



CITY of BRISBANE

City Council Meeting Agenda

Thursday, February 16, 2023 at 7:30 PM • Hybrid Meeting 50 Park Place, Brisbane, CA

This meeting is compliant with the Ralph M. Brown act as amended by California Assembly Bill No. 361 effective September 16, 2021 providing for a public health emergency exception to the standard teleconference rules required by the Brown Act. The purpose of this is to provide a safe environment for the public, staff and Councilmembers, while allowing for public participation. Accordingly, the public may observe City Council meetings and/or address the Council using remote public comment options or have the option to attend City Council meetings in person. Please be advised that City Council members may continue to participate in the meeting remotely. The Council may take action on any item listed in the agenda.

TO ADDRESS THE COUNCIL

IN PERSON

Location: 50 Park Place, Brisbane, CA 94005, Community Meeting Room

Masks are no longer required but are highly recommended in accordance with California Department of Health Guidelines. To maintain public health and safety, please do not attend in person if you are experiencing symptoms associated with COVID-19 or respiratory illness.

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The agenda materials may be viewed online at www.brisbaneca.org at least 24 hours prior to a Special Meeting, and at least 72 hours prior to a Regular Meeting.

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Webinar ID: 991 9362 8666

Call In Number: 1 (669) 900 9128

SPECIAL ASSISTANCE

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WRITINGS THAT ARE RECEIVED AFTER THE AGENDA HAS BEEN POSTED

Any writings that are received after the agenda has been posted but before 4 p.m. of the day of the meeting will be available for public inspection at the front lobby in City Hall and on the internet (www.brisbaneca.org/meetings). Any writings that are received after the agenda has been posted but after 4 p.m. of the day of the meeting will be available on the internet at the start of the meeting (www.brisbaneca.org/meetings), at which time the materials will be distributed to the Council.

7:30 P.M. CALL TO ORDER – PLEDGE OF ALLEGIANCE

ROLL CALL

ADOPTION OF AGENDA

AWARDS AND PRESENTATION

ORAL COMMUNICATIONS NO. 1

CONSENT CALENDAR

- A. Approve Minutes of City Council Closed Session Meeting of February 2, 2023
- B. Approve Minutes of City Council Meeting of February 2, 2023
- C. Approve Resolution Amending the Current Public Works Maintenance Worker I/II and Public Works Maintenance Lead Worker Job Descriptions
- D. Request to Seek Donations/Sponsorships for the 2023 Summer Concerts in the Park Series
- E. Introduce an Ordinance, waiving first reading, amending Section 13.04.420 of Chapter 13.04 of the Brisbane Municipal Code pertaining to “Sewer System”
(Introduction of this Ordinance is not subject to further environmental review because it is not a project under the California Environmental Quality Act (CEQA). CEQA

Guidelines, section 15378 (b) (2). The purpose of this ordinance is to update the municipal code chapter relating to joint sewer laterals.)

PUBLIC HEARING

- F. SP-CRO Sierra Point Commercial District; Zoning Text Amendment 2022-RZ-4; Zoning text amendment to Title 17, Chapter 17.18 of the Brisbane Municipal Code (BMC) to update existing research and development use provisions and performance standards; and finding that this project is exempt from environment review under CEQA Guidelines Section 15183(a)

(It is being recommended for Council to decide on the draft ordinance to amend the SP-CRO Sierra Point Commercial District Research & Development provisions)

NEW BUSINESS

- G. Consider Approval of First Amendment to Lease for Property at 25 Park Place, Brisbane, CA. Approval of this First Amendment is exempt from further review under the California Environmental Quality Act because it is not a “project”. Section 15378 (b), CEQA Guidelines.

STAFF REPORTS

- H. City Manager’s Report on Upcoming Activities

MAYOR/COUNCIL MATTERS

- I. Countywide Assignments and Subcommittee Reports
- J. Written Communications

ORAL COMMUNICATIONS NO. 2

ADJOURNMENT

A.

File Attachments for Item:

A. Approve Minutes of City Council Closed Session Meeting of February 2, 2023



BRISBANE CITY COUNCIL**ACTION MINUTES**

CITY COUNCIL MEETING**THURSDAY, FEBRUARY 2, 2023***VIRTUAL MEETING***CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Davis called the meeting to order at 7:34 P.M. and led the Pledge of Allegiance.

ROLL CALL

Councilmembers present: Councilmembers Cunningham, Lentz, Mackin, O'Connell and Mayor Davis

Councilmembers absent: None

Staff Present: City Manager Holstine, City Clerk Padilla, City Attorney McMorrow, Community Development Director Swiecki, Senior Planner Ayres, Senior Planner Johnson, Finance Director Yuen, Human Resources Administrator Partin, Parks and Recreation Director Leek, Parks and Recreation Supervisor Houghton, Police Commander Garcia, Inspector Preston, and Administrative Analyst Ibarra

REPORT OUT CLOSED SESSION

City Attorney McMorrow reported that legal counsel was given direction on the pending litigation cases and no action was taken.

ADOPTION OF AGENDA

Mayor Davis requested to move New Business G ahead of the Public Hearing Item F. Councilmember Lentz made a motion, seconded by Councilmember Mackin, to approve the agenda as amended.

Ayes: Councilmember Cunningham, Lentz, Mackin, O'Connell and Mayor Davis

Noes: None

Absent: None

Abstain: None

AWARDS AND PRESENTATION

A. Proclamation Recognizing Black History Month

Mayor Davis proclaimed February 2023 as Black History Month acknowledging the value African American residents add to the strength, fortitude, and resilience of our City.

ORAL COMMUNICATIONS NO. 1

Jessee Kerekes and Nancy Lacsamana asked the City to support a harm reduction program of distributing Narcan to reverse the effects of an opiate overdose.

Council members took a brief break for technical difficulties.

Michele Salmon spoke on the importance of calling 911 first to respond to opiate overdose.

CONSENT CALENDAR

- B. Approve Minutes of City Council Special Meeting of January 12, 2023
- C. Approve Minutes of City Council Meeting of January 19, 2023
- D. Approve Resolution Amending the Current Firefighter and Firefighter/Paramedic Job Description
- E. Adoption of a Resolution Declaring the Continued Need to Conduct City Council, Commission and Committee Meetings Remotely or in a Hybrid Fashion Due to Health and Safety Concerns for the Public

Councilmember Lentz made a motion, seconded by Councilmember Cunningham, to approve Consent Calendar Items B-E.

Ayes: Councilmember Cunningham, Lentz, Mackin, O'Connell and Mayor Davis

Noes: None

Absent: None

Abstain: None

NEW BUSINESS

- F. Consider Approval Moving Forward with the Center for Age Friendly Excellence's assistance to apply for the Age Friendly Communities certification under the AARP/WHO Network of Age Friendly Communities

Parks and Recreation Leek introduced Ann O'Brien from the Center for Age-Friendly Excellence (CAFÉ). Over the next several months, Brisbane's Parks and Recreation lead staff would work closely with CAFÉ, who will

provide technical assistance, consultation, applied research access, community organizing synergy, coordination of the assessment process, and will also help write the official application to be submitted to WHO for Brisbane to receive the global Age Friendly Cities designation.

After some Council questions, Sophia Brink from San Mateo County Supervisor Canepa's Office, spoke in support of the partnership with CAFÉ.

Paul Bouscal spoke how the elderly population are lonely and would benefit from transportation support to San Bruno Mountain.

Councilmember spoke about their concern that the scope of the work will be too heavily focused on Parks and Recreation activities. After further council discussion, Councilmember Cunningham made a motion, seconded by Councilmember Lentz, to approve moving forward with the Center for Age Friendly Excellence's assistance to apply for the Age Friendly Communities certification under the AARP/WHO Network of Age Friendly Communities.

Ayes: Councilmember Cunningham, Lentz, Mackin, O'Connell and Mayor Davis

Noes: None

Absent: None

Abstain: None

PUBLIC HEARING

F. Self-certification and Adoption the 2023-2031 Housing Element via a Resolution and Finding These Actions Categorically Exempt from Environmental Review Under CEQA under CEQA Guidelines Sections 15061(b)(3) and 15183(d)

(It is being recommended to adopt the 2023-2031 Housing Element of the General Plan, including proposed goals, policies and programs to promote the construction, rehabilitation and conservation of housing throughout the eight-year planning period consistent with the provisions of State law. The Draft Element identifies sites that are currently zoned or planned to be rezoned to meet State-mandated housing projections (Regional Housing Needs Allocation, or RHNA) for Brisbane over the 2023-2031 planning period.)

Senior Planners Johnson and Ayres reported that The draft 2023-2031 Housing Element was published on August 8, 2022. Following a formal 30-day public comment period and the Planning Commission's public hearing and recommendation on October 6, 2022, City Council held a public hearing and directed staff to submit the draft Housing Element to the Department of Housing and Community Development (HCD) for an initial 90-day review period. HCD received the draft Housing Element on October 7, 2022 and provided written comments on the Element's compliance with State Housing Element law on January 4, 2023. (See Attachment 1). Per State law, cities in the Bay Area have until January 31, 2023, plus a 120-day grace period (or May 31, 2023) to adopt an Element and for that adopted Element to be "certified" as compliant with State law by HCD. It is being recommended to adopt the 2023-2031 Housing Element of the General Plan.

After council questions, the Council took a brief break due to technical difficulties.

Mayor Davis opened the public hearing.

Paul Bouscal is concerned about the Brisbane Acres and asked the Council to change the Brisbane Acres' designation as deeded open space.

Dana Dillworth asked Council not to pass this General Plan Amendment and findings under the threat of builder's remedy.

Tom Heinz said this plan is egregious and it is not right to spend public funds to clean up private property.

Greg Vilkin from Baylands Development said he is proud to play our role in increasing the housing stock.

Keith Diggs commented that the Council should take its time and not rush passing the plan.

Louis Mirante from Bay Area Council spoke on the need for accountable timelines and work plans.

Ali Sapirman asked not to certify the housing element and add a concrete timeline to development.

Jeremy Levine policy manager of the Housing Leadership Counsel commented that the timeline is still long and the incentives are too few.

Michele Salmon thanked the City Council for their wisdom for making cautious decisions for the benefit of everyone.

Clerk Padilla noted for the records that Glenn Fieldman and Danny Ames wrote correspondences to the Council about the item.

Danny Ames commented that his letter wanted the Council to look at the impact of sea level rise.

Paul Bouscal asked why doesn't the City offer Baylands a density transfer to industrial park.

Councilmember O'Connell made a motion, seconded by Councilmember Cunningham, to close the public hearing.

Ayes: Councilmember Cunningham, Lentz, Mackin, O'Connell and Mayor Davis

Noes: None

Absent: None

Abstain: None

Dana Dillworth added that there is an active lawsuit by cities against the Department of Housing and Community Development (HCD) and its Regional Housing Needs Assessments (RHNA).

After Councilmember discussion, Councilmember Lentz made a motion, seconded by Councilmember O'Connell, to self-certify and adoption the 2023-2031 Housing Element via a Resolution and Finding These Actions Categorically Exempt from Environmental Review Under CEQA under CEQA Guidelines Sections 15061(b)(3) and 15183(d).

Ayes: Councilmember Cunningham, Lentz, Mackin, O’Connell and Mayor Davis

Noes: None

Absent: None

Abstain: None

NEW BUSINESS

- H. Consider Approving a Resolution for the 2023 California Climate Investments (CCI) Fire Prevention Grant funding opportunity through CAL FIRE for vegetation management and wildfire preparedness.

Inspector Preston that this item is a formality to apply for a public education and roadway fuel reduction grant through CAL FIRE for vegetation management and wildfire preparedness.

Paul Bouscal advocated to include inspection of private and industrial properties with large trees.

Michele Salmon commented that it is difficult to know which trees are a danger to the community.

Councilmember Lentz made a motion, seconded by Councilmember Cunningham, to adopt Resolution for the 2023 California Climate Investments (CCI) Fire Prevention Grant funding opportunity through CAL FIRE for vegetation management and wildfire preparedness.

Ayes: Councilmember Cunningham, Lentz, Mackin, O’Connell and Mayor Davis

Noes: None

Absent: None

Abstain: None

STAFF REPORTS

- H. City Manager’s Report on Upcoming Activities

City Manager Holstine reported on upcoming activities in the City.

MAYOR/COUNCIL MATTERS

- I. Request from Commercial /Applicant/property owner to meet the Mayor and City Manager

Councilmembers were in favor of the Mayor and the City Manager meeting with Healthpeak. The Mayor will report back to the rest of the council after their meeting.

Mayor Davis made the motion, seconded by Councilmember O’Connell to extend the meeting until 10:40 P.M.

Ayes: Councilmember Cunningham, Lentz, Mackin, O’Connell and Mayor Davis

Noes: None

Absent: None

Abstain: None

J. Countywide Assignments and Subcommittee Reports

Councilmember Mackin will replace Councilmember O'Connell in the Sierra Point Parkway and Open Space Committee during the Master Planning Process.

Councilmembers gave a report on their county activities and subcommittee meetings.

Mayor Davis made a motion, seconded by Councilmember O'Connell to extend the meeting until 10:45 P.M.

Ayes: Councilmember Cunningham, Lentz, Mackin, O'Connell and Mayor Davis

Noes: None

Absent: None

Abstain: None

K. Written Communications

Written communication was received from the following members of the public :

Dana Dillworth (2/2/23) Thursday 2/2 Council Meeting to Adopt Housing Element 7:30pm

Tony Verreos (1/31/23) Cities suing state of CA

ORAL COMMUNICATIONS NO. 2

Paul Bouscal emphasized the importance of the tree danger issue especially Eucalyptus Trees.

Michele Salmon shared her concern about the Notice of Preparation to make comments on the EIR for the Orchard Partners' application and felt that the RHNA numbers is not equitable to the City.

ADJOURNMENT

Mayor Davis adjourned the meeting at 10:45 P.M.



Ingrid Padilla, City Clerk

B.

File Attachments for Item:

B. Approve Minutes of City Council Meeting of February 2, 2023



BRISBANE CITY COUNCIL

ACTION MINUTES

BRISBANE CITY COUNCIL CLOSED SESSION MEETING

THURSDAY, FEBRUARY 2, 2023

VIRTUAL MEETING

6:30 P.M. CLOSED SESSION

A. Approval of the Closed Session Agenda

B. Public Comment. Members of the public may address the Councilmembers on any item on the closed session agenda

C. Adjournment into Closed Session

D. CONFERENCE WITH LEGAL COUNSEL—PENDING LITIGATION

Government Code, Section 54956.9 (d) (1).

Number of Cases: Two

- **BRE SH Brisbane Owner, LLC v. City of Brisbane, San Mateo County Superior Court, Case No. 22-CIV-01112**
- **City of Brisbane v. CA High-Speed Rail Authority (Superior Court of Sacramento County, Case No. 80004010)**

Mayor Davis called the meeting to order at 6:36 P.M.

