premises or that the Premises is suitable for the uses permitted herein. Prior to the Due Diligence Date, Tenant shall satisfy itself that the Premises is suitable for its intended uses. Nothing contained in this Lease shall be construed as preliminary or final approval of any land use or related decisions with

respect to the Premises, whether required for a Master Lease, or otherwise. Neither the Lease nor any Master Lease shall commit Landlord to any decisions or approvals not yet authorized by it.

1.6 As-Is. As a material inducement to the execution and delivery of this Lease by Landlord and the performance by Landlord of its duties and obligations hereunder, Tenant does hereby acknowledge, represent, warrant and agree, to and with the Landlord, that, except as expressly set forth in this Lease: (i) Tenant is leasing the Premises in an "AS-IS" condition as of the Due Diligence Date with respect to any facts, circumstances, conditions and defects; (ii) Landlord has no obligation to repair or correct any such facts, circumstances, conditions or defects or compensate Tenant for same; (iii) by the Due Diligence Date, Tenant shall have undertaken all such inspections and examinations of the Premises as Tenant deems necessary or appropriate under the circumstances, and that based upon same, Tenant is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its agents and officers, and Tenant is and will be fully satisfied that the "**Rent**" (*i.e.*, the base rent described in Section 3.1 below together with all sums payable, or expenses incurable, by Tenant under this Lease) is fair and adequate consideration for the lease of the Premises; (iv) except as expressly set forth below in this Lease and for the limited duration thereof, Landlord is not making and has not made any warranty or representation with respect to all or any part of the Premises (including, but not limited to, any matters contained in documents made available or delivered to Tenant in connection with this Lease) as an inducement to Tenant to enter into this Lease or for any other purpose; and (v) by reason of all of the foregoing, except as expressly set forth in this Lease, Tenant shall assume the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the condition of the Premises, including without limitation the presence of any asbestos containing material, hazardous toxic or radioactive waste, substance or materials in, on, under or about the Premises, and, except as expressly set forth below in this Lease, Tenant hereby expressly and unconditionally waives and releases Landlord and all of its parents, subsidiaries, affiliates, partners, boards, advisors, attorneys, departments, agents, and representatives and its and their respective officers, directors, shareholders, partners, agents and employees, and their respective successors, heirs and assigns and each of them (individually and collectively, the "**Released Parties**") from any and all Claims against Landlord and/or the Released Parties with respect to the condition of the Premises, including without limitation any rights of Tenant under the State or Federal Comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time, or similar laws. Tenant acknowledges and agrees that, except as expressly set forth in this Lease, the foregoing waiver and release includes all Claims of Tenant against Landlord pertaining to the condition of the Premises, whether heretofore or now existing or hereafter arising, or which could, might, or may be claimed to exist, of whatever kind or nature, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth herein at length, which in any way arise out of, or are connected with, or relate to, the condition of the Premises; except that such release shall not relieve Landlord of its liability for (a) fraud, or (b) any breach by Landlord of its express representations and warranties or covenants set forth in this Lease prior to the expiration thereof.

Tenant hereby waives, releases, acquits and forever discharges Landlord, its shareholders, directors, agents, employees, consultant, trustee, successor and assigns from any and all Claims which have arisen or may arise in the future with respect to the Premises,

regardless of whether Tenant is presently aware of any Claims; except that such release shall not relieve Landlord of its liability for fraud, intentional misrepresentation, gross negligence, willful misconduct or any breach by Landlord of its express representations and warranties or covenants set forth in this Lease prior to the expiration thereof. In connection with the foregoing release, Tenant specifically and expressly waives all of its rights under Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

TENANT'S INITIALS

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1.7 Title Insurance. Tenant shall have the right to obtain title insurance policies with respect to the Premises from time to time at its expense to confirm its interest in the Premises. Landlord shall cooperate with any reasonable requests of the title insurance company with respect to its issuance of such policies.

## ARTICLE II

### LEASE TERM

2.1 Term. The term of this Lease ("**Term**") shall commence, if at all, upon the later of (a) the **date upon which Landlord acquires fee title to the Property**, and (b) the Premises is comprised of one (1) or two (2) separate legal parcels (as applicable, the "**Commencement Date**"), and shall continue for a period of thirty (30) years thereafter unless earlier terminated pursuant to the terms of this Lease; provided, however, that (x) if the foregoing conditions have not occurred by the Deadline, then the Term shall not commence and this Lease shall be deemed void *ab initio*, and (y) Landlord shall have no obligation to, and is not committing to, either acquire the Property (or the Premises) and/or to subdivide the Premises.

2.2 Master Lease Term. During the Term, each Master Lease shall have a term specified therein, but in no event shall the term of any Master Lease exceed the Term of this Lease.

## ARTICLE III

### RENT

3.1 Base Annual Rent During Term. From the Effective Date until expiration or earlier termination of this Lease, Tenant shall pay Landlord on the Effective Date and on or

before each anniversary thereof base rent of One Dollar (\$1.00) per year, in advance, without demand, deduction or setoff. Landlord hereby acknowledges receipt of the payment of all base rent for the entire Term. If the Lease is terminated by either party pursuant to Section 1.4, then base rent for the remainder of the Term shall be deemed forfeited to Landlord.

3.2 Place and Method of Payment. All payments of rental and other amounts due under this Lease shall be made without notice (except as expressly set forth herein), demand, deduction or offset by Tenant to Landlord at the address set forth in Article XXV for the giving of notices to Landlord, or at such other place as Landlord may designate from time to time in writing, and shall be payable in current legal tender of the United States of America, as the same is then by law constituted. If the deadline for payment of any amount due hereunder between the parties occurs on a date that is not a business day, then such amount shall be due and payable on the immediately succeeding business day without interest or penalty.

3.3 All Obligations of Tenant Considered Additional Rent. All costs and expenses which Tenant is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts (including interest and late charges as described below), and all damages, costs and expenses which Landlord may incur by reason of any default of Tenant or failure on Tenant's part to comply with the terms of this Lease, shall be deemed to be additional rent and, in the event of nonpayment by Tenant, Landlord shall have all rights and remedies with respect thereto as Landlord has for the nonpayment of the base annual rent.

3.4 Interest on Tenant's Obligations. Tenant agrees that any payment due from Tenant to Landlord after notice thereof from Landlord (other than with respect to the annual base rent set forth in Section 3.1 above) which is not paid when due shall bear interest from the due date to the date of payment at a rate of interest equal to the lesser of four percent (4%) above the "prime" lending rate of Wells Fargo Bank, N.A. or any comparable bank or lending institution selected by Landlord, or the maximum non-usurious rate permitted by law. Landlord's acceptance of any such interest shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease or any law now or hereafter in effect.

3.5 Late Charge. In the event that Tenant fails to pay any installment of base rent or other payment for which Tenant is obligated to Landlord under this Lease after notice thereof from Landlord (other than with respect to the annual base rent set forth in Section 3.1 above) within five (5) days after such rent or other payment becomes due, Tenant shall pay to Landlord as additional rent a late charge equal to five percent (5%) of the amount due to compensate Landlord for the extra costs incurred as a result of such late payment.

## ARTICLE IV

### USE OF THE PREMISES

4.1 Use of Premises. Tenant shall use the Premises only for the purposes of determining the suitability of portions thereof for one or more Master Leases and Tenant shall not use or permit the Premises to be used for any other purpose or purposes whatsoever.

4.2 Restrictions on Use. Tenant shall not do or permit anything to be done in or about the Premises, nor bring or keep anything therein, which is not within the authorized use of the Premises set forth in Section 4.1 above. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose nor shall Tenant cause, maintain or permit any public nuisance in, on or about the Premises. Tenant shall not cause or commit, nor allow to be caused or committed, any waste in, upon or about the Premises.

In addition, Tenant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Premises, nor shall Tenant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, leases, subtenants, sublessees or vendees in the Premises. The provisions of the foregoing sentence (a) shall be included in any subleases of the Premises, including, without limitation, any Master Lease(s), and all contracts with respect to the Premises entered into by Tenant, (b) shall be binding for the benefit of Landlord, its successors and assigns without regard to whether Landlord is or remains an owner of any land or interest therein to which such covenants relate, and (c) be enforceable by Landlord or any of its successors or assigns using any legal or equitable remedies.

4.3 Compliance with Laws. Tenant covenants that during the Term of this Lease, Tenant will comply, at no cost or expense to Landlord, with all covenants, conditions and restrictions of record as of the Effective Date hereof and hereafter (pursuant to and subject to Section 1.2 above) affecting the Premises, and with all laws, ordinances, orders, rules regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and offices thereof having the effect of law, which may apply to the Premises or the use or manner of use of the Premises now or at any time during the Term and regardless of the cost thereof of the fact that such matter could not have been foreseen or anticipated.

4.4 Intentionally Omitted.

4.5 Environmental and Industrial Hygiene Compliance.

4.5.1 Landlord's Covenants. To satisfy its obligations under California Health and Safety Code §25359.7, Landlord has provided Tenant with a copy of the reports in the possession of the Landlord with respect to the Premises (collectively, the "**Reports**") relating

to "**Hazardous Materials**" (as defined below) in, on or about the Premises. Tenant acknowledges that Landlord delivered the Reports to Tenant without any representation or warranty whatsoever about the Reports, except that Landlord represents and warrants to Tenant that the Reports constitute all such reports prepared for Landlord with respect to the Premises. Landlord represents to Tenant that, as of the date of this Lease and except as disclosed in the Reports, Landlord has no actual knowledge that any Hazardous Materials exist on the Premises in violation of any governmental law, rule or regulation relating to Hazardous Materials ("**Hazardous Materials Laws**"). For the purposes of this Lease, all references to "**Landlord's knowledge**" and similar phrases shall mean the actual, present knowledge of the City Administrator of the City of Commerce without any duty of inquiry; provided, however, that such individual shall not have any personal liability as the result of being so identified. The parties hereby acknowledge and agree that (a) the limited uses to which Landlord can put the Premises, and (b) Tenant's exclusive control of the location and nature of proposed Improvements (except to the extent set forth in Section 25.8 hereof) make it unlikely that Tenant would be affected by any violation of Hazardous Materials Laws existing as of the Effective Date, so Landlord shall not be required to indemnify Tenant with respect thereto except to the limited extent set forth below in Section 4.5.2.

4.5.2 Landlord's Indemnity and Right of Entry. If (a) any portion of the Premises is in violation of Hazardous Materials Laws as of the Effective Date, (b) such violations were not disclosed in the Reports or during Tenant's due diligence (and were not otherwise actually known to Tenant), and (c) remediation thereof is required by Hazardous Materials Laws even in the absence of any development or use of the affected portion of the Premises, then Landlord shall, at Landlord's sole cost and expense, diligently remediate such condition. The foregoing shall only obligate Landlord to bear the cost of any remediation required and shall not subject Landlord to any liability for any other damages or remedies whatsoever. If Tenant becomes aware of any potential Claim under this Section 4.5.2, Tenant shall provide prompt, written notice thereof to Landlord provided, however, the failure of Tenant to so provide such notice shall not relieve Landlord of its obligations hereunder. If Landlord is required or elects to take any action on or about the Premises in connection with this Section 4.5.2, then Tenant hereby grants Landlord, subject to the terms and conditions set forth in Section 25.8 hereof, a license to enter and use the Premises in the locations and for purposes and durations specified by Landlord to Tenant in writing from time to time to test, monitor and/or remediate such conditions at Landlord's expenses, all of which shall occur without any compensation to Tenant. "**Pre-Existing Environmental Conditions**" means, collectively, any Hazardous Materials existing on the Premises as of the Effective Date other than conditions disclosed in the Reports or during Tenant's due diligence (or were otherwise actually known to Tenant).

