



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill 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 that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill 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 that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salesperson and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual 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 the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your 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. If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation. Both Sellers and Buyers 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.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).**

☐ Buyer ☐ Seller ☐ Lessor ☒ Lessee

**Mai Xuan Ngo dba M.Y Salon, a
California, Sole Proprietor.**

Date: 01-11-22

☐ Buyer ☐ Seller ☒ Lessor ☐ Lessee

**City of Santa Clara, California, a
chartered municipal corporation.**

DocuSigned by:

Deanna J. Santana

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1/14/2022

Agent: Eugene Burger Management Corporation DRE Lic. #: 01183885
Real Estate Broker (Firm)

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DocuSigned by:

By: Alex Ayala Sr.

Alex Ayala

1/12/2022

(Salesperson or Broker-Associate)

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DRE Lic. #: 02054907

Date: _____

THIS FORM HAS BEEN PREPARED BY AIR CRE. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.

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**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)**

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. (b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. (c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobile home, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. (d) "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. (f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multi-unit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobile home as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. (n) "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: (a) The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

(c) **CONFIRMATION:** The following agency relationships are confirmed for this transaction.

Seller's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is the broker of (check one): ☐ the seller; or ☐ both the buyer and seller. (dual agent)

Seller's Agent DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is (check one): ☐ the Seller's Agent. (salesperson or broker associate); or ☐ both the Buyer's Agent and the Seller's Agent. (dual agent)

Buyer's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is the broker of (check one): ☐ the buyer; or ☐ both the buyer and seller. (dual agent)

Buyer's Agent DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is (check one): ☐ the Buyer's Agent. (salesperson or broker associate); or ☐ both the Buyer's Agent and the Seller's Agent. (dual agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289, 2017-18 California Legislative session)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically

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prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller. **(b)** A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. **(c)** "Confidential Information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. **(d)** This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship. **(b)** A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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**COMMERCIAL PROPERTY LEASE AGREEMENT
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND**

Mai Xuan Ngo dba M.Y Salon, a California, Sole Proprietor

This lease agreement ("Lease") is dated **January 11, 2022** and is by and between the **City of Santa Clara, California, a chartered California municipal corporation** ("City") and **Mai Xuan Ngo dba M.Y Salon, a California, Sole Proprietor** ("Lessee"). City and Lessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Lease." The City Manager serves as Contract Administrator for this Lease on behalf of the City Council.

RECITALS:

- A. Lessee previously leased the Premises (as defined below) pursuant to one or more prior leases, including without limitation **Mai Xuan Ngo dba M.Y Salon, a California, Sole Proprietor** the Net Shopping Center Lease, with **Lucia Lim** ("Prior Landlord"), which expired on September 30, 2021 (collectively, "Prior Lease"). The Prior Lease was in turn a sublease under a ground lease between the Prior Landlord as lessee and the City as lessor for the land underlying the Project (as defined below), which also expired on September 30, 2021 ("Ground Lease").
- B. Effective of the termination of the Prior Lease, the City became the sole owner of the Project, free and clear of the Prior Lease. Nevertheless, the Parties have agreed to enter into a new lease on the terms herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, stipulated and agreed, Lessee and City mutually agree as follows:

AGREEMENTS:

LEASE PROVISIONS

1. PREMISES; BUILDING AND PROJECT.

1.1 **General.** City hereby leases to Lessee, and Lessee hires from City, certain real property located in the City of Santa Clara, County of Santa Clara, State of California, commonly known as **Suite A-1** consisting of approximately **662** square feet (the "Premises") in that certain approximately **8301** square foot building at **1000 Lafayette Street, Santa Clara, California, 95050** (the "Building"), located on an approximately 1.33 acre parcel (collectively, including the Building, the "Project"), all as more particularly described or identified in **Exhibit A** attached hereto and incorporated herein by reference. The Project excludes, and Lessee is the

sole owner of, the items identified on the Inventory of Fixtures set forth in Exhibit B attached hereto and incorporated herein by reference.

1.2 Pro Rata Share. Lessee's pro rata share ("Pro Rata Share") is percent **7.97%** which represents the percentage that the rentable area of the Premises bears to the total rentable area of the building.

2. **TERM; COMMENCEMENT DATE.**

The term of this Lease shall be for **Two (2)** years commencing at 12:01 am on **October 1, 2021** ("Commencement Date") and ending on **September 30, 2023**. Lessee shall, at the expiration of the term of this lease, or upon its earlier termination, surrender the Premises in as good condition as it is now at the date of this lease, reasonable wear and tear excepted. City shall have the right, upon the termination of the term or upon a breach, to enter the Premises and take possession of it.

3. **RENT.**

3.1 Base Rent. Lessee shall pay base rent ("Base Rent") in the amount of **\$1,160.00** per month. All rent, including Base Rent, shall be paid in lawful money of the United States of America without deduction or offset. Base Rent shall be payable on the first day of each and every month commencing on the Commencement Date, at a place (or places) as may be designated in writing from time to time by City.

3.2 Late Charge. Lessee acknowledges late payment by Lessee to City of rent will cause City to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed on City. Therefore, if City does not receive any installment of rent due from Lessee within ten (10) days after the date such rent is due, Lessee shall pay to City an additional sum of ten percent (10%) of the overdue rent as a late charge. The parties agree this late charge represents a fair and reasonable estimate of the costs City will incur by reason of late payment by Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to City.

3.3 Rent. The term "Rent" as used in this Lease shall mean Base Rent and any other amounts owing from Lessee to the City pursuant to this Lease.

4. **SECURITY DEPOSIT.**

Lessee has tendered to City an amount of **One Thousand One Hundred Sixty Dollars \$1,160.00** as a security deposit. City may use these funds as are reasonably necessary to remedy any Lessee breach(s) or default(s) under this Lease, including without limitation in the payment of rent, to repair damages caused by Lessee, or expenses incurred to clean the Premises upon termination of tenancy. If any portion of the security deposit is used towards rent or damages at City's sole discretion, Lessee agrees to reinstate said total security deposit upon receipt of five (5) days written notice. Any remaining balance of the security deposit shall be returned by City to Lessee at such time after termination of this Lease that all of Lessee's obligations under this Lease have been fulfilled, reduced by such amounts as may be required by City to remedy defaults on the part of Lessee in the payment of Rent or other obligations of Lessee under this Lease, to repair damage to the Premises, Building, or Project caused by Lessee and to clean the Premises. City may use and co-mingle the security deposit with other funds of City. Lessee hereby waives the provisions of the California Civil Code section 1950.7, and all other provisions of any laws, now or hereinafter in force, which restricts the amount or types of claim that a landlord may make upon a security deposit or imposes upon a landlord (or its successors) any obligation with respect to the handling or return of security deposits.

5. **DUTIES OF LESSEE.**

5.1 Lessee shall not use the image of the Premises or Project, the name of City or any other identifying sign or symbol associated with the Premises or Project or City to undertake any action or representation than those specifically assigned to Lessee as a duty under this Lease.

5.2 Lessee shall protect and maintain the Premises. Lessee shall assume the responsibility for the guarding and safekeeping of all personal property located at the Premises.

5.3 Lessee shall not make any interior renovation or remodeling or make any major changes to the Premises or remove any objects, which are not the property of Lessee without the prior written consent of the City Manager or her designee.

6. **USE OF PREMISES/COMMON AREAS.**

6.1 **Permitted Uses.** Lessee shall use the Premises solely as **Hair Salon** and for no other purpose. Without limiting the foregoing, Lessee agrees not to use or permit use of the Premises for any unlawful purpose, and not to commit or permit any waste or nuisance in or about the Premises. Lessee will not use Premises in a manner that increases the risk of fire, cost of fire insurance or improvements thereon. No unreasonable sign or placard shall be painted, inscribed or placed in or on or about the Premises or Project; and no tree or shrub thereon (if any) shall be destroyed or removed or other waste committed of said Premises or Project. No

bicycles, motorcycles, automobiles or other mechanical means of transportation shall be placed anywhere on the Premises or Project except for areas (if any) identified by the City from time to time. No repair, storage, overhaul or modification of any motor vehicle shall take place on or about the Premises or Project. Lessee, at his/her expense, shall keep the Premises in as good condition as it was at the beginning of the term hereof, reasonable wear and tear excepted.

6.2 Prohibited Uses. Lessee shall not use Premises for any purpose not expressly permitted hereunder. Lessee shall not (i) create, cause, maintain or permit any nuisance or waste in, on or about the Premises or permit or allow the Premises to be used for any unlawful or immoral purpose, and (ii) do or permit to be done anything in any manner which unreasonably disturbs the users of the Project or the occupants of neighboring property. Specifically, and without limiting the above, Lessee agrees not to cause any unreasonable odors, noise, vibration, power emissions or other item to emanate from the Premises. No materials or articles of any nature shall be stored outside upon any portion of the Premises.