No member of the public wished to make public comment.

Councilmember Cunningham made a motion, seconded by Councilmember Lentz to approve the agenda as it stands. The motion was carried unanimously by all present.

Ayes: Councilmembers Cunningham, Lentz, Mackin O'Connell and Mayor Davis

Noes: None

Absent: None

Abstain: None

Mayor Davis adjourned the meeting into Closed Session.

REPORT OUT CLOSED SESSION

City Attorney McMorro reported that updates were provided to Council, legal counsel was given direction and no action was taken at Closed Session regarding Item D.

ADJOURNMENT

The meeting was adjourned at 7:19 P.M.

C.

File Attachments for Item:

C. Approve Resolution Amending the Current Public Works Maintenance Worker I/II and Public Works Maintenance Lead Worker Job Descriptions



CITY COUNCIL AGENDA REPORT

Meeting Date: February 16, 2023

From: Abby Partin, Human Resources Administrator

Subject: Approve Resolution Amending the Current Public Works Maintenance Worker I/II and Public Works Maintenance Lead Worker Job Descriptions

Community Goal/Result

Fiscally Prudent, Safe Community

Purpose

To continue to provide high level of service from the Public Works Department and to ensure the community continues to receive excellent service by retaining and attracting exceptional employees in a financially prudent manner.

Recommendation

Approve Resolution amending the current Public Works Maintenance Worker I/II and Public Works Maintenance Lead Worker job descriptions.

Background

On or around September 2022, the Public Works Team Leaders met with the Public Works Director to discuss and update the Public Works Maintenance Workers I/II and Public Works Maintenance Lead Worker certification requirements to provide clear expectations for each classification and its sub-groups.

Discussion

Historically, the Marina Maintenance Worker, Park Facilities Maintenance Worker, and Public Works Maintenance Worker (Buildings and Grounds, Sewer and Water) I/II job descriptions were separate documents and did not include certification requirements. To better meet the department-wide needs going forward and for clarity purposes, staff is recommending a comprehensive Public Works Maintenance Worker I/II job description that encompasses all five (5) sub-groups- Parks Facilities, Marina, Buildings and Grounds, Sewer and Water, with descriptions of their unique specialties corresponding to their functions and varying certification requirements. The amended Public Works Maintenance Lead Worker job description has the same format and structure as the Maintenance Worker I/II listing the required certifications for each sub-group. The proposed changes for the two job descriptions were discussed with the General Employees Association group for any comments and questions as the incumbents are members of this employee group. The group had no concerns.

Classification	Proposed Change	Rationale
Parks Facilities Maintenance Worker I	add Water Distribution I (D1) within 12 months, Certified Pool Operator (CPO) within 18 months	D1 allows this position to be placed into on-call rotations; Pool Operator certificate is held by current employee, but not required in the job description
Parks Facilities Maintenance Worker II	add Water Distribution II (D2) or California Water Environment Association (CWEA) I/II or other as approved by Public Works Director (PWD)	Provides clear expectations for promotion to Maintenance Worker (MW) II.
Marina Maintenance Worker I	add D1 within 12 months	Allows this position to be placed into on-call rotations. Current employees hold this certification
Marina Maintenance Worker II	add D2 or CWEA I/II or other (e.g., CPO) as approved by PWD	Provides clear expectations for promotion to MWII.
PW Maintenance Worker I - Water	No changes	
PW Maintenance Worker II - Water	PWD may approve substitution for Class B California Driver's License (CDL) (e.g., CWEA I/II)	Water Team does not have vehicles requiring a Class B CDL to operate.
PW Maintenance Worker I - Sewer	add CWEA I within 18 months	This is an appropriate certification for Sewer Team.
PW Maintenance Worker II - Sewer	PWD may approve substituting CWEA II for D2. Clarify this is a "specified position" requiring Class B CDL	Higher sewer cert is more appropriate than higher water cert for this position. Operation of the Vector truck requires a Class B CDL.
PW Maintenance Worker I - Buildings and Grounds	No changes	
PW Maintenance Worker II - Buildings and Grounds	PWD may approve substitution for Class B CDL and for D2 (e.g., CPO)	Building and Grounds team does not have vehicles requiring a Class B CDL to operate. Other certificates are more appropriate than water certifications for this team.
Lead Maintenance Worker - Water	PWD may approve substitution for Class A or B CDL	Water Team does not have vehicles requiring a Class B CDL to operate.
Lead Maintenance Worker - Sewer	Clarify this is a "specified position" requiring Class B CDL	Operation of the Vector truck requires a Class B CDL.

Lead Maintenance Worker - Buildings and Grounds	add CPO, PWD may approve substitute for Certified Landscape Technician certificate and Qualified Applicator Certificate	The latter two certs are more appropriate for the Team Leader. Pool certificate is appropriate to supervise the Parks and Facilities MW.
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Fiscal Impact

There is no fiscal impact in adopting a Resolution that reflects updated position certification requirements.

Measure of Success

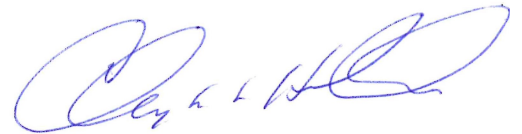
The City is able to maintain a stable and high quality workforce.

Attachments

Resolution 2023-XX



Abby Partin, Human Resources
Administrator



Clay Holstine, City Manager

RESOLUTION NO 2023-XX**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE
AMENDING RESOLUTION 2001-11 TO INCLUDE THE AMENDMENTS TO THE
CLASSIFICATIONS OF PUBLIC WORKS MAINTENANCE WORKER I/II AND
PUBLIC WORKS MAINTENANCE LEAD WORKER IN THE CLASS SPECIFICATION
MANUAL**

WHEREAS, on February 13, 2001, the City Council approved Resolution 2001-11 establishing the Classifications and Pay Plan and approving the class descriptions included in Exhibit “A” of said resolution for development of the Class Specification Manual; and

WHEREAS, the City Manager has established the need for the amendments in the classifications of Public Works Maintenance Worker I/II and Public Works Maintenance Lead Worker; and

WHEREAS, the class description amendments for Public Works Maintenance Worker I/II and Public Works Maintenance Lead Worker were developed in cooperation with and have been approved by the City Manager; and

WHEREAS, this newly developed class descriptions for Public Works Maintenance Worker I/II and Public Works Maintenance Lead Worker meet the requirements established Rule 6.02b of the City of Brisbane Personnel Rules and Regulations for the Class Specification Manual.

NOW, THEREFORE, the City Council of the City of Brisbane resolves as follows:

The class descriptions for the classifications of Public Works Maintenance Worker I/II and Public Works Maintenance Lead Worker in Exhibit “A” are approved for inclusion in the Class Specification Manual.

Madison Davis, Mayor

I hereby certify that the foregoing Resolution No. 2023-XX was duly and regularly adopted at a regular meeting of the Brisbane City Council on February 16, 2023, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Ingrid Padilla, City Clerk

CITY OF BRISBANE

PUBLIC WORKS LEAD MAINTENANCE WORKER

Definition

Under general supervision of the designated Public Works Supervisor, Team Leader or Harbormaster, leads a crew and personally performs a variety of semiskilled and skilled tasks involved in the construction, modifications, maintenance, repair and operation of City infrastructure, including streets, parks and landscaped areas, trees, storm and sanitary sewers, water and wastewater systems, and marina facilities; participates in the more complex public works construction and repair work; and does other duties and assignments as directed.

Class Characteristics

This experienced-level class has functional and technical responsibilities for a single crew of Maintenance Worker or Marina Maintenance Worker classes; works as a member of the crew and performs the more difficult and complex maintenance and repair tasks that require knowledge and skill in the general trade fields; and assists with supervising, training and directing of less experienced staff. This classification also performs any and all of the duties set forth in the lower-level classifications in the series.

This class is distinguished from the Public Works Team Leader in that the Team Leader has departmental and administrative support responsibilities, in addition to assigning, supervising, reviewing and evaluating the work of the Public Works Lead Maintenance Workers and the Public Works Maintenance Workers and Marina Maintenance Workers. This class is also distinguished from the Public Works Team Leader in that the latter has oversight for multiple crews, oversight of contractors, and administrative and fiscal oversight responsibility for specific programs and/or projects.

Examples of Duties (Illustrative Only)

Sewer Lead

- Excavate and prepare potholes and excavations related to utility line repair for patching on streets and alleys.
- Load cold and hot mix, asphalt and patching oil; apply and finishes as required.
- Use an airless paint sprayer, mix, thin and apply paint and stripes streets, crosswalks and stop sign bars; replace reflective pavement markers and street signs.
- Remove concrete, build forms and repair sidewalks and gutters that have been damaged and are trip hazards or need repair after water or wastewater line work; perform other concrete work around City buildings as required.
- Clean storm drains, sidewalks, and other appurtenances using a variety of hand and power tools and equipment.
- Maintain, clean, repair and flush underground storm and sanitary sewer collection systems; and install new service laterals.
- Operate a street sweeper on a regularly assigned schedule.
- Determine the location of underground lines and marks them accordingly.
- Apply pesticides, as required, if appropriately certified.

Public Works Lead Maintenance Worker

Page 2

Building and Grounds Lead

- Plant, water, fertilize and remove annual and perennial plantings and maintain landscaped areas in an attractive condition.
- Mow and rake grass areas; edge grass areas and remove weeds from landscaped and grass areas.
- Prune and hedge shrubs and trees in parks and street areas.
- Maintain playground equipment in a safe operating condition.
- If appropriately certified, apply herbicides and pesticides as required.
- Empty trash containers and remove trash from parks, landscaped areas and other City properties.
- Plant, trim, water, stake and maintain City trees; removes dead or unwanted trees.
- Maintain public facilities, shop areas and other buildings in a clean and orderly condition, performing regularly assigned custodial work.
- Perform basic remodeling to City facilities; paint the inside and outside of all City buildings; removes graffiti and repairs vandalism.
- Repair and replace plumbing fixtures, as required.
- Inspect and perform routine maintenance on HVAC equipment.
- Repair, replace and maintain interior and exterior lighting systems.

Water Lead

- Excavate and prepare potholes and excavations related to utility line repair for patching on streets and alleys.
- Load cold and hot mix, asphalt and patching oil; apply and finishes as required.
- Operate backhoe in digging trenches for pipe; operate trencher in digging narrow trenches; operate loader in loading truck; operate dump truck; set up tapping machines and tap into main lines.
- Set up and operate auger machine to make opening under highway and sidewalks.
- Measure and cut pipe.
- Install mains, service laterals, copper tubing, hydrants, valves, meters and meter boxes; read water meters.
- Determine location of underground lines and mark accordingly.
- Operate and repair valves as needed.
- Inspect, operate and maintain pump stations and water reservoirs.
- Read grade stakes for water service, meter height, and fire hydrants.

Marina Lead

- Repair docks, storage lockers, piers and access ramps; performs maintenance painting on all buildings and facilities and applies wood preservatives; repairs security gates as required.
- Rewire docks to meet tenant needs; maintains lighting circuits for boater safety and performs related basic electrical maintenance work.
- Maintain and repair pumps, irrigation and plumbing facilities.
- Greet and provides service and assistance to boat owners and visitors; ensures that Marina tenants and visitors have access and use of facilities as required; provides assistance to boaters in docking and maneuvering watercraft; explains rules, regulations and required fees and rental charges.
- Perform custodial work in and around Marina facilities; empties trash containers and picks up litter; cleans and stocks restrooms; cleans floors, walls, furniture, windows and other interior and exterior elements of Marina facilities; removes graffiti and repairs vandalism; reports the need for major maintenance or repair.
- Maintain Marina landscaping and parking areas in a clean and orderly condition.
- Respond to emergencies and protects boats and personal property from damage, pumps out boats that are taking on water and takes debris and toxic materials to an appropriate waste or recycle site.

Public Works Lead Maintenance Worker

Page 3

- Maintain public facilities, shop areas and other buildings in a clean and orderly condition, performing regularly assigned custodial work.
- Contact berth renters to notify them of work to be performed.

All Assignments

- Troubleshoot maintenance and repair problems, determine materials and equipment required for repair; may purchase materials and supplies from established suppliers.
- Direct the work of an assigned crew on a project basis; assist with the training and direction of new or temporary staff.
- Contact residents and businesses to inform them of work to be performed.
- Operate a variety of vehicles and construction equipment.
- Inspect and perform service, minor maintenance and repair on a variety of hand and power tools, vehicles and equipment.
- Maintain logs and records of work performed and materials and equipment used.
- Report the need for major contract repair or maintenance of facilities and equipment.

Qualifications**Knowledge of:**

- Maintenance principles, practices, tools and materials for maintaining and repairing a variety of facilities, buildings, grounds and equipment such as found in the City and/or Marina.
- The operation and minor maintenance of a variety of hand and power tools, vehicles and power equipment.
- Safety equipment and practices related to the work, including the handling of hazardous chemicals.
- General principles of supervision
- Applicable codes and regulations.
- Shop arithmetic
- Safe driving rules and practices.
- Basic traffic control procedures.

Skill in:

- Providing instruction and guidance to maintenance workers.
- Performing semiskilled construction, modification, maintenance and repair work on a variety of facilities, buildings, grounds and equipment such as found in the City and/or Marina.
- Troubleshooting maintenance problems and determining materials and supplies required for repair.
- Using and maintaining tools and equipment related to the work skillfully and safely.
- Making accurate arithmetic calculations.
- Reading and interpreting construction drawings and specifications.
- Maintaining accurate logs, records and basic written records of work performed.
- Understanding and following oral and written directions.
- Working independently or in a team situation.
- Establishing and maintaining effective working relationships with those contacted in the course of the work.

Public Works Lead Maintenance Worker

Page 4

Education and Experience:

Any combination of education, experience and training that would provide the required knowledge, skills, and abilities would be qualifying. A typical way to obtain the knowledge, skills, and abilities would be:

Education: Equivalent to graduation from high school.

Experience: Four years of increasingly responsible full-time experience in public works and/or marina related operations and maintenance, including construction, maintenance and repair of street, sewers, storm drains, docks, electrical, systems, plumbing systems, and related public works and/or marina infrastructure.

License:

Must possess a valid California class C driver's license and have a satisfactory driving record.

Water Team

Water Distribution Operator II issued by the State of California. Class B CDL or substitution (e.g., California Water Environment Association [CWEA] I/II) as approved by Public Works Director.

Sewer Team

CWEA II Collection certification. Class B CDL.

Buildings & Grounds/Streets Team

Certified Landscape Technician (maintenance and irrigation) issued by the California Landscape Contractors Association and a Qualified Applicator Certificate issued by the Department of Pesticide Regulations, or substitution as approved by Public Works Director.