4.5.3 Tenant's Covenants. Subject to the foregoing, Tenant, at its sole cost and expense, shall comply with all laws, ordinances and regulations relating to industrial hygiene and to the environmental conditions in, on, under or about the Premises, including, but not limited to, soil and groundwater conditions and Hazardous Materials. Tenant shall not cause or permit any Hazardous Materials to be brought, kept or used in, on, under or about the Premises by Tenant, its agents, employees, contractors, licensees, sublessees, assignees, concessionaires or invitees (other than Landlord pursuant to Section 25.8 hereof), unless (a) the



use of such Hazardous Materials is necessary and incident to Tenant's business on the Premises, and (b) such Hazardous Materials are used, kept, monitored, stored and disposed of in a manner that (i) complies with all laws relating to such Hazardous Materials, (ii) will not endanger any other Persons or property, and (iii) will not invalidate, limit the coverage or increase the premiums of, any insurance policy affecting or covering the Premises, (iv) such action satisfies Landlord's reasonable requirements specified in writing after receipt of a specific written request therefor from Tenant, which must precede any such action. If Tenant breaches the obligations stated in the foregoing provisions of this Section 4.5, or if the presence of any Hazardous Materials in, on, under or about the Premises caused or permitted by Tenant or Tenant's agents, employees, contractors, licensees, sublessees, assignees, concessionaires or invitees (other than Landlord pursuant to Section 25.8 hereof) results in contamination in breach of Hazardous Materials Laws of all or any portion of the Premises exclusive of any Pre-Existing Conditions, then Tenant shall be solely responsible for and shall indemnify, protect, defend and hold Landlord harmless from and against any and all Claims which arise during or after the Term of this Lease as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision having jurisdiction with respect to the applicable portion of the Premises because of the presence of any Hazardous Materials on or about the Premises caused or permitted by Tenant or Tenant's agents, employees, contractors, licensees, sublessees, assignees, concessionaires or invitees. Upon Landlord's request, with respect to contamination for which Tenant is responsible as described above in this Section 4.5.2, Tenant shall promptly take all actions, at its sole cost and expense, as are reasonably necessary to comply with Hazardous Materials Laws, provided Landlord's approval, not to be unreasonably withheld, delayed or conditioned, of such actions shall first be obtained. Furthermore, each party shall promptly notify the other party of any inquiry, test, investigation or enforcement proceeding by or against such party or the Premises concerning the presence of any Hazardous Material of which it has actual knowledge provided, however, the failure of either such party to so provide such notice to the other party shall not relieve such party of their respective obligations hereunder and under Section 4.5.1 hereof.

4.5.4 Hazardous Materials Defined. As used herein, the term "**Hazardous Materials**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority having jurisdiction with respect to the applicable portion of the Premises, the State of California or the United States Government including, without limitation, (a) petroleum or any petroleum product including refined gasoline, motor oil, waste oil and diesel fuel, (b) asbestos, (c) formaldehyde, and (d) polychlorinated biphenyls.

4.5.5 Survival. The parties hereby agree that the provisions of this Section 4.5 shall survive the expiration or earlier termination of this Lease.

## ARTICLE V

### ALTERATIONS

Because of Tenant's limited rights to use the Premises, Tenant shall not have the right to make any improvements, alterations, or modifications to the Premises (except in connection with a Master Lease) without obtaining Landlord's prior written consent, which Landlord may condition or withhold in its sole discretion.

## ARTICLE VI

### MECHANICS' LIENS

6.1 Liens. Tenant shall not suffer or permit any liens against the Premises, against Tenant's leasehold interest therein or against any other portion of the Premises, by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant or anyone holding the Premises, or any part thereof, through or under Tenant, and Tenant agrees to indemnify, protect and defend Landlord against any such liens and from any and all other Claims arising out of or in any way connected with the performance of such work or the supply of such services. If any such lien shall at any time be filed against the Premises or against any portion thereof, Tenant shall promptly cause the lien to be discharged of record; provided, however, that Tenant shall have the right to contest the amount or validity, in whole or in part, of any such lien by appropriate proceedings, but in such event, Tenant shall first notify Landlord and shall promptly bond such lien in the manner authorized by law with a responsible surety company qualified to do business in the State of California.

6.2 Nonresponsibility. Landlord shall have the right at any time and from time to time to post and maintain on the Premises such notices as may be necessary to protect the Premises and Landlord from mechanics' liens, materialmen's liens or liens of a similar nature. Not less than fifteen (15) days prior to the commencement of any work of improvement by Tenant upon the Premises, Tenant shall give written notice thereof to Landlord. If (a) Tenant fails to give such notice on a timely basis, or (b) the cost of such work exceeds One Hundred Thousand Dollars (\$100,000), then Landlord, at its option, may require Tenant to immediately post or cause to be posted in favor of Landlord, Completion and Labor and Material bonds in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction and issued by a financially sound bonding company licensed to do business in the State of California; the condition to post such bonds may be satisfied, at Tenant's sole discretion, by bonds provided by Tenant's contractor(s). Landlord's request for the posting of the aforementioned bonds shall be in writing delivered to Tenant as provided for in the "Notice" Section of this Lease. As between Landlord and Tenant, Tenant shall bear the full cost and expense of posting any such bonds. At Landlord's reasonable request and to the extent permitted by applicable law, Tenant shall require any party providing materials or performing work in connection with the Premises to modify its agreement to irrevocably waive any right to impose any lien on all or any part of the Premises.

6.3 No Consent of Landlord. Nothing in this Lease shall be deemed to be, or construed in any way to constitute, the consent or request of Landlord, express or implied, by inference or otherwise, to any person, entity, trust, company, partnership, firm or corporation (collectively, a “**Person**”) for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials, which might in any way give rise to the right to file any lien against Landlord's interest in the Premises. Landlord shall have the right to post and keep posted at all reasonable times on the Premises any notices which Landlord shall be required to post for the protection of Landlord and its interest in the Premises from any such lien.

## ARTICLE VII

### TAXES AND ASSESSMENTS

7.1 Real Property Taxes. As used herein, the term “**Real Property Taxes**” shall mean all real estate taxes, assessments for land and improvements to the Premises, and other governmental levies and charges, general and special, ordinary and extraordinary, of any kind, which shall be levied against the Premises which become a lien thereon and any tax or assessment in any way levied or assessed with respect to the possessory interest of Tenant or any Person holding under Tenant pursuant to the terms of this Lease, and any increases thereof regardless of the reason therefor, but excluding any such taxes, assessments, rates, charges based upon or measured by any Person’s gross or net income, gross or net receipts or that are in the nature of, or are imposed with respect to, capital, net worth, excess profits, accumulated earnings capital gains, franchise or conduct of business of such Person. If, during the Term of this Lease, taxes are imposed, assessed or levied on the gross rents derived from the Premises, Tenant shall pay such taxes in the manner provided below for real property taxes and assessments.

7.2 Payment of Real Property Taxes. Throughout the Term of this Lease, Landlord shall pay or cause to be paid, before any fine, penalty, interest or cost that may be added thereto for the nonpayment thereof, all Real Property Taxes levied against the Premises, except to the extent otherwise provided in a Master Lease. To the extent that Tenant receives invoices, bills, assessments or charges for Real Estate Taxes from any taxing authority with jurisdiction over the Premises, it shall promptly but, in any event, within thirty (30) days, deliver the same to Landlord.

7.3 Installment Payments. If any Real Property Taxes, general or special, are at any time during the Term of this Lease levied or assessed against the Premises, which upon exercise of any option permitted by the assessing authority may be paid in installments or converted to an installment payment basis (irrespective of whether interest shall accrue on unpaid installments), the party responsible for paying Real Property Taxes may elect to pay such Real Property Taxes in installments with accrued interest thereon. If Tenant is responsible for paying Real Property Taxes, then in the event of such election, and subject to Section 7.4, Tenant shall be liable only for those installments which become payable during the Term of this Lease, and Tenant shall not be required to pay any such installment which becomes due and payable after the expiration of the Term of this Lease. Landlord shall execute whatever documents may be

reasonably necessary to convert any Real Property Taxes to such an installment payment basis upon written request by Tenant.

7.4 Proration. Any Real Property Taxes which are payable by Tenant hereunder or which may be reimbursed to Landlord by Tenant hereunder shall be appropriately prorated between Landlord and Tenant as of the Commencement Date and then again as of the expiration or earlier termination of the Term of this Lease.

7.5 Right to Contest. The party responsible for paying Real Property Taxes under this Lease shall have the right to contest the amount or validity of any Real Property Taxes, in whole or in part, by appropriate administrative and legal proceedings, either in its own name, Landlord's name or jointly with Landlord; provided, however, that if at any time payment of the whole or any part thereof shall become necessary to prevent the termination of the right of redemption of any property affected thereby, or if there is to be an eviction of either Landlord or Tenant because of nonpayment thereof, the party responsible for paying Real Property Taxes under this Lease shall pay the same to prevent such termination of the right of redemption or such eviction. Any such contest brought by Tenant shall be at no cost or expense to Landlord. Each refund of any Real Estate Tax so contested shall be paid to the party responsible for paying Real Property Taxes under this Lease unless attributable to the portion thereof for which Landlord is responsible pursuant to Section 7.2 hereof.

7.6 Improvement or Special Assessment District. If any governmental subdivision with taxing authority shall undertake to create an improvement or special assessment district the proposed boundaries of which shall include any portion of the Premises, Landlord and Tenant shall each be entitled to appear in any proceeding relating thereto and to present their respective positions as to whether the Premises should be included or excluded from the proposed improvement or assessment district and as to the degree of benefit to the Premises resulting therefrom. Landlord or Tenant shall each promptly advise the other in writing of the receipt of any notice or other information relating to the proposed creation of any such improvement or special assessment district, the boundaries of which include any portion of the Premises.

7.7 Personal Property Taxes. Tenant agrees to pay before delinquency all personal property taxes and assessments of whatsoever kind or nature, and penalties and interest thereon, if any, levied against the all equipment, furniture, fixtures, alterations, improvements and any other personal property of whatsoever kind and to whomsoever belonging, situated or installed in and upon the Premises, whether or not affixed to the realty, exclusive of any portion thereof attributable to improvements installed by Landlord on the Premises (except to the extent otherwise indicated in a Master Lease). To the extent that it is responsible for the payment of such sums, Tenant shall have the right to contest the amount or validity of any such personal property taxes and/or assessments, in whole or in part, by appropriate administrative or legal proceedings, either in its own name, Landlord's name or jointly with Landlord, without any liability, cost or expense to Landlord, and Tenant may postpone payment of any such contested personal property taxes or assessments pending the prosecution of such proceedings and any appeal so long as such proceedings shall operate to prevent the collection of such personal property taxes or assessments and the sale of the Premises to satisfy any lien arising out of the

non-payment of the same; provided, however, that if at any time payment of the whole or any part thereof shall become necessary to prevent the termination of the right of redemption of any property affected thereby or if there is to be an eviction of either Landlord or Tenant because of non-payment thereof, Tenant shall pay the same to prevent such termination of the right of redemption or such eviction. Any such contest brought by Tenant shall be at no cost or expense to Landlord. Each refund of any such personal property tax or assessments so contested shall be paid to the party responsible for paying Real Property Taxes under this Lease unless attributable to the portion thereof for which Landlord is responsible pursuant to Section 7.2 hereof. Landlord shall not, without the prior approval of Tenant, discontinue or agree to any disposition of any contest or accept any credit or other adjustment of any such tax or assessment as a result of such contest with respect to Real Property Taxes payable by Tenant under this Lease.