6.3 Condition, Use of Premises. City makes no warranty or representation of any kind concerning the condition of the Premises, or the fitness of the Premises for the use intended by Lessee, and hereby disclaims any personal knowledge with respect thereto, it being expressly understood by the parties that Lessee has previously occupied the Premises, personally inspected the Premises, knows its condition, finds it fit for Lessee's intended use, accepts it as is and has ascertained that it can be used for the limited purposes specified in Section 6.1.

6.4 Use of Adjacent Parking Lot. Lessee and its customers shall have the right to use **One (1)** unreserved, unassigned parking spaces located in the City parking lot as shown on Exhibit A on a first come basis. A portion of the parking lot containing spaces equal to the total number of unreserved parking spaces made available to all of the tenants/lessees of the Building is part of the Project's "Common Areas" (defined in Section 6.6 below).

6.5 Overloading. Lessee shall not do anything on the Premises that will cause damage to the Premises, the Building, or the Project. Lessee shall not suffer or allow the Premises to be used in any manner that will harm or impair the structural strength of the Building nor to suffer or allow to be installed or operated on the Premises, or the Building, any machinery or apparatus whose weight or vibration would harm or impair the structural strength of the Premises or the Building. Lessee shall not place a load upon the floor or roof of the Premises without the City's prior written consent, which consent may be conditioned on moving by skilled licensed handlers, or which exceeds the load per square foot which such floor or roof was designed to carry. Business machines and mechanical equipment used by Lessee which cause vibration or noise that may be transmitted to the Building structure or to any leased space to such a degree as to be reasonably objectionable to the City or

to any other tenants in the Building shall be placed and maintained by Lessee at its expense, in settings of cork, rubber, or spring-type vibration eliminators sufficient to eliminate such vibration or noise.

6.6 Common Areas.

6.6.1 The term "Common Areas" shall mean and refer to all areas within the exterior boundaries of the Project which are now or hereafter made available for general use, convenience, and benefit of the City and other persons entitled to occupy space in the Project, including, without limiting the generality of the foregoing, roofs, exterior walls, structural parts of the Building and structural floor, pipes and conduits, outside lighting fixtures (if any), automobile parking areas (if any), driveways, sidewalks, landscaped and planted areas, and HVAC and plumbing systems and similar common areas, facilities, and systems. Lessee and its employees and invitees are, except as otherwise specifically provided in this Lease, authorized, empowered, and privileged to use the Common Areas in common with other persons during the Term of this Lease. City agrees to maintain and operate, or cause to be maintained and operated (except as hereinafter provided with reference to cost of maintenance), the Common Areas at all times for the benefit and use of the customers and patrons of Lessee, and of other lessees, owners, and occupants of the Project.

6.6.2 City shall keep or cause the Common Areas to be kept in a neat, clean, and orderly condition, and shall repair any damage to the facilities thereof, but all Common Area Expenses shall be charged and prorated in the manner hereinafter set forth. "Common Area Expenses" shall include, but not be limited to, all sums expended in connection with the Common Areas for all general maintenance and repairs, resurfacing, painting, restriping, cleaning, sweeping and janitorial services; maintenance and repair of sidewalks, curbs, and Project signs; sprinkler systems, planting and landscaping (if any); lighting and other utilities; directional signs; maintenance and repair of any fire protection systems, lighting systems, storm drainage systems and other utility systems outside of the Premises; all maintenance and repair costs and expenses, except as to cost of replacement of the roof, exterior walls, structural parts of the Premises and structural floor, and pipes and conduits outside the leased Premises in the Project that furnish the leased Premises with various utilities (except to the extent that the same are the obligations of the appropriate utility company or are otherwise Lessee's obligation pursuant to Section 7.1 or other provision of this Lease), incurred by the City pursuant to Section 7.2; personnel to implement such services; real and personal property taxes and assessments on the improvements and land comprising the Project; any governmental imposition or surcharge imposed upon the City or assessed against any portion of the Common Areas; all costs and expense pertaining to any security alarm system for the lessees in the Project (if any); depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented); and

adequate public liability and property damage insurance on the Common Areas. In addition, the Common Area Expenses shall include a management fee of ten percent (10%) of the total of all other Common Area Expenses, adjusted from time to time as provided herein. The City may cause any or all of those services to be provided by an independent contractor or contractors.

6.6.3 The Common Area Expenses shall be prorated in the following manner:

(i) From and after the Commencement Date, and throughout the term hereof, Lessee shall pay to the City, on the first day of each calendar month, an amount estimated by the City to be Lessee's share of the Common Area Expenses. The foregoing estimated monthly charge may be adjusted by the City at the end of any calendar quarter on the basis of the City's experience and reasonably anticipated costs.

(ii) At the City's sole election, each calendar year, the City shall furnish Lessee a statement covering the calendar quarter or year just expired, certified as correct by an authorized representative of the City, showing the total of the Common Area Expenses, the amount of Lessee's share of the Common Area Expenses for such calendar quarter or year, and the payments made by Lessee with respect to such period as set forth in (i) above. If Lessee's share of the Common Area Expenses exceeds Lessee's payments so made, Lessee shall pay the City the deficiency within 10 days after receipt of such statement. If Lessee's payments exceed Lessee's share of the Common Area Expenses, Lessee shall be entitled to offset the excess against payments next thereafter to become due to the City as set forth in (i) above. Lessee's share of the Common Area Expenses for the previous calendar quarter or year shall be that portion of all such expenses which is equal to the proportion thereof which the number of square feet of floor area in the Premises bears to the total number of square feet of floor area of the Building.

6.6.4 Failure of Lessee to pay any of the charges as in this Section 6.6 required to be paid shall constitute a default under the terms hereof in like manner as failure to pay Base Rent when due.

6.6.5 The City shall at all times have the right and privilege of determining the nature and extent of the Common Areas, and of making such changes therein and thereto from time to time which in its sole discretion it deems to be desirable and in the best interest of all persons using the Common Areas, including without limitation the location and relocation of driveways, entrances, exits, automobile parking spaces (if any), installation of prohibited areas, landscaped areas, utilities, and all other facilities thereof.

6.6.6 Nothing contained herein shall be deemed to create any liability upon the City for any damage to motor vehicles of customers or employees or for loss of property from within such motor vehicles.

6.6.7 The City shall have the right to establish, and from time to time change, alter, and amend, and to enforce against Lessee and the other users of the Common Areas such reasonable rules and regulations (including the exclusion of employees' parking therefrom) as the City in its sole discretion may deem necessary or advisable for the proper and efficient operation and maintenance of the Common Areas. The rules and regulations herein provided may include, without limitation, the hours during which the Common Areas shall be open for use.

6.6.8 City shall retain the sole and absolute discretion in the modification of the Common Areas, which may include the rearrangement, increase or decrease of the areas, and the manner in which the areas are utilized. City shall also have the right at any time and from time to time during the term hereof to exclude and restrain any person from use or occupancy thereof, excepting, however, bona fide customers, patrons, and service suppliers of Lessee, and other tenants of the City who make use of the Common Areas fully in accordance with the rules and regulations established by the City from time to time with respect thereto. The rights of Lessee hereunder in and to the Common Areas shall at all times be subject to the rights of the City, the other tenants of the Project to use the same in common with Lessee, and it shall be the duty of Lessee to keep all of the Common Areas free and clear of any obstructions created or permitted by Lessee or resulting from Lessee's operation and permit the use of the Common Areas only for normal parking, ingress and egress by said customers, patrons, and service suppliers to and from the Building. Nothing herein shall prevent the City from allowing non-users of the Building or Project to use the parking lot for City-designated events, as long as Lessee and its customers' rights to use the number of spaces identified in Section 6.4 during Lessee's regular business hours is not unreasonably restricted.

6.6.9 If in the sole discretion of the City unauthorized persons are using any of the Common Areas by reason of the presence of Lessee in the Premises, Lessee, upon demand of the City, shall enforce such rights against all such unauthorized persons by appropriate proceedings. Nothing herein shall affect the rights of the City at any time to remove any such unauthorized persons from said areas or to restrain the use of any of said areas by unauthorized persons.