Marina Team

Water Distribution Operator II, CWEA I/II, Certified Pool Operator, or other as approved by the Public Works Director.

Such certifications shall be maintained during employment.

Working Conditions:

Must be available for regular standby assignments and work emergency overtime as required. Must be willing to work out of doors in all weather conditions and with exposure to traffic, boating hazards and other potentially hazardous conditions.

Physical Demands:

Must possess strength, stamina and mobility to perform heavy physical work, use varied hand and power tools, drive a motor vehicle and heavy construction equipment and lift and move materials and equipment weighing to 90 pounds and heavier weights with the use of proper equipment; visions to read printed materials and a computer screen; and hearing and speech to communicate in person and over the telephone or radio. Marina Lead must be able to operate a small powerboat and swim 25 yards unassisted.

Public Works Lead Maintenance Worker
Page 5

Approved Date: January 14, 2002
Resolution: 2002-05

Revised Date: February 16, 2023
Resolution:

Bargaining Unit: General Employees Association
Resolution: 2002-06

Former Titles:

Abolished:

CITY OF BRISBANE

PUBLIC WORKS MAINTENANCE WORKER I/II

Definition

Performs a variety of semiskilled work in the construction, modification, maintenance, repair and operation of City infrastructure, including streets, parks and landscaped areas, trees, storm and sanitary sewers, water and wastewater systems.

Class Characteristics

Public Works Maintenance Worker I is the entry-level into this maintenance class series. Initially under close supervision, incumbents with basic maintenance experience learn City facilities, use of tools and equipment and a wide variety of practices and procedures. As experience is gained, assignments become more varied and are performed with greater independence. This class is alternately-staffed with Public Works Maintenance Worker II and incumbents may advance to the higher level after gaining the knowledge, skill and experience which meet the qualifications for and demonstrating the ability to perform the work of the higher-level class. This class may also be used for temporary or part-time staffing as determined by the needs of the City.

Public Works Maintenance Worker II is the journey-level class, capable of performing a wide variety of work to ensure that the public facilities and infrastructure of the City are maintained in a safe and effective working condition. Responsibilities include performing work in all operational and maintenance areas, depending upon the immediate needs of the City. While incumbents may possess craft-level skills in one or more areas of activity, all are expected to be able to perform basic maintenance and repair in all areas of assignment. This class is distinguished from Public Works Team Leader in that the latter has administrative, budgetary and departmental support responsibilities in addition to assigning, supervising, reviewing and evaluating the work of Public Works Maintenance Workers.

Supervision Received and Exercised

Receives general supervision from a Public Works Team Leader and technical and functional oversight from a Public Works Lead Maintenance Worker.

No supervisory responsibilities required.

Examples of Important and Essential Duties- *the duties described below are provided as examples and are not to be considered as exclusive or all inclusive:*

All Assignments

- Troubleshoots maintenance and repair problems, determines materials and equipment required for repair; may purchase materials and supplies from established suppliers.
- Contacts residents and businesses to inform them of work to be performed.
- Operates a variety of vehicles and construction equipment.
- Inspects and performs service, minor maintenance and repair on a variety of hand and power tools, vehicles and equipment.
- Maintains logs and records of work performed and materials and equipment used.
- Reports the need for major contract repair or maintenance of facilities and equipment.

Street Maintenance

- Excavates and prepares potholes and excavations related to water and wastewater line repair for patching on streets and alleys.
- Loads cold and hot mix, asphalt and patching oil; applies and finishes as required.

- Removes concrete, builds forms and repairs sidewalks and gutters that have been damaged and are trip hazards or need repair after water or wastewater line work; performs other concrete work around City buildings, as required.
- Cleans storm drains, sidewalks, and other appurtenances using a variety of hand and power tools and equipment.
- Maintains, repairs and flushes underground water distribution lines and storm and sanitary sewer collection systems.
- Determines the location of underground lines and marks them accordingly.

Parks Maintenance/Landscaping/Trees

- Prunes hedges, shrubs and trees in parks and street areas.
- Maintains playground equipment in a safe operating condition.
- Empties trash containers and removes trash from parks, landscaped areas and other City properties.
- Plants, trims, waters, stakes and maintains City trees; removes dead or unwanted trees.

Building Maintenance

- Maintains public facilities, shop areas and other buildings in a clean and orderly condition, performing regularly assigned custodial work.
- Performs basic remodeling to City facilities; paints the inside and outside of all City buildings; removes graffiti and repairs vandalism.
- Repairs and replaces plumbing fixtures, as required.
- Repairs, replaces and maintains interior and exterior lighting systems

Marina Maintenance

- Greets and provides service and assistance to boat owners and visitors; ensures that Marina tenants and visitors have access and use of facilities; provides assistance to boaters in docking and maneuvering water craft; explains rules, regulations and required fees and rental charges.
- Repairs docks, storage lockers, piers and access ramps; performs maintenance painting on all building and facilities and applies wood preservatives; repairs security gates as required.
- Rewires docks to meet tenant needs; maintains lighting circuits for boater safety and performs related basic electric maintenance work.
- Maintains and repair pumps, irrigation and plumbing facilities.
- Responds to emergency situations; pumps out boats that are taking on water; dismantles derelict vessels and takes debris and toxic materials to an appropriate waste or recycle site.
- Performs custodial work in and around Marina facilities; empties trash containers and picks up litter; cleans and stocks restrooms; cleans floors, walls, furniture, windows and other interior and exterior elements of Marina facilities; removes graffiti and repairs vandalism; reports the need for major maintenance or repair.
- Maintains Marina landscaping and parking areas in a clean and orderly condition.
- Troubleshoots maintenance and repair problems, determines materials and equipment required for repair; may purchase materials and supplies from established suppliers.
- May direct the work of an assigned crew on a project basis; assists with the training and direction of new or temporary staff.
- Responds to emergencies and protects boats and personal property from damage.
- Inspects and performs service, minor maintenance and repair on a variety of hand and power tools, vehicles and equipment.
- Maintains logs and records of work performed and materials and equipment used.

Qualifications

Knowledge of:

- Maintenance principles, practices, tools and materials for maintaining and repairing a variety of facilities, buildings, grounds and equipment such as found in the City.
- The operation and minor maintenance of a variety of hand and power tools, vehicles and power equipment.
- Safety equipment and practices related to the work, including the handling of hazardous chemicals.
- Applicable codes and regulations.
- Shop arithmetic
- Safe driving rules and practices.
- Basic traffic control procedures.

Skill to:

- Perform semiskilled construction, modification, maintenance and repair work on a variety of facilities, buildings, grounds and equipment such as found in the City.
- Use and maintain tools and equipment related to the work skillfully and safely.

Ability to:

- Troubleshoot maintenance problems and determine materials and supplies required for repair.
- Make accurate arithmetic calculations.
- Read and interpret construction drawings and specifications.
- Maintain accurate logs, records and basic written records of work performed.
- Understand and follow oral and written directions.
- Work independently or in a team situation.
- Establish and maintain effective working relationships with those contacted in the course of the work.

Education and Experience: *Any combination of education, experience and training that would provide the required knowledge, skills, and abilities would be qualifying. A typical way to obtain the knowledge, skills, and abilities would be:*

Education: Sufficient education to perform work requirements.

Experience:

Public Works Maintenance Worker I – Six months of construction, maintenance or repair experience in at least one of the areas found in City work.

Public Works Maintenance Worker II – In addition to the above, two years of semi-skilled maintenance experience in a variety of craft areas at a level equivalent to the City's class of Public Works Maintenance Worker I.

License/Certificates:

Must possess a valid California class C driver's license and have a satisfactory driving record.

Water Team

Maintenance Worker I: Water Distribution Operator I within 12 months.

Maintenance Worker II: Water Distribution Operator II. Class B CDL or substitution (e.g., California Water Environment Association [CWEA] I/II) as approved by Public Works Director.

Sewer Team

Maintenance Worker I: Water Distribution Operator I within 12 months. CWEA I within 18 months

Maintenance Worker II: CWEA II. Class B driver's license.

Building & Grounds/Streets Team

Maintenance Worker I: Water Distribution Operator I within 12 months.

Maintenance Worker II: Certified Pool Operator certificate. Class B CDL or substitution (e.g., CWEA I or Water Distribution Operator II) as approved by Public Works Director.

Marina Team

Maintenance Worker I: Water Distribution Operator I within 12 months

Maintenance Worker II: Water Distribution Operator II, CWEA I/II, Certified Pool Operator, or other as approved by the Public Works Director.

Parks Facilities Team

Maintenance Worker I: Water Distribution Operator I within 12 months, Certified Pool Operator within 18 months.

Maintenance Worker II: Water Distribution Operator II, California Water Environment Association I/II Certificate, or substitution as approved by the Public Works Director.

Such certifications shall be maintained during employment.

Working Conditions: May be available for regular standby assignments and work emergency overtime as required. Must be willing to work out of doors in all weather conditions and with exposure to traffic and potentially hazardous conditions.

Physical Demands: Must possess strength, stamina and mobility to perform heavy physical work, use varied hand and power tools, drive a motor vehicle and heavy construction equipment and move materials and equipment weighing up to 90 pounds and heavier weights with the use of proper equipment; visions to read printed materials and a computer screen; and hearing and speech to communicate in person and over the telephone or radio.

Approved Date: February 13, 2001

Resolution: 2001-11

Revised Date: February 16, 2023

Resolution:

Bargaining Unit: General Employees Association

Resolution: 2001-20

Former Titles:

Abolished:

File Attachments for Item:

D. Request to Seek Donations/Sponsorships for the 2023 Summer Concerts in the Park Series



CITY COUNCIL AGENDA REPORT

Meeting Date: February 16, 2023

From: Jeff Franco, Recreation Coordinator

Subject: Request to Seek Donations/Sponsorships for the 2023 Summer Concerts in the Park Series

Community Goal/Result

Community Building, Fiscally Prudent

Purpose

Provide the community an opportunity take ownership and contribute toward the City's Concerts in the Park series.

Recommendation

Grant permission to City staff to seek donations/sponsorships from Brisbane community members and businesses for the 2023 Summer Concerts in the Park series.

Background

The Concerts in the Park series has existed in Brisbane for more than 15 years. Sponsorships have always provided the community a way, not only to contribute, but to be personally engaged in the process of bestowing entertainment upon their fellow residents. With the assistance from community-based sponsorships, City staff strive to procure the highest quality bands to perform in the concert series.

Every year the goal is to continually raise the bar to be able to deliver community favorite bands or new and polished bands that will entertain Brisbane residents. The average sponsorship totals over the past 5 years have been between \$11,000-\$14,000, which has helped to achieve that goal.

Discussion

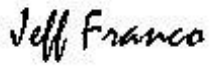
Parks & Recreation department staff seek permission to secure donations/sponsorships from Brisbane community members and businesses for the 2023 Summer Concerts in the Park series.

Fiscal Impact

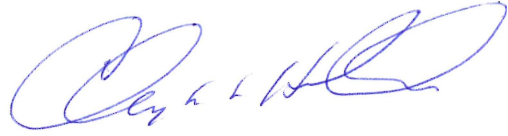
This community-based fundraising approach diminishes the burden on the City's general fund. Consistent with past fundraising efforts, staff aspire to secure \$11,000-\$14,000 in sponsorships and donations to cover non-personnel expenses associated with facilitating the Summer Concert series.

Attachments

1. 2023 Fundraising Plan



Jeff Franco, Recreation Coordinator



Clay Holstine, City Manager

City of Brisbane Fundraising Plan

Fundraising Plan Title and Purpose: *Please provide a title and description for your fundraising project.*

Request to Seek Donations/Sponsorships for the 2023 Summer Concerts in the Park Series.

Fundraising Participants: *Please list the names for all groups and individuals that will be conducting fundraising.*

Nicole Houghton, Recreation Supervisor
Jeff Franco, Recreation Coordinator

Donation Type/Amount: *Please describe the types and amount of donations that will be sought.*

Monetary Donations.

There are 4 levels of sponsorships:

-Bronze: \$100 -Silver: \$250 -Gold: \$1000 -Platinum: \$2500

Anticipated Donors: *Please describe who will be approached for donations.*

Brisbane community members & Brisbane businesses

Donor Recognition Plan: *Please describe how donors will be recognized.*

Sponsors will be recognized on the signboards, posters that are hung on the gazebo in the Community Park, in city publications, at the concerts themselves, and also by the City Council.

Fundraising Timeline:

Council Review of Fundraising Plan:	City Council Meeting, 2/16/23
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Fundraising Start:	March 2023
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Fundraising Completion:	July 2023
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Council Review of Donations:	
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Donor Recognition Complete:	
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Restrictions/Reporting: *Please identify any restrictions or reporting requirements associated with this fundraising plan.*

File Attachments for Item:

E. Introduce an Ordinance, waiving first reading, amending Section 13.04.420 of Chapter 13.04 of the Brisbane Municipal Code pertaining to “Sewer System”

(Introduction of this Ordinance is not subject to further environmental review because it is not a project under the California Environmental Quality Act (CEQA). CEQA Guidelines, section 15378 (b) (2). The purpose of this ordinance is to update the municipal code chapter relating to joint sewer laterals.)



CITY COUNCIL AGENDA REPORT

Meeting Date: February 16, 2023

From: Director of Public Works/City Engineer

Subject: Municipal Code Changes to Sewer System Chapter

Community Goal/Result: Ecological Sustainability

Purpose

To introduce an ordinance that will update the municipal code chapter relating to joint sewer laterals; this action is consistent with the community's goals of making decisions based on stewardship of the environment, and reducing waste streams.

Recommendation

Introduce an Ordinance, waiving first reading, amending Section 13.04.420 of Chapter 13.04 of the Brisbane Municipal Code pertaining to "Sewer System ." Introduction and adoption of this Ordinance is not subject to further environmental review because it is not a project under the California Environmental Quality Act (CEQA). CEQA Guidelines, section 15378 (b) (2).

Background

Paragraph I of BMC §13.04.420 states:

- I. The city council may, by resolution, upon finding good cause therefor, grant approval for a private sewer lateral (one which traverses another's private property in order to connect to the public sewer main); provided, that each applicant therefor shall submit plans in advance to the director for approval. Any approval granted by the city council for a private sewer lateral is contingent on an access easement and maintenance agreement between the private parties, in a form acceptable to the director, being recorded with the county recorder.

BMC §13.04.430 provides detailed conditions under which the Director of Public Works may approve a joint sewer lateral, including paragraph "G", which is nearly identical to the language quoted above:

13.04.430 - Joint sewer lateral installation and maintenance.