## **ARTICLE VIII**

### **UTILITIES**

Landlord shall have no obligation to Tenant under this Lease to furnish any utilities or services to the Premises. Throughout the Term of this Lease, to the extent applicable (and approved by Landlord) Tenant shall contract for, furnish and pay, at its sole cost and expense, all water, gas, heat, light, power and sewer charges, telephone service and all other services and utilities supplied to or consumed in or on the Premises, together with any taxes thereon. Landlord shall not be liable in damages or otherwise, and Tenant shall not be entitled to any abatement or reduction of rent, for any failure or interruption of any utility or service being furnished to the Premises, and no such failure or interruption shall entitle Tenant to terminate this Lease.

## **ARTICLE IX**

### **REPAIRS AND MAINTENANCE**

The parties agree that, except as provided in Section 4.5 above, Landlord shall have no obligation to make any repairs, alterations or improvements to or upon the Premises or any part thereof at any time. Except as provided in Section 4.5 above, Tenant shall, at Tenant's sole cost and expense at all times during the Term hereof, keep and maintain the Premises, and every part thereof in clean, good order, condition and repair and in compliance with all laws and regulations applicable thereto. Should Tenant fail to make any repairs which are the obligation of Tenant hereunder, after Tenant is provided notice of default and opportunity to cure in accordance with the terms provided for herein, and if Tenant is in default by virtue of having failed to make said repair within the time provided for in this Lease, Landlord may, but shall not be required to, enter the Premises and make the repairs necessary to restore the Premises to good order, condition and repair, and the cost of such repairs shall become due and payable by Tenant to Landlord upon demand. Tenant shall, upon the expiration or sooner termination of the Term of this Lease, surrender the Premises and all alterations, additions, changes and improvements therein, thereto and thereof to Landlord in good condition order and repair, ordinary wear and tear excepted.

## ARTICLE X

### INDEMNIFICATION AND NONLIABILITY

10.1 Indemnification by Tenant. Except with respect to Hazardous Materials, which the parties hereby agree are governed by the provisions of Section 4.5 hereof, Tenant hereby agrees to and shall indemnify, protect, defend and hold harmless Landlord, its agents, contractors, employees, licensees and invitees, as their respective interests may appear, from and against any and all Claims arising out of or in connection with Tenant's use of the Premises, or the conduct of its business thereon, or from any activity, work or thing done, permitted or suffered by Tenant, its agents, contractors, employees, licensees, subtenants, assignees, concessionaires or invitees (other than Landlord pursuant to Section 25.8 hereof), on or about the Premises or any part thereof. Tenant shall further indemnify, protect, defend and hold harmless Landlord, its agents, contractors, employees, licensees, and invitees from and against any and all Claims arising out of or in connection with any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease, or any act, neglect, fault or omission of Tenant or of its agents, contractors, employees, licensees, subtenants, assignees, concessionaires or invitees (other than Landlord pursuant to Section 25.8 hereof). If any action or proceeding is brought against Landlord by reason of any such Claim, upon notice from Landlord, Tenant shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to Tenant's and other property or injury to Tenant and other Persons in, upon or about the Premises from any cause whatsoever, except to the extent such damage or injury is caused by Landlord's fraud, intentional misrepresentation, gross negligence, willful misconduct or any breach by Landlord of its express representations and warranties or covenants set forth in this Lease prior to the expiration thereof. Notwithstanding anything to the contrary herein, in no event shall Tenant be liable to Landlord or be required to indemnify Landlord in respect of any matters related to Pre-Existing Environmental Conditions, which the parties agree are governed solely by the provisions of Section 4.5 hereof.

10.2 Exemption of Landlord from Liability. Except to the extent (a) caused by Landlord's fraud, intentional misrepresentation, gross negligence, willful misconduct, and (b) not covered by insurance required hereunder to be carried by the parties hereto, Landlord shall not be liable to Tenant for any Claim which may be sustained by the person, goods, wares, merchandise or property of Tenant, its agents, contractors, employees, licensees, concessionaires, invitees or customers, or any other Person in or about the Premises. In any event, under no circumstances shall Landlord shall be liable for any damage to Tenant's business, improvements, or personal property, regardless of the cause thereof, and Tenant hereby releases Landlord from all liability for such Claims. Notwithstanding any provision of this Lease or any applicable law to the contrary, in no event shall Landlord be liable under any circumstances for any speculative, punitive, or consequential damages incurred by Tenant, including, without limitation, any injury to, or interference with, Tenant's business (including any loss of profits) arising in connection with this Lease.

10.3 Survival. The parties hereby expressly agree that the provisions of this Article 10 shall survive the expiration or earlier termination of this Lease.

## ARTICLE XI

### INSURANCE

11.1 Tenant's General Insurance Requirements. All insurance required to be carried by Tenant hereunder shall be issued by responsible insurance companies reasonably acceptable to Landlord and the holder of any deed of trust secured by the fee interest of Landlord with respect to any portion of the Premises (herein referred to as a "**Mortgagee**"). Unless otherwise required by Mortgagee, all policies of insurance required to be obtained by Tenant herein shall be issued by insurance companies with general policy holder's rating of not less than A- and a financial rating of not less than Class VIII as rated in the most current available "Best Insurance Reports" or other similar insurance rating guide. Each such policy shall name Landlord and at Landlord's request any Mortgagee of the Premises as additional insureds, as their respective interests may appear, and a duplicate original of all policies or certificates evidencing the existence and amounts of such insurance shall be delivered to Landlord by Tenant at least ten (10) days prior to Tenant's occupancy of the Premises. Each such policy must contain a provision that the company writing said policy will give to Landlord, and at Landlord's request any Mortgagee of the Premises, not less than thirty (30) days' notice in writing in advance of any modification, cancellation or lapse of such insurance or any reduction in the amounts thereof. All of Tenant's insurance policies shall be written as primary policies, not contributing with, and not in excess of, coverage which Landlord may carry, and shall provide for severability of interests. Tenant shall furnish Landlord with renewals or "binders" of each such policy at least thirty (30) days prior to the expiration thereof. Tenant agrees that if Tenant does not procure and maintain such insurance, Landlord may (but shall not be required to) obtain such insurance on Tenant's behalf and charge Tenant premiums therefor together with a ten percent (10%) handling charge, payable upon demand. Tenant may carry such insurance under a blanket policy, provided such blanket policy expressly affords the full amount and type of coverage required by this Lease by a Landlord's protective liability endorsement or otherwise. Tenant shall not do, or permit to be done, anything which shall invalidate the insurance policies required hereunder.

11.2 Property Insurance. At all times during the Term hereof in which Tenant maintains any improvements on the Premises, Landlord shall, at Tenant's sole cost and expense, maintain in effect policies of property insurance covering (a) all improvements in, on or to the Premises, and (b) all trade fixtures, furniture, merchandise and other personal property which may be situated from time to time in, on or upon the Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost from time to time during the Term of this Lease, providing protection against any peril included within the classification "Fire and Extended Coverage", together with insurance against sprinkler damage, vandalism, and malicious mischief, including cost of debris removal and demolition. During Tenant's construction of any permitted alterations within the Premises, Landlord shall, at Tenant's sole costs and expense, maintain a course of construction endorsement to such property insurance policies and liability insurance policies. If Landlord informs Tenant that Landlord cannot obtain such insurance, then Tenant shall obtain such insurance at its sole expense. Subject to Article XII hereof, the proceeds of such insurance shall be used for repair and replacement of the property so insured.



11.3 Liability Insurance. At all times during the Term hereof, Landlord shall, at Tenant's sole cost and expense, obtain and continue in force commercial liability insurance or comprehensive general liability insurance with respect to the Premises and the activities and use thereof and thereon by Tenant and Tenant's employees, agents, contractors, licensees, subtenants, assignees, concessionaires and invitees. Such insurance shall include coverage for personal injury (including employees and false arrest coverage), bodily injury, broad form property damage, Premises/operations, owner's protective coverage, blanket contractual liability, products and completed operations liability, and owned/non-owned auto liability in an amount not less than Three Million Dollars (\$3,000,000.00) combined single limit. The limits of such insurance shall not, however, limit the liability of Tenant hereunder. All liability and property damage policies shall contain a provision that Landlord, although named as an additional insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence of Tenant and/or Tenant's employees, agents, contractors, licensees, subtenants, assignees, concessionaires and invitees. Notwithstanding the foregoing or anything set forth in this Article XI to the contrary, the parties agree that Tenant may satisfy its insurance requirements hereunder through policies maintained and to be maintained by Landlord with respect to the liability risks set forth herein unless Landlord informs Tenant that Landlord is unable to obtain such policies. To the extent feasible, Landlord agrees to carry such liability insurance set forth above in this Section 11.3 for the Term, which shall include Tenant and, to the extent feasible, Tenant's employees, agents, contractors, licensees, subtenants, assignees, concessionaires and invitees, as additional insureds thereto. Tenant shall be responsible for the cost of any such insurance policies as they relate to the Premises.

11.4 Worker's Compensation. Tenant shall at all times during the Term hereof, at its own cost and expense, obtain and maintain in effect worker's compensation insurance and employer's liability insurance as required by law, with full waiver of the insurer's rights of subrogation against Landlord and Landlord's officers, partners, agents, contractors, employees and representatives.

11.5 Other Insurance. Tenant shall at all times during the Term hereof at its own cost and expense obtain and maintain in effect any other form or forms or amounts of insurance as Landlord or its Mortgagee may reasonably require from time to time.

11.6 Adjustment. Not more frequently than once every five (5) years during the Term of this Lease, Tenant shall, at Landlord's request, increase the insurance policy limits for the insurance to be carried by Tenant as set forth in this Article 11 in an amount reasonably determined by Landlord in light of the nature of risks covered thereby provided, however, that no such increase in coverage shall exceed twenty percent (20%) of the previous limit therefor unless the nature of the use of the Premises has materially changed or improvements have been constructed thereon.

11.7 Waiver of Subrogation. Landlord and Tenant agree to have their respective insurance companies issuing property damage and loss of insurance and extra expense insurance waive any rights of subrogation that such companies may have against Landlord or Tenant, as the case may be, so long as the insurance carried by Landlord and Tenant, respectively, is not invalidated thereby. Landlord and Tenant hereby waive any right that either



may have against the other on account of any loss or damage to the extent such loss or damage is insurable under such policies of insurance.

## **ARTICLE XII**

### **DAMAGE OR DESTRUCTION**

12.1 **Damage and Duty to Restore.** In case of damage to or destruction of any improvements, in whole or in part, by fire or any other casualty whatsoever, whether or not insured against by any policy or policies (including required endorsements) required to be carried under the provisions of Article XI of this Lease, all of Tenant's obligations hereunder, including, without limitation, the obligation to pay rent, shall continue as provided for in this Lease. Tenant shall have no obligation to restore, replace, rebuild, demolish or remove any improvements, except that, promptly following any such damage or destruction, Tenant shall clear the Premises of all debris and hazardous conditions caused by such damage or destruction using the proceeds of any insurance and the balance thereof shall be delivered to Landlord.

12.2 **No Obligation of Landlord to Restore.** Landlord shall in no event be under any duty or obligation to restore, replace or rebuild any improvements, or any portion thereof, at any time.

12.3 **Waiver by Tenant.** Tenant shall have no right to terminate this Lease as a result of any statutory provisions now or hereafter in effect pertaining to the damage and destruction of all or any part of the Premises, including, without limitation, the provisions of Section 1932(2) and 1933(4) of the California Civil Code. Tenant shall not be entitled to any compensation or damages from Landlord for the loss of the use of the whole or any part of the Premises, or of Tenant's personal property or any inconvenience or annoyance occasioned by such damage, destruction repair, reconstruction or restoration.

## **ARTICLE XIII**

### **TRADE FIXTURES**

Throughout the Term of this Lease, all trade fixtures, equipment, signs and furnishings installed by Tenant in or on the Premises shall be and remain the property of Tenant and, provided Tenant is not in default under this Lease, such items shall be removable at any time during the Term of this Lease at Tenant's sole cost, provided Tenant hereby agrees to repair or cause to be repaired any damage or injury to the Premises occasioned by any such removal. Upon the expiration or earlier termination of this Lease, at Landlord's request, Tenant shall remove any such items at its sole expense.