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Lessee Initials

Lessee Initials

7. MAINTENANCE AND REPAIRS.

7.1 Lessee's Obligations. Lessee agrees at all times during the term hereof, at its own expense, to repair, replace and maintain in good and tenantable condition the Premises and every part thereof (except that portion of the Premises to be maintained by the City as hereinafter provided) and including, without limitation, the utility meters, pipes and conduits, all fixtures, air conditioning equipment and heating equipment, if any, exclusively serving the Premises and other equipment therein, including any equipment installed by Lessee which is part of said system, the storefront or storefronts, all signs, locks and closing devices, and all window sash, casement or frames, door and door frames, floor coverings, including carpeting, terrazzo or other special flooring, and all such items of repair, maintenance, allocation and improvement or reconstruction as may at any time or from time to time be required by a governmental agency having jurisdiction thereof. Lessee shall contract with a qualified service company for the monthly maintenance of the air conditioning equipment or heating, ventilating and air conditioning equipment, as the case may be, exclusively serving the Premises, with a copy of the service contract to be furnished to the City upon execution of this Lease and a copy of any subsequent contracts to be furnished from time to time during the term of this Lease provided that, at the City's sole election, the City may so contract directly with a qualified service company, and Lessee shall promptly reimburse the City for the full cost of same. Maintenance of all glass, both exterior and interior, is the sole responsibility of Lessee, and any glass broken shall be promptly replaced by Lessee with glass of the same kind, size and quality. Upon surrender of the Premises, Lessee shall deliver the Premises to the City in good order, condition and state of repair, but shall not be responsible for damages resulting from ordinary wear and tear.

7.2 City Obligations. Subject to the foregoing provisions and to the reimbursement by Lessee described in Section 6.6, the City shall keep and maintain in good and tenantable condition and repair the roof, exterior walls, structural parts of the Premises and structural floor, and pipes and conduits outside the Premises that furnish the Premises with various utilities (except to the extent that the same are the obligations of the appropriate utility company or are otherwise Lessee's obligation pursuant to Section 7.1 or other provision of this Lease); provided, however, that the City shall not be required to make repairs necessitated by reason of the negligence of Lessee or anyone claiming under Lessee, by reason of failure of Lessee to perform or observe any conditions or agreements of this Lease, or by reason of alterations, additions, or improvements made by Lessee or anyone claiming under Lessee. As used in this Section, "exterior walls" shall not include storefronts, plate glass, window cases or window frames, doors or door frames, security grilles or similar enclosures. It is understood and agreed that the City shall be under no obligation to make any repairs, alterations, renewals, replacements or improvements to and upon the Premises or the mechanical equipment exclusively serving the Premises at any time except as this Lease expressly provides. Anything

to the contrary contained in this Lease notwithstanding, the City shall not in any way be liable to Lessee for failure to make repairs as herein specifically required of it unless Lessee has previously notified the City, in writing, of the need for such repairs and the City has failed to commence and complete said repairs within a reasonable period of time following receipt of Lessee's written notification.

7.3 Lessee's Failure to Maintain. If Lessee refuses or neglects to make repairs or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to the City, the City shall have the right, upon giving Lessee reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Lessee. In such event the cost of such work shall be paid by Lessee as additional rent promptly upon receipt of an invoice therefor. In addition, the City shall include a management fee on the work that was completed by the City on behalf of the Lessee, in the amount of fifteen percent (15%) that may be adjusted from time to time as provided herein.

7.4 Waiver of Legal Rights. Lessee waives the benefits of any law existing now or at any time during the term of this Lease and any extension thereof or thereafter giving Lessee rights or remedies as a result of the physical condition of the Premises, the Building, or Project and, without limitation, Sections 1932, 1933, 1941, 1941.2, 1942 and 1942.1 of the Civil Code of California and all right to make repairs at the expense of the City or to terminate this Lease as provided in those Civil Code sections or otherwise, except as expressly provided herein.

8. HAZARDOUS MATERIALS.

8.1 Compliance with Laws. Lessee shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Premises or Project by Lessee, its agents, employees, contractors or invitees.

8.2 Termination of Lease. City shall have the right to terminate the Lease in City's sole and absolute discretion in the event that (i) any anticipated use of the Premises by Lessee involves the generation or storage, use, treatment, disposal or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority or Hazardous Materials laws; (ii) Lessee has been required by any lender or governmental authority to take remedial action in connection with Hazardous Material contaminating the Premises, if the contamination resulted from Lessee's action or use of the Premises; or (iii) Lessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material on the Premises.

8.3 Assignment and Subletting. If (i) any anticipated use of the Premises by any proposed assignee or sublessee involves the generation or storage, use, treatment or disposal or release of Hazardous Material in a manner or for any purpose, (ii) the

proposed assignee or sublessees has been required by any prior landlord, lender or governmental authority to take remedial action in connection with Hazardous Material contaminating a property, if the contamination resulted from such party's action or use of the property in question, or (iii) the proposed assignee or sublessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material, then it shall not be unreasonable for City to withhold its consent to an assignment or subletting to such proposed assignee or sublessee.

8.4 Hazardous Materials Defined. The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA, 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) "Proposition 65," Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

8.5 City's Right to Perform Tests. At any time prior to the expiration of the Lease Term, City shall have the right to enter upon the Premises in order to conduct tests of water and soil and to deliver to Lessee the results of such tests to demonstrate that levels of any Hazardous Materials in excess of permissible levels has occurred as a result of Lessee's use of the Premises. Lessee shall be solely responsible for and shall indemnify, protect, defend and hold City harmless from and against all claims, costs and liabilities including actual attorneys' fees and costs arising out of or in connection with any removal, remediation, cleanup, restoration and materials required hereunder to return the Premises and any other property of whatever nature to their condition existing prior to the appearance of the Hazardous Materials. The testing shall be at Lessee's expense if City has a reasonable basis for suspecting and confirms the presence of Hazardous Materials in the soil or surface or groundwater in on, under, or about the Premises or the Project, which has been caused by or resulted from the activities of Lessee, its agents, employees, contractors or invitees.

8.6 Hazardous Materials Indemnity. Lessee shall indemnify, defend (by counsel reasonably acceptable to City), protect and hold the City harmless from and against any and all claims, liabilities, penalties, forfeitures, losses and/or expenses, including, without limitation, diminution in value of the Premises or Project, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Premises or Project, damages arising from any adverse impact or marketing of the Premises or Project and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, either prior to or during the Lease Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about the Premises or Project by Lessee, Lessee's agents, employees, licensees or invitees or at Lessee's direction, of Hazardous Material, or by Lessee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. Lessee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Premises or Project, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Lease Term. For purposes of the indemnity provided herein, any acts or omissions of Lessee or its employees, agents, customers, sublessees, assignees, contractors or subcontractors of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee.

9. **UTILITIES.**

Lessee shall pay prior to delinquency, and shall indemnify and hold the City harmless from, all costs incurred in installation, hook-up, delivery, and repair of all utilities and services whatsoever supplied to or consumed by Lessee on the Premises including, but not limited, to gas, water, sewer, electricity, telecommunications service, janitorial, garbage pickup and disposal, on-Premises landscaping installation and maintenance (if any) and other public utilities. City shall not be responsible for providing any utilities or services to Lessee whatsoever, and shall not be liable to Lessee for any interruption or failure of any utility services to the Premises from any cause whatsoever, nor shall such interruption or failure constitute a constructive eviction or give rise to a right of rent offset or abatement or affect the obligations of Lessee under this Lease in any other way whatsoever.

10. **ALTERATIONS.**

10.1 **Alterations.** Lessee shall not make any alterations to the Premises or the Building without the prior written consent of the City which consent shall not be unreasonably withheld. City shall be deemed to have reasonably withheld or withdrawn consent unless each and every proposed alteration (i) shall not, individually or in the aggregate, lessen the fair market value of the Premises or the Building, or materially affect the usefulness of the Premises or the Building, either for Lessee's business or the business of potential successor tenants, (ii) be accompanied by all final plans and specifications with any deviation therefrom constituting a separate alteration subject to this Section 10, (iii) be constructed by a California licensed contractor and under the direction of a California licensed architect satisfactory to the City, and (iv) once consented to by the City, shall be completed expeditiously in a good and workmanlike manner, with first class quality materials, and in compliance with all applicable legal and insurance requirements, (v) shall be constructed in strict compliance with the additional conditions set forth in Section 10.4 hereof, and (vi) shall become a "Lessee Improvement" and part of the Premises and subject to this Lease, provided, at the City's option, Lessee shall remove any such alteration and restore the Premises to their condition prior to the making of same, normal wear and tear excepted, upon the expiration or earlier termination of the term hereof. The City shall exercise its option by 30 days' notice given no later than 30 days after such expiration or termination and, if Lessee has not so removed and restored within 30 days after the City gives said notice, Lessee shall pay the City upon demand the reasonable rental value of the Premises during the period beginning with the date immediately following said 30 days after the City gives its notice and ending with the date upon which the removal and restoration is completed and the City may, but shall not be obligated to, remove

such alteration and restore the Premises and Lessee also shall pay the City its cost of same upon demand.