The director may upon finding good cause therefor, grant approval for a joint sewer lateral (one that services two (2) or more properties); provided, that each property owner shall submit plans to the director for prior approval. Any approval granted by the director for a joint sewer lateral shall be in a form as approved by the city attorney and shall be generally subject to the following terms and conditions:

- A. Installation and maintenance costs of the joint sewer lateral shall be shared equally by the parties thereto. Any person who subsequently connects to the joint sewer lateral shall share in the cost thereof on a pro rata basis.
- B. Original installation and repairs must be pursuant to code, and approval of the plumbing or building inspector is required.
- C. One owner may hire a licensed plumber to make emergency repairs without the consent of the other owners, in the event they are not available, and the cost of the emergency repairs shall be shared on a pro rata basis.
- D. No user shall interrupt the continuity of the service or cause to have interrupted the continuity of the service of the joint sewer lateral, in such a manner as to cause damage or inconvenience to the other users, other than for a reasonable time required for repair.
- E. In the event that the owner or users fail to act and the director and/or health officer determines that conditions in the joint sewer lateral are such as to be a hazard to health or safety, then the city may, pursuant to written notice, order the work done and divide the cost, as specified in subsection A of this section, on the tax bill if it is not compensated within fifteen (15) days from the time of billing by registered mail to each of the users last known address or that shown on the last equalized assessment roll.
- F. The owners and users of the joint sewer lateral shall assume all responsibility and liability in connection therewith and they shall hold the city harmless.
- G. The owners of the property on which the joint sewer lateral is located shall grant and have recorded an easement of not less than ten (10) feet in width for the maintenance and repair of the joint sewer lateral.

Discussion

In discussion with legal counsel, there seems to be no added value to have the City Council approve by Resolution a private sewer lateral on another's property, when the exact same requirements (minus the passing of a Resolution) are also found in the conditions imposed on the Public Works Director. An argument might also be made that the requirement to obtain Council's approval is overly restrictive on the property rights of the landowner who would grant the easement.

In practice over the last 22 years, the Council has not questioned any request to approve a joint sewer lateral. When willing parties do desire to enter into a joint sewer lateral agreement, this action is to the benefit of the city because it provides specificity as to responsibility for repair and maintenance of sewer laterals, which has in past been problematic when a shared lateral overflowed without benefit of assigned responsibility.

The recommended action removes only the requirement for Council to approve joint sewer laterals by Resolution. All other existing requirements remain in effect. This action will expedite the processing of shared sewer lateral agreements.

Environmental Review

Introduction and adoption of this Ordinance is not a project under CEQA because it is a continuing administrative activity, such as general policy and procedure making, and not applied to any specific instance. CEQA Guidelines, Section 15378 (b)(5). Accordingly, no further environmental review is necessary.

Fiscal Impact

None as a direct result of the recommended action.

Measure of Success

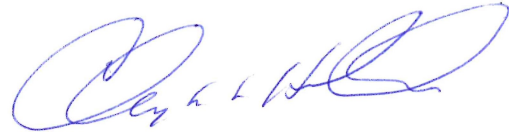
An updated sewer system municipal code chapter that expedites the processing of shared sewer lateral approvals.

Attachments

1. Proposed Ordinance
2. Red-line version comparing existing code section to proposed changes



Randy Breault, Public Works Director



Clay Holstine, City Manager

ORDINANCE NO. - - -

**AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING SECTION 13.04.420 OF CHAPTER 13.04
OF THE BRISBANE MUNICIPAL CODE CONCERNING SEWER SYSTEM**

The City Council of the City of Brisbane hereby ordains as follows:

Section 1: Section 13.04.420 of the Brisbane Municipal Code is amended by deleting subsection I thereof and Section 13.04.420 to read as follows:

"13.04.420 - Sewer installation specifications and requirements.

Sewers to be installed in the city shall satisfy the following requirements:

- A. All sewers constructed in the public right-of-way shall be constructed in accordance with plans and specifications approved by the city council upon recommendation of the director. Sewer laterals shall be constructed in accordance with standard plans prepared by the director and approved by the city council.
- B. Minimum size of all sewer laterals shall be four (4) inches and shall require a cleanout at the property line.
- C. The minimum size of public sewers shall be eight (8) inches and standard manholes shall be placed at frequencies no greater than three hundred (300) feet or in places of change of direction or grade, except sewers twelve (12) inches in diameter or greater, under which circumstances the specific design shall be approved by the director.
- D. When sewers cannot be placed in the public right-of-way or in existing rights-of-way of ten (10) feet in width or greater, special easements shall be acquired a minimum of ten (10) feet in width and wherever possible shall straddle existing property lines.
- E. Wherever easements ten (10) feet in width or greater can be acquired, public sewers shall be extended in accordance with approved plans and specifications and in accordance with proper master planning for the area being served.
- F. Wherever a public sewer can be extended along public rights-of-way or standard easements, each service shall be extended to the public sewer by a sewer lateral serving only one unit of ownership unless the city council, by resolution, approves the service of more than one unit of ownership by a lateral.
- G. A cleanout shall be placed on each sewer lateral at the transition between the upper and lower portions of the lateral. The director may additionally require the installation of a backflow

prevention device on the sewer lateral when he or she reasonably believes backflow has or may occur.

H. Wherever a substandard extension of the public sewer exists, i.e., a line smaller than eight (8) inch or across private easements, no further extension of the sewer line can be made until such a time as an agreement for maintenance and rights of easement for all individuals using the line is recorded with the office of the county recorder."

Section 2: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 3: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Madison Davis, Mayor

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

Thomas R. McMorrow, City Attorney

“Redlined” proposed change to BMC §13.04.420**13.04.420 - Sewer installation specifications and requirements.**

Sewers to be installed in the city shall satisfy the following requirements:

- A. All sewers constructed in the public right-of-way shall be constructed in accordance with plans and specifications approved by the city council upon recommendation of the director. Sewer laterals shall be constructed in accordance with standard plans prepared by the director and approved by the city council.
- B. Minimum size of all sewer laterals shall be four (4) inches and shall require a cleanout at the property line.
- C. The minimum size of public sewers shall be eight (8) inches and standard manholes shall be placed at frequencies no greater than three hundred (300) feet or in places of change of direction or grade, except sewers twelve (12) inches in diameter or greater, under which circumstances the specific design shall be approved by the director.
- D. When sewers cannot be placed in the public right-of-way or in existing rights-of-way of ten (10) feet in width or greater, special easements shall be acquired a minimum of ten (10) feet in width and wherever possible shall straddle existing property lines.
- E. Wherever easements ten (10) feet in width or greater can be acquired, public sewers shall be extended in accordance with approved plans and specifications and in accordance with proper master planning for the area being served.
- F. Wherever a public sewer can be extended along public rights-of-way or standard easements, each service shall be extended to the public sewer by a sewer lateral serving only one unit of ownership unless the city council, by resolution, approves the service of more than one unit of ownership by a lateral.
- G. A cleanout shall be placed on each sewer lateral at the transition between the upper and lower portions of the lateral. The director may additionally require the installation of a backflow prevention device on the sewer lateral when he or she reasonably believes backflow has or may occur.
- H. Wherever a substandard extension of the public sewer exists, i.e., a line smaller than eight (8) inch or across private easements, no further extension of the sewer line can be made until such a time as an agreement for maintenance and rights of easement for all individuals using the line is recorded with the office of the county recorder.

File Attachments for Item:

F. SP-CRO Sierra Point Commercial District; Zoning Text Amendment 2022-RZ-4; Zoning text amendment to Title 17, Chapter 17.18 of the Brisbane Municipal Code (BMC) to update existing research and development use provisions and performance standards; and finding that this project is exempt from environment review under CEQA Guidelines Section 15183(a)

(It is being recommended for Council to decide on the draft ordinance to amend the SP-CRO Sierra Point Commercial District Research & Development provisions)



CITY COUNCIL AGENDA REPORT

Meeting Date: February 16, 2023

From: John Swiecki, Community Development Director

Subject: SP-CRO Sierra Point Commercial District; Zoning Text Amendment 2022-RZ-4; Zoning text amendment to Title 17, Chapter 17.18 of the Brisbane Municipal Code (BMC) to update existing research and development use provisions and performance standards; and finding that this project is exempt from environment review under CEQA Guidelines Section 15183(a).

COMMUNITY GOAL/RESULT

Safe Community - Residents and visitors will experience a sense of safety.

PURPOSE

To update the research and development (R&D) permitted and conditional use provisions contained in the SP-CRO Sierra Point Commercial District zoning, Brisbane Municipal Code Chapter 17.18.

RECOMMENDATION

Decide on the draft ordinance to amend the SP-CRO Sierra Point Commercial District R&D provisions (see Attachment 1).

BACKGROUND

BMC Section 17.02.675 defines research and development as *“a use engaged in studying, testing, designing, analyzing and experimenting with potential or existing products, processes or services, including cannabis and cannabis products.”*

On June 16, 2008, City Council adopted zoning provisions, via Ordinance 528, allowing for R&D uses as either permitted by-right or as conditional uses in the Sierra Point Commercial District. With regards to using live animals, the ordinance provisions permitted by-right, R&D on live insects, rodents, rabbits, fish, and amphibians. R&D involving the use of live dogs, cats or nonhuman primates was prohibited. Use of other live animals that are not named as permitted or prohibited are subject to a conditional use permit. Additionally, a provision was included

that City Council is named as the approving authority instead of the Planning Commission, as is the case with all other use permits.

In 2022, Bristol-Myers Squibb (BMS) applied for a use permit to conduct R&D using minipigs at 1400 Sierra Point Parkway. That has been the only R&D use permit application filed to date pursuant to the regulations described above. That application was heard by City Council on May 19, 2022, continued for further public hearing and then withdrawn by the applicant on August 26th, before a decision was made. Following the withdrawal of that application, the City Council directed staff to initiate a zoning code amendment to consider updates to the live animals testing provisions. An ad hoc City Council subcommittee (Councilmembers Cunningham and Mackin) met on October 31, 2022 and indicated a desire to consider prohibiting the use of all animals except those expressly permitted under the ordinance, thereby eliminating the category of conditionally permitted animal use. The subcommittee also expressed interest in considering the removal of rabbits from the R&D permitted uses list.

A public hearing was held at the Planning Commission on January 26, 2023 to consider the following draft amendments:

- Elimination of the use permit category of R&D using live animals. Thus, R&D using specifically named live animal groups would be permitted by right, and the use of all other animals would be prohibited.
- Rabbits would be removed from the permitted R&D uses category.
- Permitted R&D uses would be expanded beyond insects to the larger category of invertebrates (i.e. animals without a backbone such as insects, spiders, worms, etc.). Permitted uses would also be expanded from amphibians to also include reptiles.
- Aside from animal testing, use permits for R&D utilizing biological agents exceeding National Institute of Health (NIH) Risk Group 3 would still be required, but the approving authority would be the Planning Commission, instead of City Council, with Council still being the authority on appeal of a Planning Commission decision, as is the process for other use permits.
- An organizational cleanup of the performance standard provisions was also included in the draft ordinance.

The January 26, 2023 Planning Commission report and minutes are attached for reference. The Planning Commission, by a vote of 3-1, recommended that City Council deny the proposed ordinance. The Planning Commission resolution, draft minutes and agenda report are provided in Attachments 3, 4 and 5. Public correspondence to the Commission is provided in Attachment 6.

DISCUSSION:

A summary of the Planning Commission's discussion of the draft ordinance is provided in the draft minutes, Attachment 4. In summary, the Commissioners voting against the amendment expressed their concern over limiting R&D using live animals as proposed and expressed a desire to allow the scientific community to take the lead regarding the need for animal studies, while the dissenting Commissioner spoke in favor of further limiting animal testing as proposed.

There was also some discussion of FDA Modernization Act 2.0, passed by Congress in December 2022, which removed the requirement to use animal testing in drug development. It allows drug companies the option of using "nonclinical test" instead of tests on animals when making new drug submissions to the U.S. Food and Drug Administration (FDA). This allows for a shift away from mandated animal studies for FDA approval, but does not go so far as to prohibit animal studies. Note that animal care at R&D facilities is the purview of the U.S. Dept of Agriculture (USDA).

The City Council has a few options with this application.

1. Vote to deny the zoning text amendment, thereby affirming the Planning Commission's recommendation. This would keep the existing provisions of BMC Chapter 17.18 unchanged. Note that under the current ordinance, there are no special findings provided for R&D use permits, but rather the standard findings contained in BMC Section 17.40.060 apply. That is, *"In considering an application, the planning commission shall consider and give due regard to the nature and condition of all adjacent uses and structures, and to general and specific plans for the area in question. The planning commission shall determine whether or not the establishment, maintenance or operation of the use applied for will, under the circumstances of the particular case, be detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city. If the planning commission finds that the aforementioned conditions will not result from the particular use applied for, it may grant the use permit."* These findings focus on potential impacts to neighbors, but do not specifically address issues of animal use related to R&D work. It does not appear the current findings are well suited to address concerns regarding animal testing.
2. Council may reject the Commission's recommendation and adopt the zoning text amendment as proposed. Clean and redlined versions of the draft ordinance are provided in Attachments 1 and 2.

3. Council may adopt an amendment that is different from what has been provided. In this case, depending on Council's direction, staff may need to bring a revised draft ordinance back to Council for consideration. Council may provide direction and refer this matter back to the Planning Commission for further study.

FISCAL IMPACT

None.

MEASURE OF SUCCESS

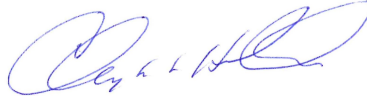
To provide clear R&D provisions in the BMC.

ATTACHMENTS

1. Draft Ordinance Amending SP-CRO R&D Provisions
2. Redlined Draft Ordinance
3. Planning Commission Resolution 2022-RZ-4
4. Draft Planning Commission Meeting Minutes, January 26, 2023
5. Planning Commission Agenda Report, January 26, 2023
6. Correspondence



John Swiecki, Community Development Director



Clay Holstine, City Manager

draft

ORDINANCE NO. ____
AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING SECTIONS 17.18.020, 17.18.030 AND 17.18.045 AND
DELETING SECTION 17.18.035
OF THE BRISBANE MUNICIPAL CODE
CONCERNING RESEARCH AND DEVELOPMENT USES IN THE
SP-CRO SIERRA POINT COMMERCIAL DISTRICT

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Sections 17.18.020 and 17.18.030 are amended to read as follows:

17.18.020 - Permitted Uses

The following uses shall be allowed in the SP-CRO district:

- A. Offices;
- B. Hotels;
- C. Retail sales and rental;
- D. Restaurants;
- E. Bars;
- F. Financial institutions;
- G. Personal services;
- H. Commercial gyms and health facilities;
- I. Meeting halls;
- J. Marinas;
- K. Research and development, unless the use is classified as a conditional use pursuant to Section 17.18.030.F. Research and development may include the use of live invertebrate animals, such as insects, or any of the following live vertebrate animals: fish, amphibians, reptiles or rodents. Research and development involving the use of other live animals not listed here is prohibited. All research and development uses are subject to the performance standards set forth in [Section 17.18.045](#).