## ARTICLE XIV

### ASSIGNMENT AND SUBLETTING

14.1 Restrictions on Transfers. Except with respect to a Master Lease, Tenant shall not voluntarily or involuntarily assign its interest in this Lease or its leasehold interest in the Premises, sublease all or any part of the Premises, sell or lease all or any part of any improvements, transfer any direct or indirect interest in Tenant, or allow any other Person to occupy or use all or any part of the Premises (collectively referred to as a "**Transfer**"), without first obtaining Landlord's prior written consent, which Landlord may withhold in its sole discretion or upon the instruction of Landlord's Mortgagee. A Transfer shall also include an Ownership Change (as defined in the next sentence) but shall exclude (a) a sale or transfer of any direct or indirect interest in Tenant by devise or descent or by operation of law upon the death of an owner of any direct or indirect interest in Tenant, and (b) a sale or transfer of any direct or indirect ownership interest in Tenant by a current owner to a trust for the benefit of such owner or an immediate family member (*i.e.*, parents, spouses, siblings, children or grandchildren) of such owner for estate planning purposes. An "**Ownership Change**" means the direct or indirect transfer (any level) by sale, assignment, mortgage, deed of trust, trust, operation of law, or otherwise of any shares, voting rights or ownership interest which will result in a change in the identity of the Person or Persons exercising, or who may exercise, voting rights or control of (or receive the economic benefits of) Tenant. Any Transfer without Landlord's prior written consent shall be voidable, at Landlord's election, and shall constitute a material default. No consent to an assignment or sublease shall constitute a further waiver of the provisions of this Article. Notwithstanding the foregoing, without the need for obtaining Landlord's prior written consent, but upon thirty (30) days' prior written notice to Landlord, Tenant shall have the right to hypothecate its interest in the leasehold estate created by this Lease as provided in Article XV.

14.2 Required Provisions. Except as expressly provided in any Master Lease, any and all agreements in respect of a direct Transfer of Tenant's rights and obligations under this Lease shall (a) impose the same obligations and conditions on the Transferee as are imposed on Tenant by this Lease (except as to Rent and term or as otherwise agreed by Landlord in its sole discretion), with an express assumption of such obligations by said Transferee, (b) be expressly subject and subordinate to each and every provision of this Lease, (c) have a term that expires on or before the expiration of the Term of this Lease, and (d) expressly provide that Tenant shall not be released from any or all of its obligations under this Lease notwithstanding such Transfer and/or Landlord's consent thereto and that Tenant remains jointly and severally liable for the tenant's obligations under the Lease.

14.3 Fees for Review. In connection with any proposed Transfer other than a Master Lease, Tenant shall pay to Landlord a non-refundable fee as reimbursement for expenses incurred by Landlord in connection with reviewing each such transaction (including any administrative expenses for Landlord's property manager), in the amount of Five Hundred Dollars (\$500.00). In addition to such reimbursement, if Landlord retains the services of an attorney to review the transaction (other than a Master Lease), Tenant shall pay to Landlord all reasonable attorneys' fees incurred by Landlord in connection therewith. Tenant shall pay such

fees to Landlord within thirty (30) days after its receipt of written request therefor from Landlord and regardless of whether such Transfer is approved.

14.4 No Release of Tenant. Except as otherwise expressly set forth therein, no consent by Landlord to any Transfer by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether occurring before or after such consent, transfer or subletting. The consent by Landlord to any Transfer shall not relieve Tenant from the obligation to obtain Landlord's express prior written consent to any other Transfer. The acceptance by Landlord of payment from any other Person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any subsequent Transfer, or to be a release of Tenant from any obligation under this Lease.

14.5 Assumption of Obligations. Each direct transferee of all of Tenant's rights and obligations hereunder shall assume all obligations of Tenant under this Lease and shall be and remain liable jointly and severally with Tenant for the payment of the rent and the performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the Term of this Lease except as otherwise expressly set forth in a Master Lease. Landlord shall have no obligation whatsoever to perform any duty or respond to any request from any sublessee, it being the obligation of Tenant to administer the terms of its subleases.

14.6 Waiver. If Tenant requests Landlord's consent to a Transfer, and Landlord's consent is impermissibly withheld, Tenant waives any right to seek damages under California *Civil Code* Section 1995.310, or any similar law now or hereafter in effect, it being the intention of the parties that Tenant's rights in such event shall be limited to seeking an injunction or specific performance.

## ARTICLE XV

### HYPOTHECATION

#### 15.1 Hypothecation.

15.1.1 Landlord agrees and consents that Tenant may, at any time and from time to time, without obtaining any further consent of Landlord, but upon not less than thirty (30) days' prior written notice to Landlord, mortgage, encumber, assign and hypothecate by mortgage, deed of trust or otherwise (any of which is herein called, together with its successors and assigns, a "**Tenant Mortgage**") all right, title and interest of Tenant in the leasehold estate created by this Lease or portion thereof (the "**Tenant Mortgage Collateral**") to a commercial bank, finance company, insurance company, or other institutional lender or other Person reasonably acceptable to Landlord (herein called "**Tenant Mortgagee**"), which will mature and be repaid in full at least two (2) years prior to the expiration of the Term. Tenant shall bear the entire cost of any such loan and the proceeds thereof shall be used to reimburse Tenant and its principals for fees, costs and expenses previously incurred by Tenant and its principals in connection with this Lease, and the planning and development, and proposed planning and development, of the Premises and any improvements relating to any Master Leases. Under no circumstances may Tenant hypothecate

the fee interest in the Premises nor will Landlord subordinate this Lease or any Master Lease to any such Tenant Mortgage obtained by Tenant.

15.1.2 Except as hereinafter otherwise provided, and except as otherwise approved by Landlord in writing in its sole discretion, the Tenant Mortgage and all rights thereunder shall be subject to each and every of the covenants, conditions and restrictions of this Lease, and the Tenant Mortgage shall also be subject to all the rights and interest of Landlord hereunder, none of which shall be deemed waived by the foregoing consent. Tenant agrees to furnish to Landlord copies of all instruments, deeds of trust, indentures or agreements executed by Tenant to perfect the hypothecation of the leasehold estate to Tenant Mortgagee.

15.2 Notice to and Rights of Tenant Mortgagee.

15.2.1 Any Tenant Mortgagee shall have the right at any time during the Term:

(a) to do any act required of Tenant hereunder, including to cure any defaults by Tenant hereunder, and all such acts done or performed shall be effective to prevent a forfeiture of Tenant's rights hereunder as if the same had been done or performed by Tenant; and

(b) to rely on the security afforded by the leasehold estate and to acquire and to succeed to the interest of Tenant hereunder by foreclosure, whether by judicial sale, by power of sale contained in any security instrument, or by deed given in lieu of foreclosure, and to thereafter convey or assign title to the leasehold estate so acquired to any other Person that agrees to accept such assignment of rights and delegation of duties by written instrument, a copy of which shall be delivered to Landlord.

15.2.2 Landlord shall provide any Tenant Mortgagee with notice of any default by Tenant hereunder at such address as may be provided by Tenant Mortgagee to Lender in writing. Landlord shall not terminate this Lease by reason of any default of Tenant hereunder if, after delivery of such notice, the Tenant Mortgagee shall:

(a) cure such default within sixty (60) days after service on Tenant Mortgagee of written notice from Landlord of Landlord's intention to terminate this Lease (if the same cannot be cured within sixty (60) days, Tenant Mortgagee shall have a reasonable time after sixty (60) days within which to cure such default so long as Tenant Mortgagee is proceeding and continuing to cure such default with reasonable diligence; provided, however, that in no event shall such cure period exceed one hundred and twenty (120) days subject to Section 15.2.3 below); and

(b) undertake on or before the expiration of said thirty (30) days, in writing, to perform thereafter on a timely basis all covenants contained in this Lease capable of performance by Tenant Mortgagee in the course of exercise of its remedies against Tenant.

15.2.3 If, following Tenant Mortgagee's written undertaking provided for in Section 15.2.2(b) above, it is determined there are performances called for and due under this Lease that are not susceptible of being performed by Tenant Mortgagee, or if any default contemplated in Section 15.2.2(a) above is not susceptible of being cured by Tenant Mortgagee,

then such performance shall be deemed rendered or such default shall be deemed cured if Tenant Mortgagee shall proceed in a timely and diligent manner to accomplish the foreclosure or other acquisition of Tenant's interest under this Lease; provided, however, that if said foreclosure proceedings shall be restrained by any court (as in the case of a bankruptcy proceeding) and relief from any such restraint shall have been diligently and timely sought but not successfully obtained by Tenant Mortgagee, any such performance shall be deemed rendered and any such default shall be deemed cured nevertheless. The obligation of Tenant Mortgagee for the performance of the terms of this Lease shall terminate upon the sale, transfer or assignment of the right, title and interest and delegation and acceptance of the duties of Tenant Mortgagee in the leasehold estate to any other Person.

15.2.4 Any provisions contained in this Lease to the contrary notwithstanding, any Tenant Mortgagee or its assigns may enforce such Tenant Mortgage and acquire title to the leasehold estate in any lawful manner and, pending foreclosure of any such Tenant Mortgage, may take possession of the Premises, and upon foreclosure of such Tenant Mortgage may sell, transfer or assign the leasehold estate without the consent of the Landlord; provided, however, any such sale, transfer or assignment shall be subject to all other terms and conditions of this Lease including, without limitation, the restrictions on change of use of the Premises contained in Article IV of the Lease. Any Person acquiring the right, title and interest of the Tenant's leasehold estate under this Lease from Tenant Mortgagee or any Person claiming or deriving its interest through or under Tenant Mortgagee shall assume the liability for the performance of the obligations imposed upon Tenant by the terms of this Lease.

15.2.5 Notwithstanding the acquisition by Tenant Mortgagee of Tenant's interest in this Lease by judicial or non-judicial foreclosure, assignment in lieu of foreclosure or any other manner, Tenant shall remain primarily liable to Landlord for all obligations of Tenant under this Lease unless and until Tenant Mortgagee or its assigns (i) voluntarily accepts all such obligations, and (ii) performs all such obligations which have accrued under this Lease.

15.3 New Lease on Termination of this Lease. If Landlord elects to terminate this Lease and Tenant's rights hereunder pursuant to the provisions of Article XVII or if this Lease is terminated for any reason or is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Landlord shall first serve written notice of such event on Tenant Mortgagee, and Tenant Mortgagee shall have thirty (30) days after receipt of such notice within which Tenant Mortgagee may elect in writing delivered to Landlord to demand that Landlord execute a new lease of the Premises with Tenant Mortgagee (or such other Person as may be designated by Tenant Mortgagee) as tenant or Tenant Mortgagee may elect to exercise its rights set forth in Section 15.2. If Tenant Mortgagee elects to lease the Premises Landlord and Tenant Mortgagee shall execute a new lease which shall be for the unexpired Term of this Lease and shall otherwise be identical with the terms of this Lease and shall have the same priority as this Lease. Landlord's election to so terminate shall not be effective against Tenant Mortgagee until after the expiration of such thirty (30) day notice period. Such new lease shall be executed and delivered by Landlord to Tenant Mortgagee within thirty (30) days after receipt by Landlord of written notice from Tenant Mortgagee of such timely election to obtain a new lease and upon payment by Tenant Mortgagee of Landlord's reasonable attorneys' fees and all sums owing by Tenant under the provisions of this Lease (less the rent and other income actually collected by

Landlord in the meantime from any subtenants or other occupants of the Premises) and upon performance by Tenant Mortgagee of all other obligations of Tenant under the provisions of this Lease with respect to which performance is then due and which are susceptible of being cured by the Tenant Mortgagee.