10.2 Required Alterations. Subject to Section 10.1 above, Lessee shall, at its sole cost, make any alteration, addition, or change to the Premises of any sort, substantial or insubstantial, ordinary or extraordinary, foreseeable or unforeseeable, whether structural or otherwise, as may be required by law due to the existence of, or Lessee's use or occupancy of, the Premises or as a result of Lessee's application for any permit or governmental approval, provided that the City may elect to make same, in which case Lessee shall reimburse the City promptly upon demand for all costs of the City's making same.

10.3 Security for Completion. Before commencing any proposed alteration, Lessee, if requested by the City, shall furnish to the City security reasonably satisfactory to the City guaranteeing to the City the completion of the proposed alteration within a reasonable time, free and clear of all liens and, if available, all encumbrances, chattel mortgages, conditional bills of sale, security agreements and other claims and charges (other than those, if any, permitted hereunder) and in accordance with any plans and specifications theretofore approved by the City and, if required under any City encumbrance, by the City's lender.

10.4 Additional Conditions. Lessee further covenants and agrees that no alterations will be made except in compliance with, and Lessee hereby covenants that it will comply with, each of the following provisions:

10.4.1 Before any alterations are begun, Lessee shall procure, at its own sole cost and expense, all necessary permits from all governmental authorities and shall, on demand, deliver photocopies thereof to the City;

10.4.2 All alterations shall be made in compliance and conformity with all applicable laws;

10.4.3 In making any alterations, Lessee shall not violate the terms or conditions of any insurance policy obtained or required pursuant to the provisions of this Lease affecting or relating to the Premises or any part thereof;

10.4.4 Promptly after the completion of any alterations, Lessee shall procure, at Lessee's own sole cost and expense, all permits of governmental authorities for the completed alterations as may be required by any applicable laws, if any, and, on demand, shall promptly deliver photocopies thereof to the City; and

10.4.5 Lessee shall pay all costs, expenses and liabilities arising out of, in connection with, or by reason of, any alterations, and shall keep the Premises, Building and Project free and clear of all liens, claims and encumbrances in any way arising out of, in connection with, or by reason of, any alterations.

10.5 No City Contribution. The City shall not be required to make any contribution to the cost of any alterations or any part thereof, and Lessee covenants that the City shall not be required to pay any cost, expense or liability arising out of

or in connection with or by reason of any alterations and shall indemnify and hold the City harmless from and against, and shall reimburse the City upon demand for, all such costs, expenses and liabilities (including, without limitation, reasonable attorneys' fees and disbursements).

10.6 Notice. If Lessee makes any alterations to the Premises as provided in this Section 10, the alterations shall not be commenced until ten (10) days after the City has received written notice from Lessee stating the date the installation of the alterations is to commence so that the City can post and record an appropriate notice of nonresponsibility at the Premises.

10.7 Manner; Cost. Any alterations by Lessee shall be made in a manner that will not interfere with the quiet enjoyment of the other tenants in the building. Lessee shall pay prior to delinquency all cost for construction done by it or caused by it to be done on the Premises as permitted by this Lease. Lessee shall also reimburse the City upon demand for all costs the City incurs in reviewing any proposed alteration, including without limitation, architect, engineer and legal fees. Upon completion of any such work, Lessee shall have recorded in the office of the County Recorder of Santa Clara County a Notice of Completion as required or permitted by law.

10.8 Mechanic's Liens. Lessee shall keep the Premises, the Building and the Project free and clear of all mechanic's liens resulting from construction done by or for Lessee.

10.9 Trade Fixtures. Lessee shall have the right at any time, and from time to time during the term of this Lease, at Lessee's sole cost and expense, to install in or on the Premises such items, herein called "trade fixtures," for use in Lessee's trade or business as Lessee may, in its reasonable discretion, deem advisable, except that all such Lessee's trade fixtures, furniture, furnishings, signs, and other personal property not permanently affixed to the Premises must be new when installed in, or attached to, the Premises. (All items identified on the Inventory of Fixtures, Exhibit B, shall be subject to all provisions of this Lease governing fixtures.) Any and all such trade fixtures shall remain the property of Lessee, and may be removed by Lessee at any time or times prior to the expiration or sooner termination of this Lease so long as Lessee is not in default hereunder, so long as Lessee shall immediately replace the same with similar personal property of comparable or better quality, except that Lessee shall not be obligated to replace such personal property at the expiration or earlier termination of this Lease, and Lessee shall immediately repair all damage caused by such removal and restore the Premises to substantially the condition they were in prior to the installation of such fixtures so that no trace remains of their presence at the Premises. At all times during the term of this Lease, Lessee shall maintain such trade fixtures in a good, first class condition.

10.10 Removal. Any trade fixtures described in this Section 10 that are not removed from the Premises by Lessee on the date of expiration or sooner termination, regardless of cause, of this Lease shall be deemed abandoned by Lessee and shall automatically become the property of the City and Lessee shall hold City harmless as to all claimants with respect to same.

10.11 Insurance. In the event that Lessee shall make any permitted improvements to the Premises under the provisions of this Section 10, Lessee agrees to carry such insurance as the City may reasonably request covering any such improvements, it being expressly understood and agreed that none of such improvements shall be insured by the City under the insurance it may carry upon the Building, nor shall the City be required to reconstruct any such improvements under any circumstances whatsoever, notwithstanding the provisions of Section 13.

11. TAXES.

11.1 Personal Property Taxes. Lessee shall pay prior to delinquency all taxes, license fees and public charges assessed or levied against Lessee or Lessee's Improvements, trade fixtures, furnishings, equipment and other personal property.

11.2 Assessments and Special Taxes. As a municipal corporation, City's fee interest in the Project is exempt from the 1% general property tax levy and therefore property taxes will not be levied and will not be passed through to lessee or other tenants of the Project during City's ownership of the Project. However, if and to the extent the Project or portion thereof is subject to special taxes or assessments, Lessee shall pay Lessee's share of all such assessment and special taxes, if any, (other than possessory interest taxes on Lessee's leasehold interest which shall be paid 100% by Lessee) which become due and payable to City on or before the later of ten (10) days prior to the delinquency thereof or three (3) days after the date on which Lessee receives a copy of the special tax or assessment bill and notice of City's determination hereunder. Lessee's liability to pay special taxes and assessments shall be prorated on the basis of a three hundred sixty-five (365) day year to account for any fraction or portion of a tax year included in the Lease term at the commencement or expiration of the Lease.

11.3 Revenue and Taxation Code Notice; Possessory Interest Taxes. Lessee specifically acknowledges it is familiar with §107.6 of the California Revenue and Taxation Code, realizes that a possessory interest subject to property taxes may be created, agrees to pay any such tax in full and without proration, and hereby waives any rights Lessee may have under said California Revenue and Taxation Code §107.6. City shall have no obligation to pay any possessory interest tax. No such possessory interest tax or any other tax payable by Lessee shall in any way reduce or substitute for the rent, charges or fees required to be paid as a condition of this Lease or as otherwise required by City.

12. **HOLD HARMLESS/INDEMNIFICATION.**

12.1 **Indemnification.** To the extent permitted by law, Lessee agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, agents, volunteers, and employees from and against any claim, injury, liability, loss, cost, and/or expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom for which City shall become legally liable arising from Lessee's negligent, reckless, or wrongful acts, errors, or omissions with respect to or in any way connected with this Lease. Lessee shall give City immediate notice of any claim or liability hereby indemnified against.

12.2 **Waiver of Claims.** Lessee waives any claims against City for injury to Lessee's business or any loss of income therefrom, for damage to Lessee's property, or for injury or death of any person in or about the Premises or the Project, from any cause whatsoever, except to the extent caused by City's active negligence or willful misconduct.

13. **DAMAGE, DESTRUCTION AND TERMINATION.**

13.1 **Uninsured Risks.** If, during the Term of this Lease, the Premises or the Building are totally or partially destroyed from a risk not covered by the insurance described in Section 19.2, the City, at its option, may elect to terminate this Lease by giving notice to Lessee or may elect to restore the same. However, as to destruction which was caused by an act or omission of Lessee, its employees, agents, invitees or permittees, Lessee shall reimburse the City the full cost of the restoration of the Premises, Building shell, and all leasehold improvements therein under any circumstances. If the City elects to restore the Premises or the Building, Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made. Such reduction shall be in an amount which bears the same proportion to the Base Rent as the floor area of that portion of Premises which has been damaged or is otherwise unusable by Lessee, bears to the total floor area of the Premises, except that if the damage or destruction is to more than 50% of the square footage of the Premises and Lessee ceases to occupy the Premises, such proportionate reduction shall be 100%.