17.18.030 – Conditional uses.

The following conditional uses may be allowed in the SP-CRO district, upon the granting of a use permit pursuant to [Chapter 17.40](#) of this title:

- A. Child care centers when:

1. Located more than five hundred (500) feet from the edge of the eastern-most lane of the Bayshore Freeway (U.S. 101);
 2. Located within an area with a community noise equivalent level (CNEL) of not more than sixty (60) dB as determined by a professionally-prepared acoustical analysis report; or located within an area with a community noise equivalent level (CNEL) of sixty to eighty (60—80) dB and designed with the noise insulation features identified in a professionally-prepared acoustical analysis report so as to comply with Figure 2 in Appendix C of the state of California General Plan Guidelines 2003; and
 3. Designed and operated so to comply with the noise levels specified in Brisbane Municipal Code [Section 8.28.040](#), as per the recommendations of a professionally-prepared acoustical analysis report.
- B. Medical facilities.
 - C. Commercial recreation.
 - D. Transit/transportation facilities.
 - E. Temporary uses.
 - F. Research and development utilizing biological agents exceeding Risk Group 3 or Biosafety Level 3 as defined by the National Institute of Health or the Center for Disease Control.

SECTION 3: Section 17.18.035 is deleted in its entirety.

SECTION 4: Sections 17.18.045 is amended to read as follows:

17.18.045 - Performance standards.

- A. All research and development uses shall submit to the planning department a risk analysis performed by a qualified hazardous or biologic materials professional specifying all hazardous or biologic materials to be utilized and methods of safe handling and disposal prior to building permit or business license issuance.
- B. Research and development involving the use of live animals, specifically permitted in Section 17.18.020.K, shall be conducted in compliance with the Institute of Laboratory Animals Resources' Guide for the Care and Use of Laboratory Animals, and in compliance with all applicable federal, state and local laws and regulations as most recently amended.
- C. Research and development uses involving the use of biological agents shall comply with all design standards set forth in the most current Center for Disease Control (CDC) Office of Health and Safety document "Biosafety in Microbiological and Biomedical Laboratories."
- D. Research and Development involving cannabis is subject to the requirements set forth in [Chapter 17.33](#).

E. Lighting shall be designed to avoid excessive glare as viewed from offsite locations, in compliance with the California Green Building Standards Code.

SECTION 11: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 12: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____ 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

APPROVED AS TO FORM:

Michael H. Arndt

City Clerk

Legal Counsel

ATTACHMENT 2 REDLINED DRAFT ORDINANCE

Chapter 17.18 - SP-CRO SIERRA POINT COMMERCIAL DISTRICT

Sections:

17.18.010 - Purposes of chapter.

In addition to the objectives set forth in [Section 17.01.030](#), the SP-CRO Sierra Point Commercial District (hereinafter referred to as the "SP-CRO district") is included in the zoning ordinance to achieve the following purposes:

- A. To establish a zoning district for the Sierra Point subarea that provides for orderly development consistent with the adopted master use permit UP-11-78, the redevelopment plan for Brisbane Community Redevelopment Project Area Number One, and the combined site and architectural design guidelines for Sierra Point.
- B. To encourage a mix of office, commercial and recreational uses to best serve the residents and businesses of Brisbane and the businesses and employees in the Sierra Point subarea.
- C. To ensure that development in the Sierra Point subarea occurs in compliance with the highest development and design standards and meets the goals and objectives set forth in the general plan.

17.18.020 - Permitted uses.

The following uses shall be allowed in the SP-CRO district:

- A. Offices;
- B. Hotels;
- C. Retail sales and rental;
- D. Restaurants;
- E. Bars;
- F. Financial institutions;
- G. Personal services;
- H. Commercial gyms and health facilities;
- I. Meeting halls;
- J. Marinas;
- K. ~~Research and development, including the use of live insects, rodents, rabbits, fish, and amphibians subject to the performance standards set forth in Section 17.18.045. Research and development~~

~~involving the use of live dogs (Canis genus) cats (Felis genus), or nonhuman primates is prohibited. Research and development involving the use of other live animals not otherwise permitted or prohibited herein may be permitted upon the granting of a conditional use pursuant to Section 17.18.030. Research and development involving cannabis is additionally subject to the requirements in Chapter 17.33. Chapter 17.33 Research and development, unless the use is classified as a conditional use pursuant to Section 17.18.030.F. Research and development may include the use of live invertebrate animals, such as insects, or any of the following live vertebrate animals: fish, amphibians, reptiles or rodents. Research and development involving the use of other live animals not listed here is prohibited. All research and development uses are subject to the performance standards set forth in Section 17.18.045.~~

17.18.030 - Conditional uses.

The following conditional uses may be allowed in the SP-CRO district, upon the granting of a use permit pursuant to [Chapter 17.40](#) of this title:

- A. Child care centers when:
 1. Located more than five hundred (500) feet from the edge of the eastern-most lane of the Bayshore Freeway (U.S. 101);
 2. Located within an area with a community noise equivalent level (CNEL) of not more than sixty (60) dB as determined by a professionally-prepared acoustical analysis report; or located within an area with a community noise equivalent level (CNEL) of sixty to eighty (60—80) dB and designed with the noise insulation features identified in a professionally-prepared acoustical analysis report so as to comply with Figure 2 in Appendix C of the state of California General Plan Guidelines 2003; and
 3. Designed and operated so to comply with the noise levels specified in Brisbane Municipal Code [Section 8.28.040](#), as per the recommendations of a professionally-prepared acoustical analysis report.
- B. Medical facilities.
- C. Commercial recreation.
- D. Transit/transportation facilities.
- E. Temporary uses.
- F. Research and development utilizing biological agents exceeding Risk Group 3 or Biosafety Level 3 as defined by the National Institute of Health or the Center for Disease Control.

~~**17.18.035 — Conditional uses — Research and development.**~~

~~The following research and development-related uses may be allowed in the SP-CRO district, upon the granting of a use permit pursuant to Chapter 17.40 of this title, subject to the provision that the city council (instead of the planning commission) shall act as the reviewing and approving authority for all purposes under Chapter 17.40 for any such research and development-related conditional use permit(s):~~

- ~~A. Any such use where the planning director determines, based solely upon the risk analysis required pursuant to Section 17.18.045 of this chapter and an evaluation by the fire marshal and the building official, that certain conditions of approval as recommended in the risk analysis or by the fire marshal or building official, are necessary to protect the public health, safety and welfare, and that such conditions are not otherwise included in any of the codes, standards or regulations applicable to such use. Notwithstanding the foregoing sentence, a use permit pursuant to Chapter 17.40 shall not be required if:~~
- ~~1. The applicant seeking to conduct the research and development signs a written agreement to implement the additional conditions of approval that are recommended in the risk analysis or by the fire marshal or the building official;~~
 - ~~2. A copy of such written agreement along with a description of the proposed research and development activity and a copy of the risk analysis and the recommendations of the fire marshal and the building official are delivered to the residence of each council member; and~~
 - ~~3. No request has been communicated to the city clerk by any two (2) council members, within fifteen (15) days after delivery of the items described in subsection (A)(2) of this section, for the matter to be heard by the city council (in which event a use permit granted by the city council shall be required).~~
- ~~B. Any use proposing the use of live animals not otherwise approved or prohibited pursuant to Section 17.18.020(K) of this title in the conduct of research.~~
- ~~C. Any use utilizing biological agents exceeding Risk Group 3 or Biosafety Level 3 as defined by the National Institute of Health or the Center for Disease Control.~~

17.18.040 - Development regulations.

Development regulations for the SP-CRO district are as follows:

- A. Lot Area. The minimum area of any lot in the SP-CRO district shall be one acre.
- B. Lot Dimensions. The minimum dimensions of any lot in the SP-CRO district shall be as follows:

Width	Depth
100 feet	No requirement

- C. Setbacks. The minimum required setback for any lot in the SP-CRO district shall be as follows, except as otherwise established in the combined site and architectural guidelines for Sierra Point:
 1. Front setback: Twenty-five (25) feet;
 2. Side setbacks:
 - a. Interior side yards: Fifteen (15) feet.
 - b. Exterior side yards: Twenty (20) feet.
 3. Rear setbacks:
 - a. Interior lots: Twenty (20) feet.

- b. Corner lots: Fifteen (15) feet.
- D. Location of Structures. The location of structures relative to the mean high tide line shall comply with the requirements set forth in the combined site and architectural design guidelines for Sierra Point.
- E. Coverage. The maximum coverage by all structures on any lot shall be forty percent (40%).
- F. Height. The height of structures shall comply with the combined site and architectural design guidelines for Sierra Point.
- G. Landscaping Requirements.
 - 1. A minimum of twenty-five percent (25%) of the total lot area shall be landscaped. Additional landscaping requirements are set forth in the combined site and architectural design guidelines for Sierra Point.
 - 2. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to [Chapter 15.70](#)) or the latest state provisions, whichever is more effective in conserving water.
- H. Recycling Area Requirements.
 - 1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.
 - 2. This requirement shall apply to all new commercial or institutional buildings, and city facilities (including buildings, structures, marinas, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to any existing development for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project. The floor area of a marina shall be defined as the space dedicated to the docking or mooring of marine vessels. For existing developments occupied by multiple tenants, this requirement shall apply to building permit applications submitted by any tenant within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of that portion of the development which said tenant leases, and such recycling areas shall be sufficient in capacity, number, and distribution to serve that portion of the development project which said tenant leases.

17.18.045 - Performance standards.

- A. All research and development uses shall submit to the planning department a risk analysis performed by a qualified hazardous or biologic materials professional specifying all hazardous or biologic materials to be utilized and methods of safe handling and disposal prior to building permit or business license issuance.
- B. Research and development involving the use of live animals, **specifically permitted in Section 17.18.020.K**, shall be conducted in compliance with the Institute of Laboratory Animals Resources' Guide

for the Care and Use of Laboratory Animals, and in compliance with all applicable federal, state and local laws and regulations as most recently amended ~~and such other conditions as may be imposed by the city.~~

C. Research and development uses involving the use of biological agents shall comply with all design standards set forth in the most current Center for Disease Control (CDC) Office of Health and Safety document "Biosafety in Microbiological and Biomedical Laboratories."

D. Research and Development involving cannabis is subject to the requirements set forth in Chapter 17.33.

E. Lighting shall be designed to avoid excessive glare as viewed from offsite locations, in compliance with the California Green Building Standards Code.

17.18.050 - Parking.

All uses in the SP-CRO district shall comply with the parking regulations set forth in [Chapter 17.34](#) of this title.

17.18.060 - Signs.

All advertising signs in the SP-CRO district shall comply with the sign programs referenced in the combined site and architectural design guidelines for Sierra Point. If the proposed advertising sign is not covered by such sign programs, it shall comply with the sign regulations set forth in [Chapter 17.36](#) of this title.

17.18.070 - Design review.

The construction of any principal structure in the SP-CRO district shall be subject to the granting of a design permit in accordance with the provisions of [Chapter 17.42](#) of this title and shall comply with any applicable guidelines as set forth in the combined site and architectural design guidelines for Sierra Point.

RESOLUTION 2022-RZ-4

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
RECOMMENDING CITY COUNCIL DENIAL OF ZONING TEXT AMENDMENT 2022-RZ-4 AMENDING
REGULATIONS WITHIN TITLE 17 OF THE BRISBANE MUNICIPAL CODE CONCERNING RESEARCH AND
DEVELOPMENT USES IN THE SP-CRO SIERRA POINT COMMERCIAL DISTRICT

WHEREAS, the City Council adopted Ordinance 528 on June 16, 2008, which provided for research and development (R&D) uses in the SP-CRO Sierra Point Commercial District; and

WHEREAS, City Council directed the Planning Commission to consider updates to the ordinance provisions regarding permitted uses, conditional uses and prohibited uses; and

WHEREAS, the draft ordinance attached as Exhibit A to this resolution proposes amendments to Title 17 (Zoning); and

WHEREAS, on January 26, 2023, the Planning Commission conducted a hearing of the application, publicly noticed in compliance with Brisbane Municipal Code Chapters 1.12 and 17.54, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and considered the staff memorandum relating to said application, and the written and oral evidence presented to the Planning Commission in support of and in opposition to the application; and

WHEREAS, the draft ordinance is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15183(a) of the CEQA Guidelines; and

NOW, THEREFORE, based upon the evidence presented, both written and oral, the Planning Commission of the City of Brisbane hereby RECOMMENDS that the City Council **deny** the attached draft ordinance.

ADOPTED this twenty-sixth day of January, 2023, by the following vote:

AYES: Funke, Gooding, Lau

NOES: Sayasane

ABSENT: Patel

Roel Funke 1/30/2023
ROEL FUNKE
Acting Chairperson

ATTEST:

JOHN SWIECKI, Community Development Director

D. PUBLIC HEARING: SP-CRO Sierra Point Commercial District; Zoning Text

Amendment 2022-RZ-4; Zoning text amendment to Title 17, Chapter 17.18 of the Brisbane Municipal Code (BMC) to update existing research and development use provisions and performance standards; and finding that this project is exempt from environment review under CEQA Guidelines Section 15183(a); City of Brisbane, applicant.

Note: This item was continued from the Planning Commission meeting of January 12, 2023. No hearing was held on January 12th.

Senior Planner Johnson gave the staff presentation and answered question on how the animals were determined to be included or precluded from animal testing under the proposed amendment and clarified the history of the research and development use provisions and performance standards in the SP-CRO district.

Acting Chairperson Funke opened the public hearing.

Senior Planner Johnson read a written comment from Bill Van Raam, Brisbane resident, against the proposed ordinance amendment and in favor of allowing animal testing.

Brisbane residents Kim Follien and Michael Barnes also spoke against the proposed amendment and in favor of allowing animal testing.

With no one else wishing to address the Commission, a motion by Commissioner Gooding, seconded by Commissioner Sayasane to close the public hearing was approved 4-0.

The Commission deliberated on the proposed amendment. Commissioner's Gooding, Lau and Funke expressed concerns about limiting animal testing as proposed. The three Commissioners acknowledged recent federal legislation regarding animal testing, FDA Modernization Act 2.0, which removed the requirement to use animal testing in drug development. However, they expressed a desire to allow the scientific community to take the lead regarding the need for future animal studies and indicated that there was insufficient information regarding the viability of alternative models for the various kinds of medical research and that some amount of animal testing is still necessary to advance medicines and medical procedures that are beneficial to humans. Additionally, it was expressed that prohibitions on animal testing would simply push R&D companies to other cities, while Brisbane residents would still benefit from such R&D testing.

Commissioner Sayasane expressed her opinion that the City has the right to reflect its community values in its zoning regulations and supported the further limitation on animal testing in Brisbane.