15.4 Consent of Tenant Mortgagee. Notwithstanding the foregoing provisions, until such time as the indebtedness of Tenant to Tenant Mortgagee shall have been fully paid, Landlord shall not, without the prior written consent of Tenant Mortgagee first had and obtained at Tenant's expense, accept any surrender, cancellation or termination of this Lease, consent to any modification hereof or consent to the assignment hereof by Tenant of any interest of Tenant herein except for a Master Lease.

15.5 No Encumbrance of Fee Title. At all times herein stated, Landlord's fee title to the Premises shall not be encumbered or affected in any manner directly or indirectly by any Tenant Mortgage regardless of whether such Tenant Mortgage is subordinate to this Lease, and the rights of any Tenant Mortgage in and to the Premises and shall at no time be greater than the right of Tenant hereunder except as otherwise provided in this Article XV.

15.6 Direct Agreement with Tenant Mortgagee. Landlord will, upon request of the Tenant, enter into an agreement with any Tenant Mortgagee confirming the rights of the Tenant Mortgagee hereunder in form and substance reasonably acceptable to Landlord and such Tenant Mortgagee

15.7 Encumbrance by Landlord. Subject to the provisions of Section 20.2 below, Landlord shall have the right to encumber the fee interest in the Premises with any Mortgage.

## ARTICLE XVI

### CONDEMNATION

16.1 Taking. If less than the entire Premises is taken or appropriated for public or quasi-public use by the right of eminent domain or otherwise by a taking in the nature of a condemnation or inverse condemnation, with or without litigation, or is transferred by agreement under the threat thereof (any of the foregoing being referred to herein as a "**Taking**"), then this Lease shall terminate as to the part taken and this Lease shall remain in effect. If the entire Premises is the subject of a Taking or such portion thereof as to render the use of the remainder of the Premises uneconomic for its intended purpose as determined by Tenant, then this Lease shall terminate. No temporary Taking of all or any part of the Premises shall terminate this Lease or give Tenant any right to any abatement of any sums due hereunder, and Landlord shall be entitled to the entire award for such temporary Taking. Each party hereto waives the provisions of California Code of Civil Procedure Section 1265.130 allowing either party to petition the court to terminate this Lease for a partial Taking.

16.2 Division of Award. In the event that an award is made for an entire or partial Taking of the Premises or any interest therein or due to any action in direct or inverse

condemnation or in the event of a Taking as herein defined, the parties hereto agree that their respective rights to the award or compensation paid shall be as follows:

16.2.1 If the portion of the Premises that is the subject of the Taking is encumbered by any Tenant's Mortgage approved by Landlord or permitted by this Lease, then Tenant shall be entitled to a prorated portion of the award equal to the amount of collateral taken.

16.2.2 Landlord shall be entitled to the balance of any award.

Neither party will do any act or make any agreement which will impair the legal obligation of the condemnor to bear the cost of such proceeding. Both parties agree, however, that in the event such a proceeding is used, the rights of the respective parties hereto shall be governed by the formula set forth herein.

16.3 Costs. Each party shall bear its own costs, attorneys' fees, appraisers' fees and all other costs in connection with any matter contained in this Article, except as may be otherwise provided.

## **ARTICLE XVII**

### **DEFAULT PROVISIONS**

17.1 Events of Default. Tenant shall be deemed to be in default under the terms of this Lease as follows (such circumstances herein called an "event of default"):

17.1.1 If Tenant shall fail to pay any installment of rent or other sum when due and such failure shall continue for a period of five (5) business days after Landlord delivers written notice thereof to Tenant specifying the default, the applicable cure period, and Landlord's opinion of any actions needed to cure such default, which notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 (or any successor or similar statute); or

17.1.2 If Tenant shall fail to promptly perform or observe any covenant, condition or agreement to be performed by Tenant under this Lease, and such failure shall continue for a period of thirty (30) days (or such longer period of time as may be necessary to cure such default provided Tenant diligently commences and thereafter diligently pursues the cure thereof, provided, however, that in no event shall such period exceed ninety (90) days) after Landlord delivers written notice thereof to Tenant specifying the default, the applicable cure period, and Landlord's opinion of any actions needed to cure such default; or

17.1.3 If any petition shall be filed against Tenant in any court, whether or not pursuant to any statute of the United States of America or of any state, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, and Tenant shall thereafter be adjudicated bankrupt, or if said proceedings shall not be dismissed within sixty (60) days after the institution of the same, or if any such petition shall be filed by Tenant; or

17.1.4 If, in any third party creditor proceedings wherein the Tenant is a defendant, a receiver, receiver and manager, trustee or liquidator shall be appointed for all or a substantial portion of the Premises, and such receiver, receiver and manager, trustee or liquidator shall not be discharged within sixty (60) days after the appointment of such receiver, receiver and manager, trustee or liquidator; or

17.1.5 If Tenant makes an assignment for the benefit of creditors.

17.2 Remedies. Upon the occurrence of and during the continuance of any event of default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

17.2.1 Landlord shall have the right to terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other Person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

(i) The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

(ii) 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 that Tenant proves could have been reasonably avoided; plus

(iii) 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 Tenant proves could have been reasonably avoided; plus

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and

(v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "rent" as used in this Section 17.2 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether



to Landlord or to others. As used in Sections 17.2.1(i) and (ii), above, the "worth at the time of award" shall be computed by allowing interest at the maximum amount of such interest permitted by law. As used in Section 17.2.1(iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). Notwithstanding anything to the contrary in this Section 17.2, if Tenant fails to timely vacate and surrender the Premises, then the term "rent" as used in this Section 17.2 shall be deemed not to be or mean any interest in the Lease related to a bonus value (*i.e.*, that the fair rental value of the Premises for all or any portion of the remainder of the Term thereof exceeded the rental reserved under this Lease for such period).

17.2.2 Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

17.3 Remedies Cumulative. The remedies of Landlord, as hereinabove provided, are cumulative and in addition to and not exclusive of any other remedy of Landlord herein given or which may be permitted by law. The remedies of Landlord, as hereinabove provided, are subject to the other provisions herein and are particularly subject to the provisions of Article XV hereinabove. Nothing contained in this Article XVII shall constitute a waiver of Landlord's right to recover damages by reason of Landlord's efforts to mitigate the damage to it caused by Tenant's default; nor shall anything herein adversely affect Landlord's right, as in this Lease elsewhere provided, to indemnification against liability for injury or damage to Persons or property occurring prior to the termination of this Lease.

17.4 Performance by Tenant. All covenants and agreements to be performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any offset to or abatement of rent. If Tenant fails to pay any sum of money, including rent, required to be paid by it hereunder or fails to perform any other act on its part to be performed hereunder, and such failure continues after written notice thereof to Tenant (if required) and the expiration of any period expressly provided for in this Lease during which Tenant may cure such failure, Landlord may, without waiving or releasing Tenant from any obligation of Tenant, make any such payment or perform any such act and all sums so paid by Landlord and all costs incurred by Landlord in performing such act (including attorneys' fees), shall be payable by Tenant on demand and Tenant hereby covenants to pay any and all such sums. Landlord shall have in addition to any other right or remedy of Landlord the same rights and remedies in the event of nonpayment of sums due under this Article XVII as in the case of default by Tenant in the payment of rent.

17.5 Landlord's Default. Landlord shall not be in default in the performance of any obligation under this Lease unless and until it has failed to perform any obligation hereunder within thirty (30) days after receipt of written notice by Tenant to Landlord specifying such failure; provided, however, that if the nature of Landlord's default is such that more than thirty

(30) days are required for its cure, then Landlord shall not be deemed to be in default if it commences such cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion provided Landlord diligently commences and thereafter diligently pursues the cure thereof. Tenant agrees to give any Mortgagee of Landlord's estate a copy, by registered mail, of any notice of default served upon Landlord, provided that prior to such notice Tenant has been notified in writing of the address of such Mortgagee. Tenant further agrees that if Landlord shall have failed to cure such default within the time period provided in this Lease, then any such Mortgagee shall have an additional sixty (60) days within which to cure such default on the part of the Landlord or if such default cannot be cured within that time, then such additional time as may be necessary if within that sixty (60) days the Mortgagee has commenced and is pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure), in which event this Lease shall not be terminated while such remedies are being so pursued. Notwithstanding anything to the contrary in this Lease, Tenant agrees that in the event of default by Landlord hereunder, there shall be absolutely no personal liability of any partners, officers, employees, managers, councilmembers, board or commission members, attorneys, or agents who or which constitutes or comprises Landlord, and Tenant shall, subject to the rights of Landlord's Mortgagees, look solely to the interest of Landlord in the Premises and any proceeds of Landlord's liability insurance policies applicable and payable with respect to Landlord's ownership of the Premises for the satisfaction of each and every remedy of Tenant therefor. In this regard, none of Landlord's partners, officers, employees, managers, councilmembers, board or commission members, attorneys or agents shall be personally liable for any such default or for any deficiency nor shall other assets of Landlord be available with respect to such default or deficiency.

## ARTICLE XVIII

### SALE OF TOTAL SITE BY LANDLORD

18.1 Right of First Refusal for Sale to Private Party. If Landlord elects to sell the fee interest in the Premises to a **"Private Party"** (e.g., a party that is not a governmental, quasi-governmental, or other similar Person, or an entity that is majority owned and controlled by such an entity or that is established solely for the purpose of obtaining tax-exempt financing), then Tenant shall have, and Landlord hereby grants, a right of first refusal with respect to the sale of the fee interest of the Premises. In connection with such right of first refusal, if, at any time during the Term, Landlord receives a bona-fide offer to purchase all or any portion of the Premises from a Private Party which Landlord intends to accept, Landlord shall deliver a copy of such offer to Tenant (the **"ROFR Notice"**), which offer must contain all material terms and conditions related to such purchase and sale (including, without limitation, a description of that portion of the Premises to which the offer pertains, the purchase price and the anticipated closing date). Upon receipt of the ROFR Notice, Tenant shall have thirty (30) days in which to elect to purchase such portion of the Premises as described in the ROFR Notice, on the same terms and conditions as noted in the ROFR Notice (the **"Tenant ROFR"**) without, however, any due diligence period, and which notice shall be accompanied by a non-refundable deposit, in immediately available funds, in the amount of the aggregate deposits under the ROFR Notice. If Tenant elects to exercise the Tenant ROFR, Landlord and Tenant shall be deemed to have entered into an agreement of purchase and sale containing those conditions set forth in the ROFR

Notice, with such modifications as Landlord and Tenant may agree to, and, on the closing date specified in such ROFR Notice, Landlord and Tenant shall complete the transfer of such portion of the Premises to Tenant (or an affiliate of Tenant, as designated by Tenant). If Tenant does not respond within such thirty (30) days, or Tenant elects not to exercise the Tenant ROFR, Landlord shall be permitted to sell that portion of the Premises described in the ROFR Notice, subject to the material terms and conditions of Section 18.2 hereof, on and subject to the terms and conditions set forth in the ROFR Notice, without amendment; provided that, if Landlord is unable to complete such sale by the date specified in the ROFR Notice plus ninety (90) days, such portion of the Premises shall once again be subject to the terms and conditions of this Section 18.1 and Tenant's right of first refusal. Tenant's rights under this Section 18.1 shall not apply in connection with a foreclosure, deed-in-lieu of foreclosure, or a subsequent conveyance by Landlord's Mortgagee.

**18.2 Release of Landlord.** Landlord shall have the right to sell all or any portion of the Premises to a non-Private Party without triggering the Tenant's right of first refusal set forth above. In the event of any sale by Landlord of its fee interest in all or any portion of the Premises to any Person, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and unaccrued obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; provided that the purchaser, at such sale of all or any portion of the Premises, shall in writing covenant in favor of Tenant to carry out and assume any and all of the covenants and obligations of Landlord under this Lease.