13.2 **Insured Risks.**

13.2.1 If, during the Term of this Lease, the Premises or the Building are totally or partially destroyed from a risk covered by insurance described in Section 19.2, the City shall forthwith repair the same to substantially the same condition they were in immediately prior to the destruction and to the extent of proceeds

received under such insurance, provided such repairs can be made within ninety (90) days under then existing law. Such destruction shall in no way annul or void this Lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, including but not limited to the foregoing ninety days, such proportionate reduction to be equal to, and granted upon the City's receipt of, the proceeds received by the City from any rental interruption insurance maintained by Lessee. Such reduction shall be in an amount which bears the same proportion to the minimum monthly rent as the floor area of that portion of the Premises which has been damaged or is otherwise unusable by Lessee bears to the total floor area of the Premises. If such repairs cannot be made in 90 days, the City may, at its option, make same within a reasonable time, this Lease continuing in full force and effect and the rent being proportionately reduced as aforesaid. In the event that the City does not so elect to make such repairs which cannot be made in 90 days, or such repairs cannot be made under such then existing law, this Lease shall terminate.

13.2.2 Notwithstanding any other provision of this Lease, if, at any time during the term of this Lease, the Premises or the Building are totally or partially destroyed and (i) the total cost to repair the Premises or the Building exceeds One Hundred Thousand Dollars (\$100,000), or (ii) twenty percent (20%) of the Building is damaged or destroyed (and whether or not any portion of the Premises is also damaged or destroyed), the City may elect to terminate this Lease by written notice to Lessee. Determination of the extent of damage or destruction and the time for effectuating repair shall be made by the City based upon written appraisals and insurance adjustment reports, and shall be final and binding on the Parties.

13.3 Extent of Obligation. Notwithstanding the foregoing, the City shall not be required to repair, reconstruct, or restore damage or destruction by fire or other cause to any portion of the Premises constructed by or for Lessee, and Lessee shall at its sole cost and expense fully restore or replace its stock in trade, trade fixtures, furniture, furnishings, equipment, and other personal property. Lessee shall commence all such replacement and restoration work promptly following the occurrence of any such damage or destruction, and shall diligently prosecute such work to completion. Lessee hereby waives any statutory rights of termination which may arise by reason of any partial or total destruction of the Premises or any part thereof. Upon termination of the Lease under any of the provisions of this Section 13, the Parties shall be released thereby from any further obligations hereunder except for obligations which, prior to the date of such termination, had already accrued, and except as provided in the following sentence. In the event of such a termination, all proceeds from Lessee's insurance which pertain to alterations or improvements to the Premises which would otherwise become the property of the City upon expiration or termination of this Lease shall be disbursed and paid to the City.

13.4 Force Majeure/Excusable Delay. Except as provided in this Lease, any act of City or Lessee required by this Lease to be done within a specified time shall be subject to Excusable Delay. Lessee's obligation to pay Rent, however, is not excused by this Section. "Excusable Delay" means prevention, delay or stoppage due to strikes, lockouts, labor disputes, Acts of God, inability to obtain labor, materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy, or hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Lessee or City (excepting, however, City's or Lessee's financial inability), which shall excuse the performance by City or Lessee for a period equal to the prevention, delay or stoppage, except the obligations imposed with regard to rent to be paid by Lessee pursuant to this Lease. In the event any work performed by Lessee or Lessee's contractors results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Lessee of the provisions of this Lease.

13.5 Waiver. City and Lessee waive the provisions of any statutes which relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

14. SIGNS.

Lessee shall not construct, maintain or place any signs, advertising or other exterior decoration (collectively, "Signs") upon the exterior of the Premises or Project, or modify any existing Signs, without prior written consent of City. Any Sign that Lessee has the right to place, construct or maintain shall comply with all laws at all times during the term of this Lease, and Lessee shall obtain any approval required by such law. City makes no representation with respect to Lessee's ability to obtain such approval.

15. ASSIGNMENT AND SUBLETTING.

15.1 City's Consent Required. Lessee shall not assign this Lease, nor any interest therein, and shall not sublet or encumber the Premises or any part thereof, nor any right or privilege appurtenant thereto, nor allow or permit any other person(s) to occupy or use the Premises, or any portion thereof, without the prior written consent of City. This Lease shall be binding upon any permitted assignee or successor of Lessee. Consent by City to one assignment, subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. No assignment, subletting, or encumbrance by Lessee shall release it from or in any way alter any of Lessee's obligations under this Lease. Any assignment, subletting, encumbrances, occupation or use contrary to the provisions of this Lease shall be void and shall constitute breach of this Lease. City may assign any of its rights hereunder without notice to Lessee.

15.2 No Release of Lessee. No subletting or assignment as approved by City shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations by Lessee hereunder. The acceptance of rent by City from any other person shall not be deemed to be a waiver by City of any provision hereof. In the event of default by any approved assignee or other successor of Lessee in the performance of any of the terms hereof, City may proceed directly against Lessee without the necessity of exhausting remedies against such assignee or successor.

16. **DEFAULTS; REMEDIES.**

16.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default or breach of this Lease by Lessee:

16.1.1 Abandonment of the Premises by Lessee as defined by California Civil Code § 1951.3;

16.1.2 Failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of ten (10) business days after written notice thereof from City to Lessee. In the event City serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph;

16.1.3 Failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease in any material respect to be observed or performed by Lessee where such failure shall continue for a period of thirty (30) days after written notice thereof from City to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion;

16.1.4 Making by Lessee of any general arrangement or assignment for the benefit of creditors; Lessee's 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 sixty (60) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

16.2 Remedies. In the event of any material default or breach by Lessee, City may at any time thereafter, following any notice required by statute, and without limiting City in the exercise of any right or remedy which City may have by reason of such default or breach:

16.2.1 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 of the Premises and all alterations to City. In such event, City shall be entitled to recover from Lessee all damages incurred by City by reason of Lessee's default including, but not limited to, the cost of recovering possession of the Premises and alterations, expenses of reletting, including necessary renovation and alteration of the Premises and alterations, reasonable attorneys' fees, the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease and 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 such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.

16.2.2 Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event, City shall be entitled to enforce all of City's rights and remedies under this Lease, including the right to recover rent as it becomes due hereunder.

16.2.3 Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California.

16.3 No Relief from Forfeiture after Default. Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure §§ 1174 and 1179, and any other present or future law, in the event Lessee is evicted or City otherwise lawfully takes possession of the Premises by reason of any default or breach of this Lease by Lessee.

17. INTEREST ON PAST-DUE OBLIGATIONS.

Except as expressly provided herein, any amount due City when not paid when due shall bear interest at the lesser of ten percent (10%) per year or the maximum rate then allowable by law from the date due.

18. CITY'S ACCESS.

18.1 Access for Inspection. City and City's agents shall have the right to enter the Premises at reasonable times, upon not less than twenty-four (24) hours prior notice to Lessee or less in case of an emergency), for the purpose of inspecting same, showing same to prospective purchasers, lenders, lessees or others, and making such alterations, repairs, improvements or additions to the Premises as City may

deem necessary. City may at any time place on or about the Premises any ordinary "For Sale" signs and City may at any time during the last one hundred twenty (120) days of the term hereof place on or about the Premises any ordinary "For Lease" signs, all without rebate of rent or liability to Lessee.

18.2 No Warranty. Except as otherwise stated in this Lease, Lessee hereby acknowledges that neither the City nor any employees or agents of the City has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of said Premises and Lessee acknowledges that Lessee assumes all responsibility regarding the Occupational Safety and Health Act, the legal use and adaptability of the Premises and compliance with all applicable laws and regulations in effect during the term of this Lease.

18.3 Security Measures. City shall have the right to require a reasonable security system, device, operation or plan be installed and implemented to protect the Premises or any alterations. Should City, in its sole discretion, require Lessee to install such a security system, Lessee agrees to bear the sole cost and expense of any security system, device, operation or plan and the installation and implementation thereof. Lessee shall obtain City's prior approval before installing or implementing any security system, device, operation or plan.