After deliberation, a motion by Acting Chairperson Funke, seconded by Commissioner Lau, recommending City Council denial of Zoning Text Amendment 2022-RZ-4 via adoption of Resolution 2022-RZ-4 was approved 3-1. Commissioner Sayasane voted against the motion.

Acting Chairperson Funke read the appeals procedure.



PLANNING COMMISSION AGENDA REPORT

Meeting Date: 1/26/2023

From: Ken Johnson, Senior Planner

Subject: SP-CRO Sierra Point Commercial District; Zoning Text Amendment 2022-RZ-4; Zoning text amendment to Title 17, Chapter 17.18 of the Brisbane Municipal Code (BMC) to update existing research and development use provisions and performance standards; and finding that this project is exempt from environment review under CEQA Guidelines Section 15183(a); City of Brisbane, applicant.

REQUEST: To update the research and development (R&D) permitted and conditional use provisions in the SP-CRO Sierra Point Commercial District.

RECOMMENDATION: Recommend City Council adoption of Zoning Text Amendment 2022-RZ-4 via adoption of Resolution 2022-RZ-4 (Attachment A).

ENVIRONMENTAL DETERMINATION: The project is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15183(a) in that this proposal falls within a class of projects which are consistent with existing zoning or general plan policies for which an EIR was certified and shall therefore not require further review.

APPLICABLE CODE SECTIONS: Procedures for zoning amendments are provided in BMC Chapter 17.50. The proposed updates for this amendment pertain to R&D uses and are contained in BMC Chapter 17.18, Sections 17.18.020, 17.18.030, 17.18.035 and 17.18.045. Additionally, BMC Section 17.02.675 provides the City's definition of research and development.

BACKGROUND: BMC Section 17.02.675 defines research and development as *"a use engaged in studying, testing, designing, analyzing and experimenting with potential or existing products, processes or services, including cannabis and cannabis products."*

On June 16, 2008, City Council adopted zoning provisions via Ordinance 528 to allow for R&D uses as either permitted by-right or as conditional uses in the Sierra Point Commercial District. The provisions of that ordinance, with some exceptions, permitted R&D uses by right in the district. With regards to using live animals, the ordinance provisions permit by-right, R&D on live insects, rodents, rabbits, fish, and amphibians. R&D involving the use of live dogs, cats or nonhuman primates was prohibited. Use of other live animals that are not named as permitted or prohibited are subject to a conditional use permit, with a special provision that City Council is named as the approving authority instead of the Planning Commission.

No special findings were provided for R&D use permits, but the standard findings contained in BMC Section 17.40.060 apply, *"In considering an application, the planning commission shall consider and give due regard to the nature and condition of all adjacent uses and structures, and to general and specific plans for the area in question. The planning commission shall determine whether or not the establishment, maintenance or operation of the use applied for will, under the circumstances of the particular case, be detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city. If the planning commission finds that the aforementioned conditions will not result from the particular use applied for, it may grant the use permit."* These conditions focus on potential impacts to neighbors, but do not specifically address issues of animal care related to R&D work. Animal care at R&D facilities is the purview of the U.S. Dept of Agriculture (USDA).

In 2022, Bristol-Myers Squibb (BMS) applied for a use permit to conduct R&D using minipigs at 1400 Sierra Point Parkway, the only R&D use permit application filed to date pursuant to the regulations described above. That application was heard by City Council on May 19, 2022, continued for further public hearing and ultimately withdrawn by the applicant before a decision was made. Following that application, City Council directed staff to initiate an update to consider updates to the use provisions for live animals. Additionally, a City Council subcommittee met on October 31, 2022 and indicated a desire to consider removal of R&D conditional uses for animals, but also made a recommendation to consider removal of rabbits from the R&D permitted uses list. The subcommittee also requested that an email with linked articles, originally from Councilmember Cunningham to the City Manager and City Council, be provided to the Commission for reference. That is included as Attachment C.

DISCUSSION: The draft ordinance would amend certain provisions contained in BMC Chapter 17.18 - SP-CRO Sierra Point Commercial District, as outlined below. A redlined version of the proposed amendments is provided as Attachment B.

BMC Section 17.18.020 – Permitted Uses: The amendment would retain the provisions allowing for R&D by-right on insects, rodents, fish and amphibians. However, consistent with the Council subcommittee recommendation, use of rabbits would no longer be permitted. R&D on any other animals that are not specifically identified as permitted would now be prohibited, thus eliminating the conditional use category that presently exists. In addition to the change regarding use of rabbits, reptiles have been added as a permitted R&D use and the use of insects has been broadened to invertebrate animals. Invertebrates are those animals without a backbone and includes insects, spiders, worms, etc. The only vertebrate animals, those with a backbone, on the permitted for R&D list would be fish, amphibians, reptiles and rodents.

Additionally, as an administrative clarification item, in reviewing this section staff noted that it also refers to cannabis R&D as permitted but is subject to BMC Chapter 17.33. Since that chapter is specific to cannabis performance standards, the cross reference was moved to BMC Section 17.18.045 – Performance Standards. It does not change the allowance of cannabis R&D as permitted in this district, since it's already named as an R&D use in the definition, as noted above.

An important distinction should also be noted, that manufacturing of products is not permitted in this district whether related to cannabis or other medical products. That remains unchanged.

BMC Sections 17.18.030 – Conditional Uses and 17.18.035 – Conditional Uses – Research and Development: BMC Section 17.18.035 - Conditional Uses-Research and Development is proposed to be deleted. There are three types of R&D uses identified in that section: 1) Risk analysis-based referral to the City Council by the Planning Director 2) live animals not otherwise named under permitted or prohibited uses and 3) uses exceeding Risk Group 3 or Biosafety level 3 as defined by the National Institute of Health (NIH) or the Center for Disease Control.

As indicated above, with the proposed amendment, R&D using live animals would no longer be permitted by use permit. They would either be permitted by-right or prohibited, depending on the animal species.

The provision pertaining to R&D utilizing biological agents exceeding Risk Group 3 or Biosafety Level 3 would be moved to Section 17.18.030 - Conditional Uses and such R&D uses would still require a conditional use permit, but as with all other conditional uses, the Planning Commission would be the approving authority instead of City Council. As is the case with all Planning Commission decisions, the Commission's decision on any use permit may be appealed to City Council, as provided in BMC Chapter 17.52 - Appeals.

The provisions for Planning Director referral of certain uses to the Council based on a risk analysis have been removed. The risk analysis would still be required, per BMC Section 17.18.045 - Performance Standards, to provide documentation prior to issuance of a building permit or business license. That documentation would then be used to identify whether the Risk Group 3 or Biosafety Level 3 threshold would be exceeded, at which point a proposed use would automatically be referred to the Planning Commission for a decision on a use permit application. The intent of this proposed change is to provide for greater clarity in the regulations as to what does and does not require a use permit, while still requiring a use permit for higher risk or biosafety level uses. Such uses would still be considered by the Planning Commission relative to the standard use permit findings related to potential impacts to neighbors, as indicated above.

In brief, elimination of Section 17.18.035 and moving certain R&D uses indicated above to Section 17.18.030 would provide for consistent processing requirements for all use permits in this district.

BMC Section 17.18.045 – Performance Standards: The performance standards for this district have been updated, as indicated above. The risk analysis for R&D would be required prior to building permit or business license issuance. The business license reference has been added, since certain incoming R&D businesses may occupy a space that has already been built out to suit their R&D needs. A building permit is not always required, but a business license is. The cross reference to BMC Chapter 17.33 for cannabis businesses has been added to the performance standards, as noted above.

ATTACHMENTS:

- A. ~~Draft Resolution 2022-RZ-4 (including draft ordinance)~~ See the City Council report Attachments 1, 2 and 3 for the draft ordinance, redlined draft ordinance and the Planning Commission's resolution.
- B. ~~Redlined copy of proposed zoning text amendments~~
- C. Email from Council Subcommittee Member Cunningham, dated 6/2/22

Ken Johnson

Ken Johnson, Senior Planner

John Swiecki

John Swiecki, Community Development Director

6/2/22

To: Holstine, Clay <clayholstine@ci.brisbane.ca.us>

Subject: Bristol Myers ~ Minipig Testing

Planning Commission Report - Attachment C

Email from Council Subcommittee
Member Cunningham

Hi Clay,

I would like all of this information to be distributed to the entire City Council please

Human *In Silico* Drug Trials Demonstrate Higher Accuracy than Animal Models in Predicting Clinical Pro- Arrhythmic Cardiotoxicity

It is understood that the use of Animal Testing has been the benchmark for many years, even as early as 2018

However, advanced computer and in vitro methods of testing as far back as the 1960's has proven more improved drug testing results than animal testing has given us

In Vitro Methods of Testing ~

Advanced Computer Modeling (aka in silico models) ~

From the European Society of Cardiology

These alternatives to animal testing include sophisticated tests using human cells and tissues (also known as in vitro methods), advanced computer-modeling techniques (often referred to as in silico models), and studies with human volunteers.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5601077>

<https://pubmed.ncbi.nlm.nih.gov/28955244/>

Computer-based in silico clinical trials (European Society of Cardiology)

There are >1900 article representing the advantages of non animal testing

As far back as 2018 (Smithsonian

<https://www.smithsonianmag.com/innovation/why-we-should-test-heart-drugs-on-virtual-human-instead-animals-180968588/>)

Human Volunteers ~

Virtual Human Testing (since 2018) ~

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5601077/>

<https://www.frontiersin.org/articles/10.3389/fphys.2017.00668/full>

Computer-based in silico clinical trials (Oxford University)

<https://www.frontiersin.org/articles/10.3389/fphys.2017.00668/full>

Efficacy rates (Oxford University) ~ Department of Computer Science demonstrates that computational models representing human heart cells produce a higher accuracy than animal models in predicting an adverse drug effect. Therefore it is now possible to test a new heart drug in virtual humans

Pigs 75% - 85% efficacy

Virtual Human Computer simulations 89%-96% efficacy

<https://mazuri.com/blogs/education-and-nutrition/mini-pigs-what-makes-mini-pig-mini>

A mini pig refers to a class of domesticated pig ranging from 60 pounds to 200 pounds and 14 to 20 inches tall. “Mini” is used as a differentiator between traditional farm or production pigs and smaller pigs bred as companion animals. Mini pigs can be mixed or pure breeds, with common ancestry from Juliana, KuneKune, Pot-bellied and Göttingen mini pigs. Mini pigs reach maturity at five years old and have 20 years life expectancy. Like other pigs, mini pigs are incredibly smart and social animals. They are easy to train and can make great pets or therapy animals.



Karen Cunningham | She/Her

City Council Member

City of Brisbane, CA USA

City #: (415) 312-2662 | Cell: (415) 860-4698|

Email: kcunningham@brisbaneca.org

City Hall hours (Covid Changes ~ please check City Website): M, T, Th: 8-5,
W: 8-5, F: 8-1

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and [Instagram](#)!

From: Michael Barnes <Michael.Barnes@ci.brisbane.ca.us>
Sent: Tuesday, January 24, 2023 1:22 PM
To: Padilla, Ingrid <ipadilla@ci.brisbane.ca.us>
Subject: Planning Commission Meeting of 1/26/23

Dear Planning Commission,

Please deny the city councils Zoning Text Amendment 2022-RZ-4 provisions prohibiting animal testing and the elimination of conditional use permits.

Animal testing on Sierra Point has proven not to be detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood, nor has it proven "...injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city." In fact, the opposite is true.

The establishment of animal testing by right on Sierra Point allowed for the long-stalled build-out of that area with Biotech and Pharmaceutical buildings. These new buildings are providing a number of public benefits, including revenue to the city, improvements to the Bay Trail, jobs, elimination of landfill blight, and the development of life-saving medicines for our community and the world.

Sierra Point is now a safer, more comfortable and healthier place to visit. The Biotech and Pharmaceutical buildings themselves improve the properties, the neighborhood, and the general welfare of the city.

The city council application to prohibit animal testing is yet another anti-science Brisbane initiative, like our rejection of environmental remediation. I believe this application is the first step in running the drug companies out of Brisbane, since these companies only started moving to Sierra Point after animal testing was granted by right.

Having worked in the Biotech and Pharmaceutical industry for over 40 years, the last 25 in research, I can tell you that the drug industry has an economic, ethical and scientific interest in replacing animal testing. I have used many in vitro and in silico tools, but the sad fact is that we still cannot accurately predict or anticipate all the effects of novel drugs on an animal, or the effects an animal will have on a novel drug.

Without in vivo research, thousands of Americans would die. Did you know that pig heart valves are transplanted into humans? And that they have a clear advantage over artificial heart valves?

Please continue to allow Brisbane's already limited animal testing at Sierra Point, and reject the proposed in vivo testing prohibition and elimination of conditional uses. Keep the life-saving Biotech and

Pharmaceutical industries in Brisbane.

Michael Barnes
Brisbane resident

From: Kim Follien <kfollien@genentech.com>
Sent: Thursday, January 26, 2023 12:01 AM
To: Padilla, Ingrid <ipadilla@ci.brisbane.ca.us>
Subject: Regarding the 1/26/2023 Planning Commission Meeting/ Zoning Text Amendment 2022-RZ-4

Hi Ingrid,

Could you please forward this to the Planning Commission:

Dear Planning Commissioners,

I'm here to request that you reject Zoning Text Amendment 2022-RZ-4. The FDA typically requires drugs for human use to be tested on one rodent species and a non-rodent species prior to human clinical trials. One example is the mRNA COVID 19 vaccines made by Pfizer and Moderna, which the city recommended that we all get. They were tested on rodents and non-human primates. Additionally heart drugs typically need to be tested on Pigs, as rodents aren't a good human model. Limiting animal testing in Brisbane to only rodents, amphibians and insects is really limiting animal testing to just rodents, as I know of no human drug development that can use insects or amphibians.

While a recent U.S. law has eliminated the requirement that all drugs in development must undergo testing in animals prior to human clinical trials, the alternate testing methods, such as computer modeling are still quite limited, so won't work for all drugs, nor has any drug been approved yet using these alternate methods. I can tell you that the Pharmaceutical Industry will gladly use these alternative methods if they can because it reduces the time and cost of drug development, compared to animal testing.

Drug Development Scientists are the ones that should be determining what type of testing is best suited to ensure a safe drug for human use, not the Brisbane City Council. There are Brisbane residents that have benefitted and will benefit from drugs tested on animals, other than rodents. I highly doubt most Brisbane residents would refuse a vaccine or life saving drug for themselves or their children if it was tested on a non-rodent species, so this zoning text amendment makes no sense, is NIMBY, and is just providing an illusion that Brisbane rejects animal testing. The Biotechnology companies will just go somewhere else to do their drug development and Brisbane residents will continue to take those life saving drugs and vaccines.