## **ARTICLE XIX**

### **NON-MERGER**

There shall be no merger of this Lease, nor of the leasehold estate created by this Lease, with Landlord's fee estate in the Premises by reason of the fact that this Lease or the leasehold estate created by this Lease or any interest in this Lease or any such leasehold estate or any Master Lease may be held, directly or indirectly, by or for the account of any Person who shall own the fee estate in the Premises or any interest in such fee estate, and no such merger shall occur unless and until all Persons at the time having an interest in the fee estate in the Premises and all Persons (including any leasehold Mortgagee) having an interest in this Lease or in the leasehold estate created by the Lease or any Master Lease shall join in a written instrument effecting such merger and shall duly record the same.

## **ARTICLE XX**

### **ESTOPPEL CERTIFICATES AND SUBORDINATION**

**20.1 Tenant's Certificate.** Tenant agrees at any time and from time to time, upon not less than ten (10) days written notice by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same are in full force and effect as modified and stating the modifications); (b) whether or not, to the best knowledge of Tenant,

there are then existing any offsets or defenses against the enforcement of any of the terms, covenants or conditions hereof upon the part of Tenant to be performed and if so specifying the same); (c) the dates to which the rent and other charges have been paid; (d) whether or not, to the best knowledge of Tenant, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge; and (e) such other matters as may be reasonably required by Landlord or any Mortgagee, it being intended that any such statement delivered pursuant to this section may be relied upon by any prospective purchasers or Mortgagee of the fee of the Premises.

20.2 Subordination. This Lease shall be subject and subordinate to the lien of any mortgage or trust deed, now or hereafter in force against Landlord's interest in the Premises, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages or trust deeds require in writing that this Lease be superior thereto. With respect to any such instruments entered into by Landlord after the execution of this Lease, Tenant's subordination of this Lease shall be subject to receiving assurance (a "non-disturbance agreement") from Landlord's Mortgagee in commercially reasonable form and substance that Tenant's use and possession and this Lease will not be disturbed so long as no event of default occurs and is continuing and Tenant agrees to attorn to Landlord's mortgagee to the extent it becomes the record owner of the Premises. Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any mortgage or deed in lieu thereof by any Landlord Mortgagee, to attorn, without any deductions or set-offs whatsoever, to the purchaser or any successors thereto upon any such foreclosure sale or deed in lieu thereof if so requested to do so by such purchaser, and to recognize such purchaser as the Landlord under this Lease. Tenant shall, within five (5) days of request by Landlord, execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the attornment and subordination of this Lease to any such mortgages or trust deeds. Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of the Tenant hereunder in the event of any foreclosure proceeding or sale.

## ARTICLE XXI

### MEMORANDUM OF LEASE

Following (a) the execution of this Lease, (b) City's acquisition of the Property, and (c) the subdivision of the Premises, upon Tenant's request and upon Landlord's approval (which shall not be unreasonably withheld), both parties shall execute and acknowledge a Memorandum of this Lease in recordable form which shall be substantially in the form attached hereto as **Exhibit "D"** ("Memorandum") which shall be recorded at Tenant's election (and expense, including, without limitation, all recording charges and documentary transfer taxes, and the like) in the official records in which the Premises is located ("**Official Records**") after the Due Diligence Date (or earlier provided that Tenant concurrently executes and delivers to Landlord an executed, acknowledged, original of a quitclaim deed or other instrument prepared by Landlord to terminate the effect of the Memorandum, which (a) Landlord may record in the Official Records if Tenant terminates this Lease pursuant to Section 1.3 above or either party

terminates this Lease pursuant to Section 1.4 above, or (b) Landlord shall return to Tenant if Tenant does not terminate this Lease pursuant to Section 1.3 above and neither party terminates this Lease pursuant to Section 1.4 above) provided that this Lease has not previously terminated. Concurrently with the execution of each Master Lease, upon Landlord's request, the parties shall execute and record in the Official Records a modification of the Memorandum with respect to the Master Lease.

## **ARTICLE XXII**

### **QUIET POSSESSION**

Landlord covenants that Tenant, upon payment of the rental herein reserved, and so long as no event of default shall have occurred and be continuing, shall and may at all times, for itself and its subtenants, peaceably and quietly have, hold and enjoy the Premises during the Term of this Lease.

## **ARTICLE XXIII**

### **SIGNS**

Tenant may not erect or affix permanent or temporary signage on or about the Premises without the prior written reasonable approval of Landlord as to content, number, color, size, type, quality, location, materials and graphics provided, however, that such signage must also comply with any applicable Restrictions, covenants, conditions and restrictions and all applicable laws, rules, regulations and ordinances and shall not be used for advertising of any type. Tenant shall be responsible, at its sole cost and expense, for maintaining and repairing any such signage. Upon the expiration or earlier termination of this Lease, Tenant shall remove, at Tenant's sole cost and expense, all such signage from the Premises. If Tenant fails to so remove such signage, Landlord may do so and charge the cost of such removal to Tenant. The foregoing obligations shall survive the expiration or earlier termination of this Lease.

## **ARTICLE XXIV**

### **MASTER LEASE(S)**

During the Term, Tenant shall have the right, from time to time, to describe proposed real estate projects for development upon the Premises that would be the subject of a Master Lease. Landlord and Tenant shall negotiate the terms and conditions of any proposed Master Lease, which shall include, without limitation, the Improvements, development scheduled, allocation of costs and risks, term (including extension or termination rights, if any), rental rate (including escalations, if any), use, maintenance obligations, sublease and assignment rights, and such other terms and conditions as Landlord and Tenant deem appropriate in their respective sole discretion. If the parties reach agreement on the terms of, and execute, a Master Lease prior to the termination of this Lease, then it shall bind the parties and be subject to the terms and conditions of this Lease except as expressly set forth therein.

**ARTICLE XXV**

**GENERAL PROVISIONS**

25.1 Notices. Any notice to be given or other document to be delivered by either party to the other hereunder may be delivered in person to either party, may be delivered by commercial express delivery service, facsimile or United States mail duly certified, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

To Landlord:           Mr. Edgar Cisneros  
                              City Manager  
                              City of Commerce  
                              2535 Commerce Way  
                              City of Commerce, CA 90040  
                              Email: ECisneros@ci.commerce.ca.us

With a copy to:       \_\_\_\_\_

                                  \_\_\_\_\_

                                  \_\_\_\_\_

                                  \_\_\_\_\_

To Tenant:             Silverado Management and Holding Company  
                              800 Silverado Street  
                              Suite 301  
                              La Jolla, CA 92037  
                              Attn.: Mr. Anthony Barkett

Either party hereto may from time to time by written notice to the other party designate a different address which shall be substituted for the one above specified. If any notice or other document is sent by certified mail, as aforesaid, the same shall be effective upon receipt at the appropriate address. The address to which notices are sent may be changed by providing notice thereof in the manner specified in this Section 25.1. From time to time, parties may designate attorneys that are authorized to provide notices on their behalf, which shall be valid until terminated by written notice from such party or such designated attorney.

## 25.2 Reservation of Discretion.

25.2.1 The Parties agree and acknowledge that nothing in this Lease in any respect does or shall be construed to affect or prejudice the exercise of the Landlord's discretion concerning consideration of any submittal by Tenant or any other party. Further, nothing in this Lease in any respect does or shall be construed to affect or prejudice Landlord's discretion to consider, negotiate, approve or disapprove any development or any required approval necessary by the laws, rules, and regulations governing the development of the Premises under any circumstances.

25.2.2 By its execution of this Lease, Landlord is not committing itself to or agreeing to undertake any other acts or activities requiring the subsequent independent exercise of discretion by the City or any Agency or department thereof. Except as expressly set forth in this Lease, Landlord shall not be responsible for any cost or expenses incurred by Tenant pursuant to this Lease, nor shall City be responsible for any potential lost profits of Tenant.

25.2.3 Tenant is aware, understands, and acknowledges that City is required by law to exercise its sole unfettered discretion in approving or denying any land use, development or building permit approvals required by Tenant. Neither this Lease nor any other agreement with Tenant obligates Landlord to approve, disapprove or consider any development entitlements for any project in a particular manner.

25.3 Litigation. In the event of the bringing of any action or suit by either party against the other arising out of this Lease, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees.

25.4 Waiver. No delay or omission by either party hereto in exercising any right or power accruing upon the non-compliance or failure of performance by either party hereto under the provisions of the Lease shall impair any such right or power to be construed to be a waiver thereof. A waiver by either party hereto of any of the covenants, conditions or agreements thereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions and conditions hereof.

25.5 Holding Over. If Tenant shall remain in possession of the Premises after the expiration or earlier termination of the Term of this Lease without the express written consent of Landlord, Tenant will be deemed to be occupying the Premises as a tenant-at-sufferance only subject to all covenants and obligations of this Lease and at a daily rental equal to \$5.00 per square foot per month that the Tenant has not surrendered per day, plus all other amounts of rent and all items of additional rent which are payable hereunder, during the period of any such holding over. Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a holdover or result in a renewal, and shall not affect Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise provided by law. If any property not belonging to Landlord remains at the Premises after the expiration of the term of this Lease, Tenant hereby authorizes Landlord, without liability for compensation or damages to Tenant, to retain all or any portion thereof (and title thereto shall thereupon be vested in Landlord), or remove such property

and make such disposition thereof as Landlord may desire. Tenant shall, upon demand by Landlord, pay Landlord for the expense of any such removal and disposition plus the cost of repair of any and all damages to the Premises resulting from or caused by such removal. In the event that such property belongs to someone other than Tenant, Tenant agrees to indemnify and hold Landlord harmless from all Claims in connection with or incident to any removal, exercise of dominion over and/or disposition of such property by Landlord. Tenant shall indemnify and hold Landlord harmless from any and all Claims resulting from Tenant's failure to surrender the Premises upon the expiration or earlier termination of the Lease.

25.6 Surrender. Subject to the provisions of Section 5.1, upon the end of the Term of this Lease, as provided herein, or any extension thereof, or sooner termination of this Lease, Tenant shall surrender and quitclaim to Landlord the Premises, together with any Improvements.

25.7 Lease Binding Upon Successors and Assigns. Subject to the limitations herein set forth, each of the terms, covenants and conditions of this Lease shall extend to and be binding on and inure to the benefit of not only Landlord and Tenant, but also each of their successors and assigns. Whenever in this Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the successors and assigns and the parties hereto the same as if in every case expressed.

25.8 Entry. Landlord reserves for itself and its agents the right to peaceably enter the Premises to inspect the same, to submit the Premises to prospective purchasers, lenders or tenants, to post notices of non-responsibility and to take such other actions and perform such duties as Landlord may be required or permitted under this Lease provided that Landlord shall use all reasonable efforts to not interfere unreasonably with the business of Tenant. Tenant hereby waives any claim for damages or for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned by Landlord's entry except to repair any damage to property resulting therefrom. Any entry to the Premises obtained by Landlord by any means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof. Except in the event of an emergency, (i) Landlord shall not enter the Premises during non-business hours, and (ii) Landlord shall provide Tenant not less than twenty-four (24) hours prior notice before entering the Premises.

25.9 Relationship of Parties. The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the conduct of Tenant's business or otherwise, and that the provisions of any agreement between Landlord and Tenant relating to rent are solely for the purpose of providing a method whereby rental payments are to be measured and ascertained.

25.10 Time of the Essence. Time is expressly declared to be of the essence of this Lease with regard to all obligations hereunder.



25.11 Quitclaim. At the expiration or earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord within ten (10) days after written demand from Landlord to Tenant, any quitclaim deed or other document required by any reputable title company to remove the cloud of this Lease from the Premises.