19. INSURANCE.

19.1 Lessee Insurance. Lessee's responsibility for the Premises begins immediately upon the Commencement Date and Lessee, at its sole cost and expense, and at no cost to City, shall provide and maintain in full force and effect during the entire term of this Lease insurance coverage in an amount(s) and in a form acceptable to City as set forth in Exhibit C attached hereto and incorporated herein by reference. Said policies shall be maintained with respect to Lessee's employees, if any, and all vehicles operated on the Premises. The policies shall include the required endorsements, certificates of insurance and coverage verifications as described in Exhibit C. Lessee also agrees to secure renter's liability insurance.

19.2 Fire Insurance on Building. City shall maintain insurance (or self-insurance through City's joint pool coverage plan) covering the building. Lessee shall reimburse City Lessee's pro rata share of the cost of insurance or joint pool self-insurance coverage(s) provided by the City upon delivery of the insurance (or joint pool self-insurance) premium invoice or, if otherwise requested by City, as part of the other Common Area Expenses pursuant to Section 6.6.

20. CONTRACT FOR ADMINISTRATIVE SERVICE.

To the extent that this Lease is a contract for administrative services, the City Council entered into such agreement upon recommendation of the City Manager pursuant to

Section 1108 of the City's Charter. The policy decision with respect to the services was made by the City Council and not by the City Manager.

21. **DISPUTE RESOLUTION.**

21.1 Unless otherwise mutually agreed to or as provided in Section 21.5, any controversies between Lessee and City regarding the construction or application of this Lease, and claims arising out of this Lease or its breach shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

21.2 The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Lease.

21.3 The costs of mediation shall be borne by the Parties equally.

21.4 Except as provided in Section 21.5, mediation under this section is a condition precedent to filing an action in any court. In the event of litigation arising out of any dispute related to this Lease, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

21.5 Nothing in this Section shall require the City to mediate any eviction, unlawful detainer, or other exercise of remedies following the expiration of the Term of this Lease as provided in Section 2 or any termination of this Lease under Section 16.

22. **PAYMENTS/PARTIAL PAYMENTS.**

Payments shall be effective upon receipt. City may apply any payment received from Lessee at any time against any obligation due and owing by Lessee under this Lease, regardless of any statement appearing on or referred to in any remittance from Lessee or any prior application of such payments. Acceptance by City of a partial payment of rent or other charges shall not be considered or construed to waive any right of City or affect any notice of legal proceedings, unless both Parties shall agree otherwise in writing. The receipt by City of a partial payment of any amount due to City endorsed as payment in full will be deemed to be a partial payment only, and any endorsements or statements on the check or any letter accompanying the check shall not be deemed an accord and/or satisfaction, and, notwithstanding said endorsements, City may accept and deposit said check without prejudice to its right to recover the balance. Lessee's obligation (without prior notice or demands) to pay rent and all other amounts due hereunder shall be

absolute and unconditional, and not subject to any abatement, set off, defense, recoupment or reduction.

23. **NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE CITY.**

No official or employee of City shall be personally liable for any default or liability under this agreement.

24. **NON-DISCRIMINATION.**

Lessee covenants it shall not discriminate based upon race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry in any activity pursuant to this agreement.

25. **CONFLICT OF INTEREST.**

Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this agreement.

26. **MEMORANDUM OF LEASE.**

Lessee shall not record this Lease or a memorandum thereof, or any other reference to this Lease, without the prior written consent of the City. Lessee, upon the request of the City, shall execute and acknowledge a Memorandum of Lease for recording in the official records of Santa Clara County. Upon termination or expiration of this Lease, Lessee shall execute and record a quitclaim deed as to its leasehold interest.

27. **ESTOPPEL CERTIFICATE.**

Lessee shall, from time to time, upon at least ten (10) days prior written notice from City, execute, acknowledge and deliver to City a statement in writing (i) certifying this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Lease, as modified, is in full force and effect, and the date to which the rental and other charges, if any, have been paid; and, (ii) acknowledging that there are not to Lessee's knowledge, any defaults, or stating if any defaults are claimed, any statement may be relied upon by any prospective purchaser or encumbrancer of the Project.

28. **LIENS.**

Lessee agrees at its sole cost and expense to keep the Premises, Building and Project free and clear of any and all claims, levies, liens, encumbrances or attachments.

29. RELOCATION BENEFITS WAIVER.

29.1 Relocation Laws Acknowledgement. Lessee is informed of, and is aware that following expiration or termination of this Lease, City intends to demolish the exiting Building and explore redevelopment of the Project property with other uses. Lessee further acknowledges that under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601, et seq.) and its regulations (49 CFR Part 24) and the Relocation Assistance Act (Cal. Gov. Code § 7260, et seq.), as may be amended, (collectively, "Relocation Laws") a qualifying "displaced person or business" who is displaced by a public agency-initiated redevelopment project, such as the one proposed by City, is entitled to monetary and non-monetary benefits including relocation advisory assistance, a business reestablishment payment, assistance with costs to search for a replacement location for the business, and rent differential payments to the extent the tenant's rent in a new location is higher than the tenant's current rent (collectively, "Potential Relocation Benefits").

29.2 Lessee Representations and Warranties. Lessee represents and warrants to City as follows: (i) Lessee had no option or other rights to extend the term of the Prior Lease beyond September 30, 2021; (ii) Lessee's Prior Lease terminated upon the termination of the Ground Lease and Lessee had no right to remain in occupancy of the Premises beyond the expiration dates of the Prior Lease and Ground Lease which were co-terminus; (iii) Lessee's right to occupy the Premises under this Lease will commence following the termination of the Ground Lease and City's acquisition of an ownership interest in the Building from the former ground lessee; (iv) Lessee is an after-acquired tenant of City and not a potential "displaced person or business" under Relocation Laws (defined below); and (v) City's willingness to enter into this new Lease with Lessee is contingent upon Lessee's agreement to waive Potential Relocation Benefits as provided herein. Lessee further represents and warrants to City that Lessee's relocation from the Property upon expiration or termination of this Lease will be a result of the expiration of the Prior Lease and this Lease each of which occurred or were anticipated prior to Lessee entering into this Lease with City and therefore Lessee is not a "displaced person or business" under Relocation Laws.

29.3 Waiver and Release of All Claims. In exchange for City's agreements under this Lease, Lessee hereby waives and releases all rights or claims that Lessee has or may have in the future against City or its elected or appointed officials, employees, agents, attorneys or consultants, or any federal or state agency which may provide funding in connection with City's future redevelopment of the Project with other uses (collectively, the "Released Parties") under the Relocation Laws as a result of, arising out of, or connected with Lessee's departure from the Premises and/or the City's redevelopment of the Project in the future, including but not limited to any claims for Potential Relocation Benefits.

29.4 Covenant Not to Sue. Lessee covenants and agrees that it will not bring, commence, maintain or prosecute, directly or indirectly, any action at law or proceeding in equity or any legal administrative proceeding or any claim for damages or any other relief against any of the Released Parties, based in whole or in part on any claim of eligibility for Potential Relocation Benefits. The waiver and release set forth in Section 29.3 above may, and shall be plead, as a full and complete defense to, and may be used as a basis for an injunction against any action, suit or proceeding which may be instituted, prosecuted, or maintained in breach of the covenants contained in this Section 29.

By its initials below, Lessee hereby acknowledges and confirms its agreement to the waivers, releases, covenants and agreements of this Section 29.

MN
Lessee Initials

Lessee Initials

30. VACATING.

Upon termination of the tenancy, Lessee shall completely vacate the Premises, Building and Project, including the removal of any and all of its personal property and fixtures (whether or not identified on the Inventory of Fixtures (Exhibit B). Before departure, Lessee shall return keys and the Premises (including Lessee Improvements) to City in good, clean and sanitary condition, reasonable wear and tear excepted. Lessee shall allow City to inspect the Premises to verify the condition of the Premises and its contents.

31. ABANDONMENT.

Lessee's absence from the Premises for three (3) consecutive days, without prior notice, during which time rent or other charges are delinquent, shall be deemed abandonment of the Premises and a material default by Lessee entitling City to the remedies in Section 16 above, including the right to terminate this Lease. In the event of such termination, City shall be authorized to enter and take possession and to remove and dispose of the property of Lessee and its employees, agents, contractors and invitees without any liability whatsoever to City.

32. PROPRIETARY AND GOVERNMENTAL ROLES; ACTIONS BY CITY.

Except where clearly and expressly provided otherwise in this Lease, the capacity of the City in this Lease shall be as owner and lessor of property only ("Proprietary Capacity"), and any obligations or restrictions imposed by this Lease on the City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures,

reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law ("Governmental Capacity").