Link to NPR article regarding the new US law no longer requiring animal testing:
<https://www.npr.org/2023/01/12/1148529799/fda-animal-testing-pharmaceuticals-drug-development>

Best Regards,

Kim Follien

Brisbane Resident, and have been working in the Biotech Industry for the last 36 years

--

Kim Follien (she/her)

Genentech, Inc. - A member of the Roche Group
 Senior Business Systems Analyst

Product Analysis & Consultancy Chapter - ERP Business Analysis - Manufacturing&Supply
Chain NA/LATAM Building 26 / N1-4
South San Francisco, CA 94080, USA
Phone No.: +1 650-303-7285

FW: Correspondence: Animal Testing

Swiecki, John <johnswiecki@ci.brisbane.ca.us>

Thu 1/26/2023 8:39 PM

To: Johnson, Kenneth <kjohnson@ci.brisbane.ca.us>

**John Swiecki, AICP | He/Him**

Community Development Director

Cell: 415.713.9266 | Office(message) 415.508.2120 | Email: jswiecki@brisbaneca.orgStay connected with us via the [Blast](#), [GoRequest](#), [Facebook](#), [Twitter](#), [YouTube](#) and [Instagram](#)!**From:** Padilla, Ingrid <ipadilla@ci.brisbane.ca.us>**Sent:** Thursday, January 26, 2023 8:39 PM**To:** Ayres, Julia <jayres@ci.brisbane.ca.us>**Cc:** Swiecki, John <johnswiecki@ci.brisbane.ca.us>**Subject:** Correspondence: Animal Testing

For the Planning Commission- kindly forward correspondence from Bill Van Raam.

Ingrid Padilla

City of Brisbane, City Clerk

(415) 508-2113

From: Bill Van Raam <bill@bvanraam.com>**Sent:** Thursday, January 26, 2023 5:41 PM**To:** Padilla, Ingrid <ipadilla@ci.brisbane.ca.us>**Subject:** Animal Testing

Hi Ingrid I hope this gets to in time for tonight's Planning Commission meeting, and thank you for all you do.

I'm writing this letter to say please do not further restrict animal testing in Brisbane. I like so many others have benefited from testing, after thirty years of type one diabetes I had eye issues leading to the loss of sight in one eye but saving the sight in the other, kidney failure, subsequent kidney pancreas transplant, two strokes, heart attack with bypass surgery, there's been other things too but I'm trying to keep this short. The medicine and procedures would not have happened without animal testing. Computer models are a wonderful advancement in medicine but unfortunately they can't replace all animal testing, while I completely understand the emotional aspect of animal testing it is my opinion we shouldn't set back things because of our emotions.

Thank you

Brisbane resident

Bill Van Raam

File Attachments for Item:

G. Consider Approval of First Amendment to Lease for Property at 25 Park Place, Brisbane, CA. Approval of this First Amendment is exempt from further review under the California Environmental Quality Act because it is not a “project”. Section 15378 (b), CEQA Guidelines.



CITY COUNCIL AGENDA REPORT

Meeting Date: 02/16/2023

From: Clay Holstine, City Manager

Subject: First Amendment to Lease for Property at 25 Park Place, Brisbane, CA. Approval of this First Amendment is exempt from further review under the California Environmental Quality Act because it is not a “project”. Section 15378 (b), CEQA Guidelines.

Community Goal/Result

Fiscally prudent.

Recommendation:

Approve the First Amendment to the Standard Industrial/Commercial Single Tenant Lease-Gross between the Orsini Court Trust and the City of Brisbane for the property located at 25 Park Place, Brisbane, CA, extending the term of the Lease for an additional 15 years (through December 31, 2046) and setting forth the annual rent increases for the property at a rate of 3% annually, subject to a reset of the rent in 2034.

Background

In order to serve better the community and in anticipation of the need for additional space for staff due to the potential development of the Baylands, the City entered into a 10 year lease for the property at 25 Park Place. Attachment 1. The term of that lease will expire on December 31, 2031. The initial rent for the property was \$25,000 per month and increases 3% annually. For 2023, the rent is \$25,750 per month. In order to undertake the necessary tenant improvements for the property, it will be necessary to obtain financing and such financing requires a lease term of 25 years. City staff has discussed with the property owner (the Orsini Court Trust/Elena Court) extending the lease term through December 31, 2046, with annual rent increases of 3%. As discussed below, there is the possibility that the monthly rent could be “reset” to a higher amount in 2034. If the “reset” contingency is included, the property owner is willing to amend the lease as set forth in Attachment 2.

Discussion

Extending the term of the lease will permit the City to obtain the necessary funding to make the tenant improvements required to make the property more functional for City purposes. The monthly rent for the property will increase annually at a rate of 3%. Such annual rent increases are typical for long term commercial property in the Bay Area.

Given the length of the lease (25 years), the property owner is concerned that there may be years of high inflation, such as what has been experienced recently, that would erode the built in 3% annual increase. To address that concern, the lease amendment provides as follows: if the percentage change in the Consumers Price Index between 2022 (when the lease started) and the end of 2033, as applied to

the base rent in 2022 (\$25,000) results in an amount greater than \$21,288, the monthly rent would be “reset” to \$42,397, rather than \$35,644. The 3% annual increase would then be applied for the remainder of the lease. In order for the amount in question to be greater than \$21,288, the percentage change in the CPI would need to average about 6% over the course of 12 years. Staff believes that is unlikely given that over the last 50 years, the percentage change to the CPI has averaged only 4.3%. If that should occur, however, the property owner has agreed that the reset rent would reflect only a 4.5% average percentage change in the CPI over course of the 12 years, rather than the higher percentage. Accordingly, staff supports this contingency.

In addition, under the lease, the City is to pay any differences in the real property taxes (based on the FY 21/22 taxes) and the differences in the property owner’s insurance premium for the property (based on the premium in FY 21/22). Those differences for 2023 were small--\$911 for the taxes and the \$170 for the insurance premium.

Environmental Review

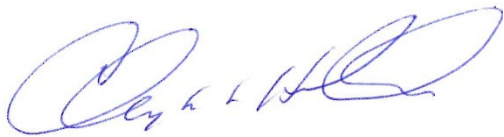
Approval of this amendment to the lease for the property at 25 Park Place is not subject to further review under the California Environmental Quality Act as it is an administrative activity of the City that will not result in direct or indirect physical changes to the environment and hence, not a “project”. CEQA Guidelines, Section 15378 (b)(5).

Fiscal Impact

The First Amendment commits the City to extending the lease for the property at 25 Park Place for an additional 15 years beyond December 31, 2031 and there will be annual rent increases associated with such extension. For example, the monthly rent beginning in January 2032 will be \$33,598 and, unless the rent has been reset in 2034, the monthly rent beginning in January 2046 (the last year of the lease) will be \$50,820. Council will need to budget funds for the rent annually. There will also be increases, over time, as to the differences in the property taxes and insurance premiums but staff anticipates these will remain relatively small.

Attachments:

1. Standard Industrial/Commercial Single Tenant Lease-Gross and Addendum (25 Park Place, Brisbane, CA)
2. First Amendment to Standard Industrial/Commercial Single Tenant Lease-Gross



Clay Holstine, City Manager

STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE - GROSS (DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. Basic Provisions ("Basic Provisions").

1.1 Parties. This Lease ("Lease"), dated for reference purposes only July 1, 2021, is made by and between Orsini Court Trust ("Lessor") and City of Brisbane ("Lessee"), (collectively the "Parties," or individually a "Party").

1.2 Premises: That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as (street address, city, state, zip): 25 Park Place, Brisbane, California 94005 ("Premises"). The Premises are located in the County of San Mateo, and are generally described as (describe briefly the nature of the property and, if applicable, the "Project," if the property is located within a Project): an approximately 10,000 square foot freestanding office building and associated exterior parking and landscaping area. (See also Paragraph 2)

1.3 Term: 10 years and 0 months ("Original Term") commencing upon lease execution, proof of liability insurance naming the Lessor as Additional Insured, payment of monies due upon execution, and current occupant vacating. This is estimated to be January 1, 2022. Lessor will provide Lessee with minimum 30 days written notice when Lessor has estimated date that current occupant will vacate ("Commencement Date") and ending December 31, 2031 ("Expiration Date"). (See also Paragraph 3)

1.4 Early Possession: If the Premises are available Lessee may have non-exclusive possession of the Premises commencing upon lease execution, proof of liability insurance naming the Lessor as Additional Insured, payment of monies due upon execution, and current occupant vacating. This is estimated to be January 1, 2022. ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: \$25,000 per month ("Base Rent"), payable on the First day of each month commencing upon Commencement Date. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 52.

1.6 Base Rent and Other Monies Paid Upon Execution:

(a) Base Rent: \$25,000 for the period 1st month's rent.

(b) Security Deposit: \$32,619 ("Security Deposit"). (See also Paragraph 5)

(c) Association Fees: for the period .

(d) Other: for .

(e) Total Due Upon Execution of this Lease: \$57,619.

1.7 Agreed Use: General office. (See also Paragraph 6)

1.8 Insuring Party. Lessor is the "Insuring Party". The annual "Base Premium" is \$5,056. (See also Paragraph 8)

1.9 Real Estate Brokers. (See also Paragraph 15 and 25)

(a) Representation: Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)"):

Lessor's Brokerage Firm CBRE, Inc. License No. 00409987 Is the broker of (check one): ☐ the Lessor; or ☒ both the Lessee and Lessor (dual agent).

Lessor's Agent Damon Schor/Karl Hansen License No. 01317778/01351383 is (check one): ☐ the Lessor's Agent (salesperson or broker associate); or ☒ both the Lessee's Agent and the Lessor's Agent (dual agent).

Lessee's Brokerage Firm CBRE, Inc. License No. 00409987 Is the broker of (check one): ☐ the Lessee; or ☒ both the Lessee and Lessor (dual agent).

Lessee's Agent Karl Hansen License No. 01351383 is (check one): ☐ the Lessee's Agent (salesperson or broker associate); or ☒ both the Lessee's Agent and the Lessor's Agent (dual agent).

(b) Payment to Brokers. Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of or % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.10 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by ("Guarantor"). (See also Paragraph 37)

1.11 Attachments. Attached hereto are the following, all of which constitute a part of this Lease:

☒ an Addendum consisting of Paragraphs 51 through 64;

☐ a plot plan depicting the Premises;

☐ a current set of the Rules and Regulations;

☐ a Work Letter;

☒ other (specify): CBRE Agency Disclosures.

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Page 1 of 17

G. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date, that the surface and structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "Building") shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense, except for the roof, foundations, and bearing walls which are handled as provided in paragraph 7. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to **Applicable Requirements effective after any improvement was made to the Premises, or to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee.** **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's Intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), ~~Lessor and Lessee shall pay~~ **allocate** the cost of such work, as follows:

(a) ~~Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.~~

~~(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.~~

~~(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.~~

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's Intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

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G. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 Delay in Possession. Lessor agrees to use commercially reasonable efforts to deliver exclusive possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 ~~180~~ days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 Lessee Compliance. Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent.

4.1 Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent, Insurance and Real Property Taxes, and any remaining amount to any other outstanding charges or costs.

4.3 Association Fees. In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. Use.

6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but

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G. be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 Lessee's Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises. In addition, Lessee shall provide Lessor with copies of its business license, certificate of occupancy and/or any similar document within 10 days of the receipt of a written request therefor.

6.4 Inspection; Compliance. Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1(e)) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor

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G. If the costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations.

(a) In General. Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), ceilings, floors, stairs, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee is also responsible for keeping the roof and roof drainage clean and free of debris. Lessor shall keep the surface and structural elements of the roof, foundations, and bearing walls in good repair (see paragraph 7.2). Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) Service Contracts. Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, and (v) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) Failure to Perform. If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

~~(d) Replacement. Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.~~

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee, except for the surface and structural elements of the roof, foundations and bearing walls, the repair of which shall be the responsibility of Lessor upon receipt of written notice that such a repair is necessary. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) Definitions. The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) Consent. Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) Liens; Bonds. Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

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73-27.40, Revised 10-22-2020

Page 5 of 17

G. 7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Payment of Premium Increases.

(a) Lessee shall pay to Lessor any insurance cost increase ("Insurance Cost Increase") occurring during the term of this Lease. Insurance Cost Increase is defined as any increase in the actual cost of the insurance required under Paragraph 8.2(b), 8.3(a) and 8.3(b), over and above the Base Premium as hereinafter defined calculated on an annual basis. Insurance Cost Increase shall include but not be limited to increases resulting from the nature of Lessee's occupancy, any act or omission of Lessee, requirements of the holder of mortgage or deed of trust covering the Premises, increased valuation of the Premises and/or a premium rate increase. The parties are encouraged to fill in the Base Premium in Paragraph 1.8 with a reasonable premium for the Required Insurance based on the Agreed Use of the Premises. If the parties fail to insert a dollar amount in Paragraph 1.8, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the commencement of the Original Term for the Agreed Use of the Premises. In no event, however, shall Lessee be responsible for any portion of the increase in the premium cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of \$2,000,000 per occurrence.

(b) Lessee shall pay any such Insurance Cost Increase to Lessor within 30 days after receipt by Lessee of a copy of the premium statement or other reasonable evidence of the amount due. If the insurance policies maintained hereunder cover other property besides the Premises, Lessor shall also deliver to Lessee a statement of the amount of such Insurance Cost Increase attributable only to the Premises showing in reasonable detail the manner in which such amount was computed. Premiums for policy periods commencing prior to, or extending beyond the term of this Lease, shall be prorated to correspond to the term of this Lease.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender or included in the Base Premium), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss.

(b) **Rental Value.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned

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G. **Installations and Utility Installations.** Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a "Waiver of Subrogation" endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required

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G. If insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 Termination; Advance Payments. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. Real Property Taxes.

10.1 Definition. As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 Payment of Taxes. Lessor shall pay the Real Property Taxes applicable to the Premises provided, however, that Lessee shall pay to Lessor the amount, if any, by which Real Property Taxes applicable to the Premises increase over the fiscal tax year during which the Commencement Date Occurs ("Tax Increase"). Payment of any such Tax Increase shall be made by Lessee to Lessor within 30 days after receipt of Lessor's written statement setting forth the amount due and computation thereof. If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that the Tax Increase be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payment shall be an amount equal to the amount of the estimated installment of the Tax Increase divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable Tax Increase is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable Tax Increase. If the amount collected by Lessor is insufficient to pay the Tax Increase when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

10.3 Additional Improvements. Notwithstanding anything to the contrary in this Paragraph 10.2, Lessee shall pay to Lessor upon demand therefor the entirety

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G. y increase in Real Property Taxes assessed by reason of Alterations or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Tax Increase for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

10.5 **Personal Property Taxes.** Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities and Services.