25.12 Number and Gender. Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "**Person**" shall include corporation, firm or association. If there be more than one tenant, the obligations imposed under this Lease upon Tenant shall be joint and several.

25.13 Headings and Titles. The section headings of this Lease are inserted as a matter of convenience and references only and in no way define, limit or describe the scope or intent of this Lease or in any way effect the terms and provisions hereof.

25.14 Covenants and Conditions. Each of the covenants in this Lease shall be deemed and construed as conditions and each and every covenant shall be deemed covenants running with the land.

25.15 Entire Agreement. This Lease contains the final expression of and the entire agreement between the parties hereto with respect to the matters covered hereby, and no other previous agreement, statement or promise made by any party hereto which is not contained herein shall be binding or valid.

25.16 Partial Invalidity. If any term, provision, condition or covenant of this Lease, or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Lease, or the application of such term, provision, condition or covenant to Persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

25.17 Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State of California, without regard to choice of law provisions.

25.18 Modifications. Any alteration, change or modification of or to this Lease, in order to become effective, shall be made by written instrument or endorsement hereon and in each such instance executed on behalf of each party hereto.

25.19 Brokers. Landlord represents and warrants to Tenant, and Tenant represents and warrants to Landlord, that no broker or finder has been engaged by it, respectively, in connection with any of the transactions contemplated by this Lease, or to its knowledge is in any way connected with any of such transactions. In the event of any such claims for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Lease, Tenant shall indemnify, save harmless and defend Landlord from and against such claims if they shall be based upon any statement or representation or agreement by Tenant, and

Landlord shall indemnify, save harmless and defend Tenant if such claims shall be based upon any statement, representation or agreement made by Landlord.

25.20 Execution of Lease. The submission of this Lease to Tenant for examination or execution does not constitute a reservation of or option on the Premises, or an agreement of Landlord to lease the Premises. This Lease shall become effective as a Lease, and Landlord shall become obligated hereunder, only upon the execution and delivery of this Lease by both parties, which neither party shall have any obligation to do. Submission of this Lease to Tenant in no way constitutes an offer to lease by Landlord.

25.21 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the rent payments herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

25.22 Construction. It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Lease (other than this Lease and the exhibits attached hereto), and that this Lease supersedes and cancels any and all previous negotiations, arrangements, representations, brochures, displays, projections, estimates, agreements and understandings, if any, made by or between Landlord and Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret, construe, supplement or contradict this Lease, including, without limitation, any term sheet or letter of intent. The parties hereto hereby acknowledge and agree that (a) each party hereto is of equal bargaining strength, (b) each such party has actively participated in the drafting, preparation and negotiation of this Lease, (c) each such party has been (or has had the opportunity to be) represented by, and consulted, with such party's own, independent counsel, and such other professional advisors as such party has deemed appropriate, relating to any and all matters contemplated under this Lease, (d) each such party and such party's counsel and advisors have reviewed (or have had the opportunity to review) this Lease, (e) each such party has agreed to enter into this Lease following such review and the rendering of such advice (or the opportunity to receive such advice), and (f) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Lease, or any portions hereof, or any amendments hereto. The parties agree that any deletion of language from this Lease prior to its mutual execution by Landlord and Tenant shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language.

25.23 Authority. Tenant does hereby represent and warrant to Landlord that Tenant has all requisite power and authority to own, lease, hold and operate properties and conduct business in the State of California.

25.24 Exhibits. All Exhibits attached to this Lease are hereby incorporated herein by this reference.

25.25 ADA Disclosure. Landlord hereby represents to Tenant that the Premises has not undergone inspection by a Certified Access Specialist (as such term is defined in California Civil Code Section 1938) and, no Certified Access Specialist has determined whether the Premises currently meets all applicable construction related accessibility standards pursuant to California Civil Code Section 55.53. Tenant assumes all risks that the Premises does not comply with all applicable construction related accessibility standards pursuant to California, Federal or local law, and shall be solely responsible for the cost of any modifications required to comply therewith.

25.26 Municipal Laws. Within thirty (30) days after the Effective Date, the parties shall make such additions, deletions, or modifications to this Agreement as shall be specified by Landlord's City Attorney to make this Lease comply with any applicable laws, rules, regulations or ordinances that apply to Landlord, as determined by Landlord's City Attorney. The parties shall enter into such amendment within such thirty (30) day period. If Tenant refuses to timely execute such an amendment in form and content acceptable to Landlord, then this Lease shall automatically terminate.

[Balance of page intentionally left blank. Signatures appear on next page.]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date and year first set forth above.

**“LANDLORD”**

THE CITY OF COMMERCE,  
a municipality organized under the laws of the  
State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_

**“TENANT”**

SILVERADO MANAGEMENT AND  
HOLDING COMPANY, a Nevada corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT “A”**

**SITE PLAN**

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF PROPERTY**

REAL PROPERTY IN THE CITY OF COMMERCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

TENTATIVE PARCEL MAP NO. (TO FOLLOW), BEING A SUBDIVISION OF THE FOLLOWING:

THAT PORTION OF THE RANCHO SAN ANTONIO, IN THE CITY OF COMMERCE, AS SHOWN ON MAP THEREOF RECORDED IN BOOK 1, PAGE 389 OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWESTERLY LINE OF WASHINGTON BOULEVARD, 90 FEET IN WIDTH, DESCRIBED AS PARCEL NO. 1 IN DEED TO THE COUNTY OF LOS ANGELES, RECORDED AUGUST 29, 1939 AS DOCUMENT NO 1085, IN BOOK 16836, PAGE 241, OFFICIAL RECORDS AND AS WIDENED BY DEED DATED JULY 25, 1973 FOR ROAD PURPOSES, RECORDED JANUARY 23, 1974 AS INSTRUMENT NO. 2907, OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WITH THE SOUTHWESTERLY LINE OF THAT CERTAIN 50 FOOT WIDE RAILWAY RIGHT-OF-WAY CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, BY DEED RECORDED APRIL 07, 1953 AS DOCUMENT NO. 3406, IN BOOK 41412, PAGE 331, OFFICIAL RECORDS AND REFERRED TO THEREIN AS PARCEL NO. 1, THENCE ALONG SAID RIGHT-OF-WAY LINE NORTH 38° 35' 15" WEST 574.81 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 384.27 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE AND SAID CURVE AN ARC DISTANCE OF 453.13 FEET, THROUGH A CENTRAL ANGLE OF 64° 52' 43" TO A TANGENT POINT ON THE SOUTHEASTERLY LINE OF THAT CERTAIN 20.00 FEET WIDE RIGHT-OF-WAY CONVEYED TO STANDARD OIL COMPANY BY DEED RECORDED ON NOVEMBER 10, 1948 AS DOCUMENT NO. 2014, IN BOOK 28699, PAGE 283, OFFICIAL RECORDS; THENCE TANGENT ALONG SAID SOUTHEASTERLY LINE SOUTH 26° 17' 28" WEST 707.99; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE SOUTH 63°42' 32" WEST 20.00 FEET TO THE SOUTHEASTERLY LINE OF TRACT NO. 7185 AS SHOWN ON MAP RECORDED IN BOOK 135, PAGES 65 TO 80 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID SOUTHEASTERLY TRACT LINE SOUTH 26° 21' 20" WEST 300.00 FEET TO THE NORTHEASTERLY LINE OF TELEGRAPH ROAD, FORMERLY ANAHEIM-TELEGRAPH ROAD, 100 FEET IN WIDTH, AS WIDENED BY DECREE OF CONDEMNATION, A CERTIFIED COPY OF WHICH IS RECORDED IN BOOK 9983, PAGE 296, OFFICIAL RECORDS; THENCE ALONG THE SAID NORTHEASTERLY LINE

OF TELEGRAPH ROAD SOUTH 38° 35' 15" EAST 408.03 FEET; THENCE CONTINUING ALONG SAID WASHINGTON BOULEVARD NORTHERLY LINE, SOUTH 75° 50' 47" EAST 33.81' TO THE NORTHWESTERLY LINE OF SAID WASHINGTON BOULEVARD, 90.00 FEET IN WIDTH; THENCE ALONG SAID NORTHWESTERLY LINE OF WASHINGTON BOULEVARD NORTH 70° 48' 46" EAST 71.43 TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 955.00 FEET; THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE AND SAID CURVE AN ARC DISTANCE OF 323.27 FEET, THROUGH A CENTRAL ANGLE OF 19° 23' 41"; THENCE TANGENT TO SAID CURVE, ALONG ON THE NORTHWESTERLY LINE OF SAID WASHINGTON BOULEVARD, 90 FEET WIDE, NORTH 51° 25' 05" EAST 295.03' TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL OIL, GAS AND OTHER PETROLEUM OR MINERAL SUBSTANCES IN SAID LAND, BUT WITHOUT THE RIGHT OF SURFACE ENTRY TO A DEPTH OF 100 FEET BELOW THE SURFACE THEREOF, AS RESERVED BY CENTRAL MANUFACTURING DISTRICT, INC., A CORPORATION, IN DEED RECORDED NOVEMBER 02, 1953 IN BOOK 43061, PAGE 149, OFFICIAL RECORDS, AND IN A DEED RECORDED SEPTEMBER 29, 1954 IN BOOK 45712, PAGE 175, OFFICIAL RECORDS.

SAID LAND IS ALSO SHOWN AS PARCEL A OF C.O.C. 12-05 CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 03, 2012 AS INSTRUMENT NO. 20120198998 OF OFFICIAL RECORDS.

APN: 6336-010-908

**EXHIBIT "C"**

**LEGAL DESCRIPTION OF PREMISES**

REAL PROPERTY IN THE CITY OF COMMERCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE RANCHO SAN ANTONIO, IN THE CITY OF COMMERCE, AS SHOWN ON MAP THEREOF, RECORDED IN BOOK 1, PAGE 389 OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND BEING A PORTION OF PARCEL A OF CERTIFICATE OF COMPLIANCE 12-05 RECORDED FEBRUARY 3, 2012 AS INSTRUMENT NO. 20120198998 OF OFFICIAL RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**PARCEL 1**

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF THAT CERTAIN 50-FOOT WIDE RAILWAY RIGHT-OF-WAY CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, BY DEED RECORDED APRIL 7, 1953 AS DOCUMENT NO. 3406, IN BOOK 41412, PAGE 331, OFFICIAL RECORDS OF SAID COUNTY, AND REFERRED TO THEREIN AS PARCEL NO. 1, DISTANT THEREON 210.23 FEET FROM THE NORTHWESTERLY LINE OF WASHINGTON BOULEVARD, 90- FEET IN WIDTH, DESCRIBED AS PARCEL NO. 1 IN DEED TO THE COUNTY OF LOS ANGELES, RECORDED AUGUST 29, 1939 AS DOCUMENT NO. 1085, IN BOOK 16836, PAGE 241, OFFICIAL RECORDS OF SAID COUNTY, AND AS WIDENED BY DEED DATED JULY 25, 1973 FOR ROAD PURPOSES, RECORDED JANUARY 23, 1974 AS INSTRUMENT NO. 2907, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID RIGHT-OF-WAY LINE NORTH 38°41'41" WEST 364.81 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 384.27 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY AND SAID CURVE AN ARC DISTANCE OF 435.27 FEET, THROUGH A CENTRAL ANGLE OF 64°54'00" TO A TANGENT POINT ON THE SOUTHEASTERLY LINE OF THAT CERTAIN 20.00 FOOT WIDE RIGHT-OF-WAY CONVEYED TO STANDARD OIL COMPANY BY DEED RECORDED NOVEMBER 10, 1948 AS DOCUMENT NO. 2014, IN BOOK 28699, PAGE 283, OFFICIAL RECORDS OF SAID COUNTY; THENCE TANGENT ALONG SAID SOUTHEASTERLY LINE SOUTH 26°12'19" WEST 500.00 FEET; THENCE SOUTH 38°41'41" EAST 287.47 FEET, THENCE SOUTH 00°51'34" WEST 20.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 120.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 5°50'54" WEST; THENCE EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 119.70 FEET, THROUGH A CENTRAL ANGLE OF 57°09'13"; THENCE SOUTH 38°41'41" EAST 97.00 FEET; THENCE NORTH 51°18'19" EAST 189.34 FEET TO THE POINT OF BEGINNING.