When acting in its Proprietary Capacity, discretionary actions may be undertaken by the City Manager or other designees as designated by the City Manager to the extent otherwise provided for in this Lease. In addition, nothing in this Lease shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable law, nor guarantee that the City, in its Governmental Capacity, will grant any particular request for a license, permit or other regulatory approval. Lessee understands that the City may grant or deny such request in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion and applicable laws.

33. **HOLDOVER.**

Lessee has no right to retain possession of the Premises or any portion thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over after the expiration of the term without executing a new lease, then such holding over shall be construed as a tenancy from month-to-month, subject to all conditions, provisions and obligations of this Lease insofar as they are applicable to a month-to-month tenancy, except that the Base Rent portion of the rent shall be increased to 150% of the amount of the Base Rent payable immediately prior to the expiration or termination of the Lease, as the case may be. Nothing contained herein shall be construed as consent of City to any holding over by Lessee.

34. **NOTICES.**

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Or by facsimile at (408) 241-6771

And to Lessee addressed as follows:

Lessee's Notice Address:

Name: **Mai Xuan Ngo dba M.Y Salon, a California, Sole Proprietor.**
Address: **1689 Chesterton Circle, San Jose, CA 95133**
Phone: **(408) 387-2256**

Notices may be served upon Lessee in person or by first class mail or by certified mail to Lessee whether or not said mailing is accepted by Lessee. If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 P.M. on a Friday shall be deemed to have been transmitted on the following Monday. These addresses shall be used for service of process.

35. **TIME.**

Time shall be of the essence in this Lease.

36. **MISREPRESENTATIONS.**

Any statements submitted to City in the *Application to Rent* by Lessee (if applicable) are considered inducements to execute this Lease. Misrepresentations shall entitle City to terminate this Lease at any time.

37. **AMENDMENTS.**

It is mutually agreed that no oral Leases have been entered into and that no alteration or variation of the terms of this Lease shall be valid unless made in writing and signed by the Parties to this Lease.

38. **INDEPENDENT LEGAL ADVICE.**

Each Party represents and warrants to the other the following: they have carefully read this Lease, and in signing this Lease, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Lease, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Lease; and, they have freely signed this Lease without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Lease, and without duress or coercion, whether economic or otherwise.

39. **SERVICE CHARGE.**

A service charge of twenty dollars (\$20.00) will be made for each check that must be resubmitted for payment.

40. **SIGNING AUTHORITY.**

If this Lease is not signed by all Lessees named herein, the person actually signing warrants that he/she has the authority to sign for the others.

41. **CHANGE OF LOCKS.**

Lessee may install new locks on all exterior doors. Lessee shall advise City of such action and shall provide City with keys to said locks. Lessee shall also deliver to City the old locks with keys. Upon termination, Lessee shall leave new locks that shall become the property of City.

42. **CAPTIONS/RECITALS.**

The captions of the various sections, paragraphs and subparagraphs of this Lease are for convenience only and shall not be considered or referred to in resolving questions of interpretation. All of the recitals of this Lease, and the defined terms set forth therein, are incorporated into and made a part of this Lease by this reference.

43. **REPAIRS.**

Except as expressly provided in this Lease, City shall have no obligation to repair or maintain the Premises or any alterations thereto or facilities placed therein. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs at City's expense or to terminate this Lease because of City's failure to keep Premises in good order, condition and repair. Lessee shall not call on City to make any improvements or repairs to said property of any kind whatsoever.

44. **SURRENDER OF LEASE NOT MERGER.**

The voluntary or other surrender of this lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of City, terminate all or any existing subleases or subtenancies, or may, at the option of City, operate as an assignment to it of any and all such subleases or subtenancies.

45. **INTEGRATED DOCUMENT; AMENDMENTS.**

This Lease, including any exhibits attached hereto, embodies the entire agreement between City and Lessee and its terms and conditions. No other understanding, agreements, conversations or otherwise, with any officer, agent or employee of City prior to execution of this Lease shall affect or modify any of the terms or obligations contained in any documents comprising this Lease. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City. This Lease may be modified only by a written amendment duly executed by the Parties to this Lease, pursuant to

Section 37 entitled "Amendments." All agreements with City are subject to approval of the City Council before City shall be bound thereby.

46. **WAIVER.**

Waiver by City of one or more conditions of performance or any breach or condition under this Lease shall not be construed as a waiver(s) of any other condition of performance or subsequent breaches or conditions. The subsequent acceptance by a Party of the performance of any obligation or duty by another Party shall not be deemed to be a waiver of any term or condition of this Lease. The exercise of any remedy, right, option or privilege hereunder by City shall not preclude City from exercising the same or any and all other remedies, rights, options and privileges hereunder and City's failure to exercise any remedy, right, option or privilege at law or equity, or otherwise which City may have, shall not be construed as a waiver.

47. **INTERPRETATIONS.**

In construing or interpreting this Lease, the word "or" shall not be construed as exclusive and the word "including" shall not be limiting. The Parties agree that this Lease shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against any other Party.

48. **SEVERABILITY CLAUSE.**

If any provision of this Lease is held to be illegal, invalid or unenforceable in full or in part, for any reason, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Lease shall not be affected thereby.

49. **GOVERNING LAW.**

This Lease shall be governed and construed in accordance with the statutes and laws of the State of California.

50. **VENUE.**

In the event that suit shall be brought by any Party to this Lease, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara.

51. **COMPLIANCE WITH LAWS.**

Lessee shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restriction, ordinance or governmental law or rule, regulation, or requirement, including any Hazardous Materials laws or regulations, of any duly constituted public authorities now in force or which may

hereafter be enacted or promulgated, or which will subject City to any liability for injury to any person or property by reason of any business operation being conducted in or about the Premises. To the extent required due to Lessee's specific use of the Premises, alterations of the Premises made by Lessee, or as a result of Lessee's application for permits or authorizations, Lessee shall, at its sole cost and expense, promptly comply with all applicable laws, statutes and ordinances, governmental rules, regulations, orders, permits, licenses, approvals, authorizations, federal and state disability laws, and other requirements including the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. 12101 et seq.), together with any amendment thereto or regulations promulgated under any of the foregoing, and any state or local ordinances or codes enacted pursuant thereto, and with all requirements of any board or fire insurance underwriters or other similar bodies, now or hereafter constituted, relating to or affecting the condition, use, or occupancy of the Premises by Lessee, any improvements or alterations made by, on behalf of, or for Lessee, or any other Lessee acts or omissions. The final judgment of any court of competent jurisdiction or the admission of Lessee in any action against Lessee, whether City be a party thereto or not, that Lessee has violated any laws shall be conclusive of that fact as between City and Lessee. Lessee, within ten (10) days after receipt, shall provide City with copies of any notices it receives regarding a material violation or alleged material violation of any Laws. Lessee shall also cause its agents, contractors, subcontractors, employees, customers, and subtenants to comply with all applicable laws.

52. **COUNTERPARTS; ELECTRONIC SIGNATURES.**

This Lease may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Lease, including those transmitted electronically by email or facsimile, shall be sufficient to bind the Parties.

53. **ACCESSIBILITY; DISABILITY LAWS.**

53.1 The Premises have not undergone an inspection by a Certified Access Specialist.

53.2 "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."

53.3 Since compliance with the ADA and other federal and state disability laws (collectively, "Disability Laws") is dependent upon Lessee's specific use of the Premises, City makes no warranty or representation as to whether or not the Premises comply with Disability Laws. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with Disability Laws, Lessee agrees to make any such necessary modifications and/or additions at Lessee's sole cost and expense.

54. **OFAC COMPLIANCE.**

Lessee represents and warrants to City that Lessee is not a party with whom City is prohibited from doing business pursuant to the regulations of the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury, including those parties named on OFAC's Specially Designated Nationals and Blocked Persons List. Lessee is currently in compliance with, and shall at all times during the term of this Lease remain in compliance with, the regulations of OFAC and any other governmental requirement relating thereto. In the event of any violation of this section, City shall be entitled to immediately terminate this Lease and take such other actions as are permitted or required to be taken under law or in equity. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, RISKS, LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS) INCURRED BY CITY ARISING FROM OR RELATED TO ANY BREACH OF THE FOREGOING CERTIFICATIONS. These indemnity obligations shall survive the expiration or earlier termination of this Lease.