11.1 Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

11.2 Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 **Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall

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G. by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 **Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; the vacating of the Premises prior to the expiration or termination of this Lease without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism; or failure to deliver to Lessor exclusive possession of the entire Premises in accordance herewith prior to the expiration or termination of this Lease.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

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

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (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 the Lessee proves could have been reasonably avoided; (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 the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to

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G. If Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.9 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed. The provisions of this paragraph are intended to supersede the provisions of any earlier agreement to the contrary.

15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.9, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said

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G. ~~ies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

15.15.3 Representations and Indemnities of Broker Relationships. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents, if any) in connection with this Lease, and that no one other than said named Brokers and Agents is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by AIR CRE, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

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

19. Days. Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

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

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

23.3 Options. Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

24. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be

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G. tried as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. At or prior to the expiration or termination of this Lease Lessee shall deliver exclusive possession of the Premises to Lessor. For purposes of this provision and Paragraph 13.1(a), exclusive possession shall mean that Lessee shall have vacated the Premises, removed all of its personal property therefrom and that the Premises have been returned in the condition specified in this Lease. In the event that Lessee does not deliver exclusive possession to Lessor as specified above, then Lessor's damages during any holdover period shall be computed at the amount of the Rent (as defined in Paragraph 4.1) due during the last full month before the expiration or termination of this Lease (disregarding any temporary abatement of Rent that may have been in effect), but with Base Rent being 150% of the Base Rent payable during such last full month. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

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

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located. Signatures to this Lease accomplished by means of electronic signature or similar technology shall be legal and binding.

30. Subordination; Attornment; Non-Disturbance.

30.1 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

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G. **30.2 Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 Non-Disturbance. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

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

34. Signs. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 Execution. The Guarantors, if any, shall each execute a guaranty in the form most recently published by AIR CRE.

37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted any Option, as defined below, then the following provisions shall apply.

39.1 Definition. "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

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G. 39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Multiple Buildings.** If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations.

41. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. **Reservations.** Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

44. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

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

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

45. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. **Offer.** Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

48. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS LEASE.

49. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☒ is not attached to this Lease.

50. **Accessibility; Americans with Disabilities Act.**

(a) The Premises:

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

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☒ G. have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

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

Executed at: _____

On: _____

By LESSOR:

Orsini Court Trust

By: _____

Name Printed: Elena Court

Title: _____

Phone: _____

Fax: _____

Email: _____

By: _____

Name Printed: _____

Title: _____

Phone: _____

Fax: _____

Email: _____

Address: _____

Federal ID No.: _____

BROKER

CBRE, Inc.

Attn: Damon Schor/Karl Hansen

Title: _____

Address: 400 Hamilton Ave

Palo Alto, CA 94301

Phone: (650) 494-5121 / (415) 706-6734

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27.40, Revised 10-22-2020

Executed at: _____

On: _____

By LESSEE:

City of Brisbane

By: _____

Name Printed: Clayton Holstine

Title: _____

Phone: _____

Fax: _____

Email: _____

By: _____

Name Printed: _____

Title: _____

Phone: _____

Fax: _____

Email: _____

Address: _____

Federal ID No.: _____

BROKER

CBRE, Inc.

Attn: Karl Hansen

Title: _____

Address: 1450 Chapin Ave, Ste 200

Burlingame, CA 94010

Phone: (415) 706-6734

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Page 16 of 17

G.

Email: damon.schor@cbre.com /
karl.hansen@cbre.com

Federal ID No.: _____

Broker DRE License #: 00409987

Agent DRE License #: 01317778/01351383

Fax: _____

Email: karl.hansen@cbre.com

Federal ID No.: _____

Broker DRE License #: 00409987

Agent DRE License #: 01351383

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Page 17 of 17

ADDENDUM TO LEASE
By and between
ORSINI COURT TRUST as Lessor and
CITY OF BRISBANE as Lessee
Property Address: 25 Park Place, Brisbane, California 94005

This Addendum is incorporated into and made a part of that certain AIR Standard Industrial/Commercial Single-Tenant Lease ("Lease") dated for reference purposes July 1, 2021 as described above. In the event of any conflict between the terms of the Lease and the terms of this Addendum, the terms of this Addendum shall prevail.

- 51. RENT:** Rent shall be paid in lawful money of the United States of America payable to Orsini Court Trust at the following address: P.O. Box 928, Brisbane, CA 94005 or at such other place as Lessor may designate in writing, free from all claims, demands or set-offs against Lessor of any kind or character whatsoever (except as otherwise expressly set forth herein). Lessee understands that no monthly rental invoices will be sent to Lessee.

In accordance with the terms of the Lease, the entire Rent amount must be received (not mailed) by Lessor on or before 5:00pm on the first (1st) day of each month. If the entire Rent amount is not received by Lessor by 5:00 PM on the 5th day of the month, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% the total monthly Rent.

- 52. RENT AND RENT INCREASES:** The gross Base Rental and Base Rental increases shall be as follows:

Commencement Date – December 31, 2022:	\$25,000 per month
January 1, 2023 – December 31, 2023:	\$25,750 per month
January 1, 2024 – December 31, 2024:	\$26,522 per month
January 1, 2025 – December 31, 2025:	\$27,318 per month
January 1, 2026 – December 31, 2026:	\$28,138 per month
January 1, 2027 – December 31, 2027:	\$28,982 per month
January 1, 2028 – December 31, 2028:	\$29,851 per month
January 1, 2029 – December 31, 2029:	\$30,747 per month
January 1, 2030 – December 31, 2030:	\$31,669 per month
January 1, 2031 – December 31, 2031:	\$32,619 per month

- 53. MANAGEMENT FEE:** Lessee shall reimburse Lessor for Lessee's management fee, within 5 days of receipt of Lessor's notice that a management fee has been incurred and thereafter monthly together with Base Rental when Base Rental is paid. Management Fee shall not exceed 5% of Base Rental.
- 54. ROOF PENETRATION:** Lessee shall not make any roof penetration of any kind without Lessor's prior written approval. Any Lessee required roof repairs or roof work shall be performed by Lessor's roofing contractor only, at the Lessee's sole cost and expense. Lessee shall reimburse the full cost of such work to Lessor within 30 days upon written demand. Any unauthorized roof penetration by Lessee shall be a violation of the Lease. Such a violation would be just cause for Lessee's Security Deposit to be used per Paragraph 5.
- 55. CONDITION OF PREMISES:** Lessor shall deliver the Premises with the roof, HVAC system, electrical, plumbing and lighting in good working condition in accordance with the terms of the Lease. The Premises have not undergone an inspection by a certified ADA specialist.

Otherwise, the Premises shall be delivered AS IS. Without limiting the generality of the foregoing, the Premises shall be delivered without any warranty as to its compliance with Applicable Requirements.

56. **PARKING LOT & STORAGE:** Lessee shall have rights to all parking spaces at the Premises at no charge during the term of the lease. Parking spaces and parking lot may not be used for storage. There is to be no washing or work done on vehicles on the property. Lessee is responsible maintaining its parking spaces and for keeping its spaces oil free, and for providing all signage and striping per Applicable Requirements.
57. **SIGNS:** Lessee shall have the right to place monument signage at the property and other signage, subject to applicable legal requirements, approvals and Lessor's consent. Lessee shall be responsible, at its sole expense, for its own sign installation and removal at the end of Lease Term or earlier termination thereof. At Lessee's expense, Lessee shall remove all signage, logos, etc. and repair any damages caused by its installation and removal at the end of Lease Term or earlier termination thereof. Lessee shall receive prior written approval of Lessor prior to installing any signage. Lessee is responsible for obtaining any required permits at its sole expense.
58. **LOCKS & ALARM:** Door locks may not be changed or removed without prior written permission of Lessor. If permission is requested and approved, Lessee shall provide Lessor with 2 keys (copies) to each door lock(s). If Lessee installs an alarm system, Lessee shall provide Lessor with an access code. Lessee shall remove all equipment and restore any damages, at Lessee's expense, upon vacating the Premises.
59. **NO RELIANCE ON SECURITY DEVICES OR MEASURES:** Lessee acknowledges that security devices or measures may fail, or be thwarted by criminals, or by electrical, or by mechanical malfunction. Therefore, Lessee acknowledges that it should not rely on such devices or measures and should protect itself and its property as if these devices or measures did not exist. Lessor is not responsible for any failures of the security devices or measures. Lessee will be fully responsible for any repairs, maintenance and or replacements of such devices.
60. **SMOKING PROHIBITION:** Smoking on the Premises and in the common areas is prohibited under this Lease and by any applicable laws at all times.
61. **ADVERTISING THE PREMISES:** Lessee may not advertise the Premises, or any portion of it without prior written permission by Lessor. All advertisements must be approved by Lessor in writing. Lessee shall not advertise and/or lease the Premises, or any portion of it on any poster, sign, newspaper, billboard, magazine, listing services, second party services or agencies, television, radio, flyer, or any website.
62. **RODENTS AND INSECT:** Lessor and Lessee have inspected the Premises prior to entering into this lease and know of no rodent or insect infestation. If the presence of rodents or insects are found during tenancy in the Premises, Lessee shall be responsible for the cost of extermination and any damage caused by the infestation. Lessor shall cooperate with all pest control efforts.
63. **ASSIGNMENT AND SUBLETTING:** In the event of an assignment or subletting, Lessor and Lessee shall equally share and divide any premium (after Lessee's deduction for reasonable costs and expenses incurred by Lessee related to such assignment or subletting), whether in the form of (a) a lump sum payment (s) in consideration of the assignment or subletting, and/or (b) the payment of the rent by the Sublessee, in an amount greater than that provided for in this Lease, that result from such assignment or subletting.

64. RIGHT OF FIRST OFFER TO PURCHASE: If during the Lease Term the Lessor decides to sell the Premises, the Lessor shall give the Lessee a written notice offering Lessee the first right to purchase the Premises at price and terms under which Lessor is willing to sell ("First Offer"). Lessee shall have 30 days to accept the First Offer or make a counter offer. If Lessee does not accept the First Offer or Lessor does not accept the counter offer, then Lessor shall have the right to sell the Premises to any other purchaser; provided, however, that if Lessor receives a written offer to purchase the Premises that is 10% lower than the First Offer and Lessor intends to accept such offer, Lessor, before accepting such offer, shall offer Lessee the right to purchase the Premises at that same purchase price ("Second Offer"). Lessee shall have 30 days to accept the Second Offer.

FIRST AMENDMENT TO STANDARD INDUSTRIAL/COMMERCIAL SINGLE TENANT LEASE—GROSS

THIS FIRST AMENDMENT TO STANDARD INDUSTRIAL/COMMERCIAL SINGLE TENANT LEASE-GROSS is made February __, 2023 between the Orsini Court Trust ("Lessor") and the City of Brisbane ("Lessee") concerning 25 Park Place, Brisbane, California 94005 ("Premises").

Recitals

- A. On July 1, 2021, Lessor and Lessee entered into a Standard Industrial/Commercial Single Tenant Lease-Gross "Lease") for the Premises.
- B. The term of the Lease ends on December 31, 2031 and paragraph 52 of the Lease sets forth the monthly rent that Lessee is to pay to Lessor through December 31, 2031.
- C. Lessor and Lessee wish to extend the term of the Lease through December 31, 2046 and to set forth the monthly rent that Lessee will pay to Lessee from January 1, 2032 through December 31, 2046.

NOW, THEREFORE, in consideration of the following, Lessor and Lessee amend the Lease as follows:

- 1. Paragraph 1.3 of the Lease is amended to read:
"1.3 Term. 25 years and 0 months, commencing January 1, 2022 ("Commencement Date") and ending December 31, 2046 ("Expiration Date"). (See also paragraph 3.)"
- 2. Paragraph 52 of the Lease is amended to read:

"52. Rent and Rent Increase. The gross Base Rental and Base Rental Increases shall be as follows:

Commencement Date—December 31, 2022	\$25,000 per month
January 1, 2023 – December 31, 2023	\$25,750 per month
January 1, 2024 – December 31, 2024	\$26,522 per month
January 1, 2025 – December 31, 2025	\$27,318 per month
January 1, 2026 – December 31, 2026	\$28,138 per month
January 1, 2027 – December 31, 2027	\$28,982 per month
January 1, 2028 – December 31, 2028	\$29,851 per month
January 1, 2029 – December 31, 2029	\$30,747 per month
January 1, 2030 – December 31, 2030	\$31,669 per month
January 1, 2031 – December 31, 2031	\$32,619 per month
January 1, 2032 – December 31, 2032	\$33,598 per month
January 1, 2033 – December 31, 2033	\$34,606 per month
January 1, 2034 – December 31, 2034	\$35,644 per month
January 1, 2035 – December 31, 2035	\$36,713 per month
January 1, 2036 – December 31, 2036	\$37,815 per month
January 1, 2037 – December 31, 2037	\$38,949 per month
January 1, 2038 – December 31, 2038	\$40,118 per month
January 1, 2039 – December 31, 2039	\$41,321 per month
January 1, 2040 – December 31, 2040	\$42,561 per month
January 1, 2041 – December 31, 2041	\$43,838 per month
January 1, 2042 – December 31, 2042	\$45,153 per month

January 1, 2043 – December 31, 2043	\$46,507 per month
January 1, 2044 – December 31, 2044	\$47,903 per month
January 1, 2045 – December 31, 2045	\$49,340 per month
January 1, 2046 – December 31, 2046	\$50,820 per month

3. Notwithstanding the foregoing, Base Rental and Base Rental Increases may be adjusted upwards, effective January 1, 2034, in the following events and on the following basis:
- a. If the percentage change in Consumer Price Index, all Urban Consumers (CPI-U), San Francisco – Oakland - Hayward Region (the “CPI”), between January 1, 2022 and December 31, 2033, if applied to the Base Rental on January 1, 2022 (\$25,000) , would cause an increase of \$21,288 or more, then the monthly rent shall be reset, effective January 1, 2034, at \$42,397, and said amount shall thereafter be increased by 3% annually.
 - b. Resetting the rent, if applicable, as set forth above shall be made as soon as possible after publication of the percentage change in the CPI for December 2033, and shall be retroactively applied, effective January 1, 2034. Any amounts due for the Lease period between January 1, 2034, and the date when the monthly rent has been reset shall be payable within sixty (60) days of the reset date.
 - c. If the percentage change in the CPI between January 1, 2022 and December 31, 2033, as applied to the Base Rental on January 1, 2022 (\$25,000), would not cause an increase of \$21,288 or more, the monthly rent for 2034 and thereafter shall remain for the balance of the Lease term as set forth in Paragraph 52 of the Lease as amended.
4. In all other respects, the terms and conditions of the Lease are to remain in full force and effect.

ORSINI COURT TRUST

CITY OF BRISBANE

Elena Court, Trustee

Clayton Holstine, City Manager

Approved as to form:

Michael H. Roush
Legal Counsel
City of Brisbane