CONTAINS 3.033 ACRES, MORE OR LESS.



PARCEL 2

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF THAT CERTAIN 20.00 FOOT WIDE RIGHT-OF-WAY CONVEYED TO STANDARD OIL COMPANY BY DEED RECORDED NOVEMBER 10, 1948 AS DOCUMENT NO. 2014, IN BOOK 28699, PAGE 283, OFFICIAL RECORDS OF SAID COUNTY, DISTANT THEREON 500.00 FEET FROM THE SOUTHWESTERLY LINE OF THAT CERTAIN 50-FOOT WIDE RAILWAY RIGHT-OF-WAY CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, BY DEED RECORDED APRIL 7, 1953 AS DOCUMENT NO. 3406, IN BOOK 41412, PAGE 331, OFFICIAL RECORDS OF SAID COUNTY, AND REFERRED TO THEREIN AS PARCEL NO. 1; THENCE CONTINUING ALONG SAID SOUTHEASTERLY RIGHT-OF -WAY LINE SOUTH 26°12'19" WEST 207.96 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE NORTH 63°47'41" WEST 20.00 FEET TO THE SOUTHEASTERLY LINE OF TRACT NO. 7185 AS SHOWN ON MAP RECORDED IN BOOK 135, PAGES 65 THROUGH 80 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID SOUTHEASTERLY LINE OF TRACT NO. 7185 SOUTH 26°12'19" WEST 78.40 FEET; THENCE SOUTH 38°41'41" EAST 230.25 FEET, THENCE SOUTH 83°08'28" EAST 5.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 232.50 FEET, A RADIAL TO SAID POINT BEARS SOUTH 56°17'26" EAST; THENCE NORTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 27.68 FEET, THROUGH A CENTRAL ANGLE OF 6°49'13"; THENCE NORTH 26°53'22" EAST 83.89 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 158.00 FEET; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 148.01 FEET, THROUGH A CENTRAL ANGLE OF 53°40'22" TO THE BEGINNING OF A TANGENT COMPOUND CURVE, HAVING A RADIUS OF 120.00 FEET, THE RADIUS POINT OF WHICH BEARS SOUTH 9°26'17" EAST; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 7.52 FEET, THROUGH A CENTRAL ANGLE OF 3°35'23"; THENCE NORTH 00°51'34" EAST 20.00 FEET; THENCE NORTH 38°41'41" WEST 287.47 FEET TO THE POINT OF BEGINNING.

CONTAINS 1.486 ACRES, MORE OR LESS.

**EXHIBIT “D”**

**FORM OF MEMORANDUM OF LEASE**

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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(Above Space for Recorder's Use Only)

**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE (this "**Memorandum**") is made and entered into as of \_\_\_\_\_, 2019, by and between THE CITY OF COMMERCE, a municipality organized under the laws of the State of California ("**Landlord**"), and SILVERADO MANAGEMENT AND HOLDING COMPANY, a Nevada corporation ("**Tenant**"), with reference to the following facts:

A. Landlord and Tenant are the landlord and tenant, respectively, under that certain Ground Lease, dated as of \_\_\_\_\_, 2019 (the "**Lease**"), relating to certain real property located in the County of Los Angeles, State of California, more particularly described in **Exhibit "A"** attached hereto (the "**Premises**").

B. Pursuant to Article 18 of the Lease, Landlord has granted to Tenant a limited right of first refusal to purchase (the "**Right of First Refusal**"), with respect to all or any portion of the Premises and the improvements and certain other property located thereon.

C. Landlord and Tenant desire to have this Memorandum recorded in the Official Records of Los Angeles County, California, in order to put interested parties on notice of the estate of the Tenant in the Premises and the Right of First Refusal.

NOW, THEREFORE, in consideration of the rents and covenants provided for in the Lease to be performed by the Tenant, the Landlord hereby demises and leases the Premises to Tenant, subject to the terms and conditions of the Lease.

1. **Term.** The term of the Lease is thirty (30) years commencing on \_\_\_\_\_, 2019, and terminating thereafter, all subject to and on terms and conditions more fully set forth in the Lease.

2. **Right of First Refusal.** Landlord has granted, and hereby grants, to Tenant the Right of First Refusal described in Recital B above during the time, for the price, and on the terms and conditions contained in the Lease, the terms and conditions of which are

incorporated herein by this reference in their entirety. The Right of First Refusal must be exercised on or before the dates specified in the Lease.

3. **Use Restrictions.** The Lease contains the following restrictions upon use:

3.1 The Parties agree and acknowledge that nothing in this Lease in any respect does or shall be construed to affect or prejudice the exercise of the Landlord's discretion concerning consideration of any submittal by Tenant or any other party. Further, nothing in this Lease in any respect does or shall be construed to affect or prejudice Landlord's discretion to consider, negotiate, approve or disapprove any development or any required approval necessary by the laws, rules, and regulations governing the development of the Premises under any circumstances.

3.2 By its execution of this Lease, Landlord is not committing itself to or agreeing to undertake any other acts or activities requiring the subsequent independent exercise of discretion by the City or any Agency or department thereof. Except as expressly set forth in this Lease, Landlord shall not be responsible for any cost or expenses incurred by Tenant pursuant to this Lease, nor shall City be responsible for any potential lost profits of Tenant.

3.3 Tenant is aware, understands, and acknowledges that City is required by law to exercise its sole unfettered discretion in approving or denying any land use, development or building permit approvals required by Tenant. Neither this Lease nor any other agreement with Tenant obligates Landlord to approve, disapprove or consider any development entitlements for any project in a particular manner.

4. **Incorporation of Lease.** All of the terms, conditions, provisions and covenants of the Lease are incorporated in this Memorandum by reference, as though written out in length herein. In the event of any conflict between the terms and provisions of this Memorandum and the Lease, the terms of the Lease shall govern.

[Balance of page intentionally left blank. Signatures appear on next page.]

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

**“LANDLORD”**

THE CITY OF COMMERCE,  
a municipality organized under  
the laws of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_

**“TENANT”**

SILVERADO MANAGEMENT AND  
HOLDING COMPANY, a Nevada corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PREMISES**

REAL PROPERTY IN THE CITY OF COMMERCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE RANCHO SAN ANTONIO, IN THE CITY OF COMMERCE, AS SHOWN ON MAP THEREOF, RECORDED IN BOOK 1, PAGE 389 OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND BEING A PORTION OF PARCEL A OF CERTIFICATE OF COMPLIANCE 12-05 RECORDED FEBRUARY 3, 2012 AS INSTRUMENT NO. 20120198998 OF OFFICIAL RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**PARCEL 1**

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF THAT CERTAIN 50-FOOT WIDE RAILWAY RIGHT-OF-WAY CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, BY DEED RECORDED APRIL 7, 1953 AS DOCUMENT NO. 3406, IN BOOK 41412, PAGE 331, OFFICIAL RECORDS OF SAID COUNTY, AND REFERRED TO THEREIN AS PARCEL NO. 1, DISTANT THEREON 210.23 FEET FROM THE NORTHWESTERLY LINE OF WASHINGTON BOULEVARD, 90- FEET IN WIDTH, DESCRIBED AS PARCEL NO. 1 IN DEED TO THE COUNTY OF LOS ANGELES, RECORDED AUGUST 29, 1939 AS DOCUMENT NO. 1085, IN BOOK 16836, PAGE 241, OFFICIAL RECORDS OF SAID COUNTY, AND AS WIDENED BY DEED DATED JULY 25, 1973 FOR ROAD PURPOSES, RECORDED JANUARY 23, 1974 AS INSTRUMENT NO. 2907, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID RIGHT-OF-WAY LINE NORTH 38°41'41" WEST 364.81 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 384.27 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY AND SAID CURVE AN ARC DISTANCE OF 435.27 FEET, THROUGH A CENTRAL ANGLE OF 64°54'00" TO A TANGENT POINT ON THE SOUTHEASTERLY LINE OF THAT CERTAIN 20.00 FOOT WIDE RIGHT-OF-WAY CONVEYED TO STANDARD OIL COMPANY BY DEED RECORDED NOVEMBER 10, 1948 AS DOCUMENT NO. 2014, IN BOOK 28699, PAGE 283, OFFICIAL RECORDS OF SAID COUNTY; THENCE TANGENT ALONG SAID SOUTHEASTERLY LINE SOUTH 26°12'19" WEST 500.00 FEET; THENCE SOUTH 38°41'41" EAST 287.47 FEET, THENCE SOUTH 00°51'34" WEST 20.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 120.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 5°50'54" WEST; THENCE EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 119.70 FEET, THROUGH A CENTRAL ANGLE OF 57°09'13"; THENCE SOUTH 38°41'41" EAST 97.00 FEET; THENCE NORTH 51°18'19" EAST 189.34 FEET TO THE POINT OF BEGINNING.

CONTAINS 3.033 ACRES, MORE OR LESS.

PARCEL 2

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF THAT CERTAIN 20.00 FOOT WIDE RIGHT-OF-WAY CONVEYED TO STANDARD OIL COMPANY BY DEED RECORDED NOVEMBER 10, 1948 AS DOCUMENT NO. 2014, IN BOOK 28699, PAGE 283, OFFICIAL RECORDS OF SAID COUNTY, DISTANT THEREON 500.00 FEET FROM THE SOUTHWESTERLY LINE OF THAT CERTAIN 50-FOOT WIDE RAILWAY RIGHT-OF-WAY CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, BY DEED RECORDED APRIL 7, 1953 AS DOCUMENT NO. 3406, IN BOOK 41412, PAGE 331, OFFICIAL RECORDS OF SAID COUNTY, AND REFERRED TO THEREIN AS PARCEL NO. 1; THENCE CONTINUING ALONG SAID SOUTHEASTERLY RIGHT-OF -WAY LINE SOUTH 26°12'19" WEST 207.96 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE NORTH 63°47'41" WEST 20.00 FEET TO THE SOUTHEASTERLY LINE OF TRACT NO. 7185 AS SHOWN ON MAP RECORDED IN BOOK 135, PAGES 65 THROUGH 80 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID SOUTHEASTERLY LINE OF TRACT NO. 7185 SOUTH 26°12'19" WEST 78.40 FEET; THENCE SOUTH 38°41'41" EAST 230.25 FEET, THENCE SOUTH 83°08'28" EAST 5.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 232.50 FEET, A RADIAL TO SAID POINT BEARS SOUTH 56°17'26" EAST; THENCE NORTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 27.68 FEET, THROUGH A CENTRAL ANGLE OF 6°49'13"; THENCE NORTH 26°53'22" EAST 83.89 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 158.00 FEET; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 148.01 FEET, THROUGH A CENTRAL ANGLE OF 53°40'22" TO THE BEGINNING OF A TANGENT COMPOUND CURVE, HAVING A RADIUS OF 120.00 FEET, THE RADIUS POINT OF WHICH BEARS SOUTH 9°26'17" EAST; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 7.52 FEET, THROUGH A CENTRAL ANGLE OF 3°35'23"; THENCE NORTH 00°51'34" EAST 20.00 FEET; THENCE NORTH 38°41'41" WEST 287.47 FEET TO THE POINT OF BEGINNING.

CONTAINS 1.486 ACRES, MORE OR LESS.