55. **NO BROKERAGE.**

City is represented in this transaction by **Eugene Burger Management Corporation** ("City's Agent"). Brokerage fees, commissions or other payments owed to City's Agent, if any, in connection with this Lease transaction shall be paid by City per the terms of a separate agreement between City and City's Agent. Lessee represents and warrants to City that Lessee is represented in this transaction by **Alex Ayala Sr.** ("Lessee's Agent"). Fees, if any, payable to Lessee's Agent, if applicable, shall be paid pursuant to separate agreement(s) between City's Agent and Lessee's Agent or between Lessee and Lessee's Agent. Lessee shall indemnify and defend City from and against any claims made by Lessee's Agent or any other person or entity purporting to represent Lessee in this transaction for any finder's fee, brokerage fee, commission or other payment claiming through Lessee or its affiliates with respect to the execution of this Lease or the consummation of the transaction contemplated hereby.

[Remainder of page intentionally left blank]

[Signatures on next page]

CITY OF SANTA CLARA, CALIFORNIA, a chartered California municipal corporation

Dated: 1/13/2022

APPROVED AS TO FORM:

DocuSigned by:

Elizabeth Klotz

F9F84671DC6A4BA...

Office of the City Attorney

1/14/2022

By:

DocuSigned by:

Deanna J. Santana

55DD401F5DAE4B5...

DEANNA J. SANTANA

City Manager

1500 Warburton Avenue

Santa Clara, CA 95050

Telephone: (408) 615-2210

Fax: (408) 241-6771

"CITY"

Mai Xuan Ngo dba M.Y Salon, a California, Sole Proprietor

Dated: *Jan 11th 2022*

By: *Mango*

(Signature of Person executing the Agreement on behalf of Lessee)

Name: Mai Xuan Ngo

Title: Owner

Local Address: 1689 Chesterton Circle

San Jose, CA 95133

Email Address: triminhle1689@yahoo.com

Telephone: (408) 387-2256

Fax: ()

"LESSEE"

**COMMERCIAL PROPERTY LEASE AGREEMENT
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
Mai Xuan Ngo dba M.Y Salon, a California, Sole Proprietor**

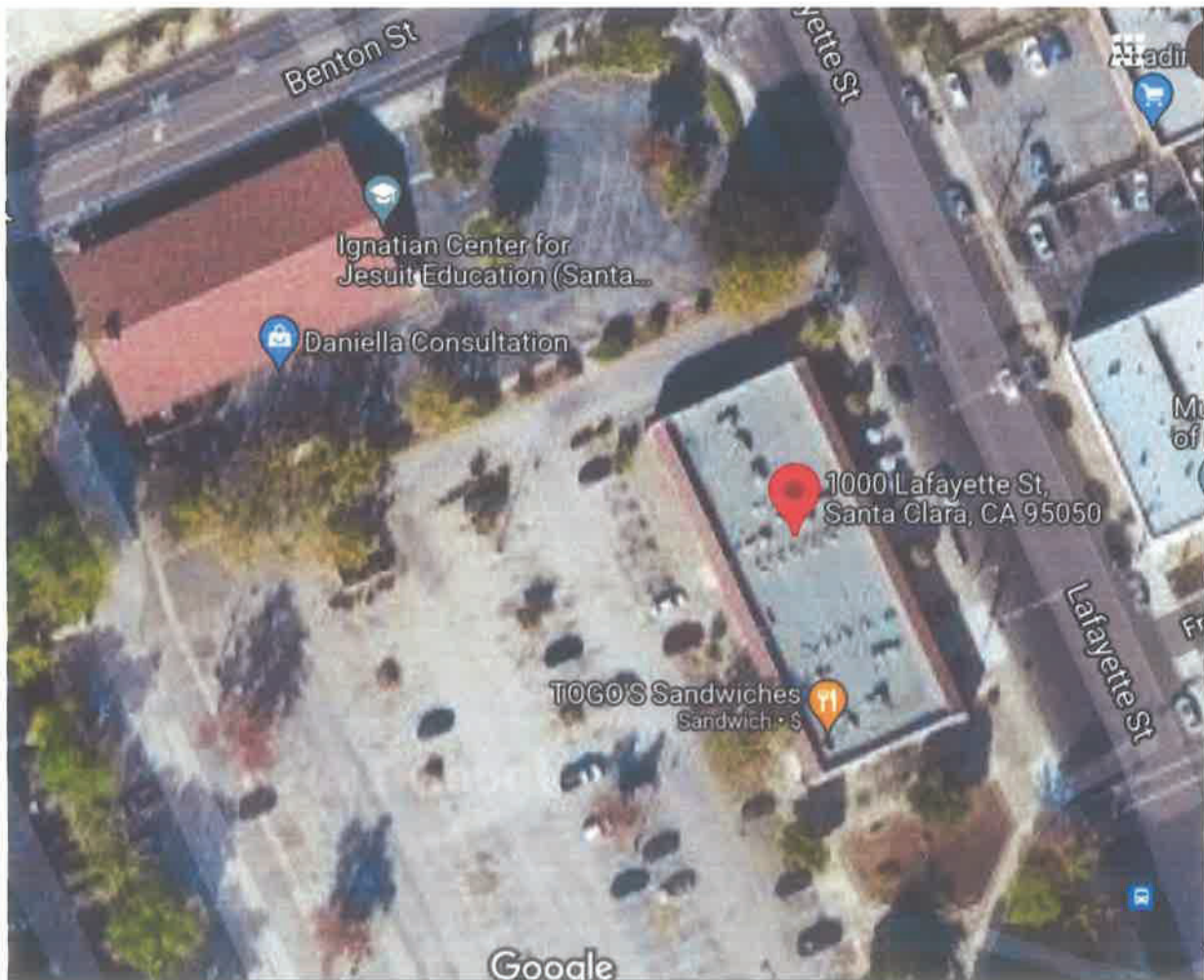
EXHIBIT A

Address: 1000 Lafayette Street, Santa Clara, CA 95050

APN: 269-22-089

Lot Size: 1.319 AC

Legal Brief Description: CITY: SANTA CLARA LOT B RECORDER'S BOOK 437 PAGE 46





ADDENDUM TO LEASE

Date: January 11, 2022

By and Between

Lessor: City of Santa Clara, California, a
chartered municipal corporation.

Lessee: Mai Xuan Ngo dba M.Y Salon, a California, Sole Proprietor.

Property Address: 1000 Lafayette Street Suite A1, Santa Clara, CA 95050
(street address, city, state, zip)

Paragraph: 56-58

In the event of any conflict between the provisions of this Addendum and the printed provisions of the Lease, this Addendum shall control.

AIR CRE * <https://www.aircre.com> * 213-687-8777 * contracts@aircre.com

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56. This Addendum takes effect on October 1, 2021.

57. Rent Schedule:

Monthly Base Rent shall be adjusted as follows:

A. Year 1 - \$1,160.00 per month + NNN (CAM)

Year 2 - \$1,160.00 per month + NNN (CAM)

58. Lessee agrees to pay \$4,640.00 for the months of October 2021, November 2021, December 2021, and January 2022 prior to execution of this Lease agreement.

MN
INITIALS

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ADD-1.03, Revised 10-22-2020

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Last Edited: 1/10/2022 7:26 PM
Page 1 of 1

MN

**COMMERCIAL PROPERTY LEASE AGREEMENT
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND**

Mai Xuan Ngo dba M.Y Salon, a California, Sole Proprietor

EXHIBIT B

INVENTORY OF FIXTURES

- | | |
|----|--------------------------|
| 1. | 5- Chairs |
| 2. | 8 – Salon Chairs |
| 3. | 2 – Wire Racks |
| 4. | 1 – Salon Reception Desk |
| 5. | 1- Flat Screen TV |

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**COMMERCIAL PROPERTY LEASE AGREEMENT
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND**

Mai Xuan Ngo dba M.Y Salon, a California, Sole Proprietor

EXHIBIT C

INSURANCE REQUIREMENTS

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Workers' Compensation Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease. (This applies to lessees with employees).
3. Property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If the Lessee maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Lessee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

B. OTHER INSURANCE PROVISIONS:

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

1. Additional Insured Status: The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or



equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Lessee's insurance (at least as broad as ISO Form CG 20 10).

2. **Primary Coverage:** For any claims related to this contract, the Lessee's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

3. **Legal Liability Coverage:** The property insurance is to be endorsed to include Legal Liability Coverage (ISO Form CP 00 40 04 02 or equivalent) with a limit equal to the replacement cost of the leased property.

4. **Notice of Cancellation:** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

5. **Waiver of Subrogation:** Lessee hereby grants to City a waiver of any right to subrogation which any insurer of said Lessee may acquire against the City by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

6. **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

7. **Self-Insured Retentions:** Self-insured retentions must be declared to and approved by the City. The City may require the Lessee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

8. **Verification of Coverage:** Lessee shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before occupying the premises. However, failure to obtain the required documents prior to the work beginning shall not waive the Lessee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

9. **Special Risks or Circumstances:** City reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.