

**COMMERCIAL PROPERTY LEASE AGREEMENT
BY AND BETWEEN
CITY OF WATSONVILLE, CALIFORNIA
AND
IN SOOK YUM, DBA TOP USA CO.**

This lease agreement ("Lease") is dated _____ and is by and between the City of Watsonville, California, a chartered California municipal corporation ("City") and In Sook Yum, an individual, dba Top USA Co. ("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. City owns the property at 21, 27 and 31 West Beach Street, Watsonville, California, consisting of eight thousand four hundred and twenty four (8,424) square feet of retail space and five hundred and ten (510) square feet of storage space.

B. City wishes to lease the Property to Lessee.

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 Watsonville, County of Santa Cruz, State of California, commonly known as 21, 27 and 31 West Beach Street, Watsonville, California, consisting of approximately 8,424 square feet of retail space and 510 square feet of storage space (the "Premises") within the Property commonly referred to as the Beach Street Garage (the "Building"), located on an approximately .74 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 (80%), which represents the percentage that the rentable area of the Premises bears to the total rentable area of the Building. As of the Commencement Date this equates to \$1,200 per month, as the amount agreed upon by the parties to be Lessee's share of the Common Area Expenses. These expenses may be reassessed and updated by the Lessee from time to time.

2. **TERM; COMMENCEMENT DATE.**

2.1 **Lease Term.** The term of this Lease shall be for Five (5) years (the “Initial Term”), commencing at 12:01 am on July 1, 2025 (“Commencement Date”) and ending on June 30, 2030. 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.

2.2 **Option to Extend Lease Term.** Lessee is granted the option to extend the term of this Lease (the “Renewal Option”) upon and subject to all of the provisions contained herein, except for Base Rent and the Renewal Option, for one (1) five (5) year period (the “Extended Term”) following expiration of the Initial Term. The Renewal Option may be exercised only by giving notice of exercise of the Renewal Option (“Option Notice”) to City at least six (6) months before the expiration of the Initial Term. If Lessee is in default beyond the period of notice and opportunity to cure provided in Section 16.1 of this Lease on the date of giving the Option Notice, the Option Notice will be totally ineffective. If Tenant is in default beyond the period of notice and opportunity to cure provided in Section 16.1 of this Lease on the date the Extended Term is to commence, the Extended Term will not commence and this Lease will expire at the end of the Initial Term as it may have previously been extended.

3. **RENT.**

3.1 **Base Rent.** Lessee shall pay base rent (“Base Rent”) in the amount of Five thousand two hundred nine dollars and ninety cents (\$5,209.90) 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. Base rent shall be adjusted annually, beginning the second year of the Initial Term, using as the basis for calculating the adjustment, the rate of April to April change in the Consumer Price Index (CPI) for All Urban Consumers San Francisco-Oakland-Hayward Metropolitan Area, not to exceed three percent (3%) per year.

3.1.1 **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.

3.1.2 **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.

3.2 Extended Term Base Rent. Base Rent of the Premises payable during the Extended Term as of the Extended Term commencement date shall be equal to the Market Rate (as hereinafter defined) adjusted annually, beginning the second year of the Extended Term, using as the basis for calculating the adjustment, the rate of April to April change in the Consumer Price Index (CPI) for All Urban Consumers San Francisco-Oakland-Hayward Metropolitan Area, not to exceed three percent (3%) per year. City shall, in response to and within thirty (30) days of City's receipt of Lessee's notice of its intent to exercise the Option, give Lessee written notice of the applicable Market Rate, as reasonably determined in good faith by City.

3.2.1 The term "Market Rate" shall mean, the then prevailing annual rental rate per square foot of rentable area for space in comparable buildings in the City of Watsonville which has been built out for occupancy, comparable in area and location and quality to the space for which such rental rate is being determined (to the extent that quoted rental rates in the building, as applicable, vary with regard to location), being leased for a duration comparable to the Extended Term for terms commencing on or about the Extended Term commencement date for non-sublease, non-encumbered, non-equity space. The determination of the Market Rate shall take into consideration rental concessions and abatements, the "as is" condition of the Premises, operating expenses and tax expenses, other adjustments to base rental and other comparable factors. Notwithstanding anything to the contrary contained herein, in no event shall the Market Rent as determined hereunder be less than the Base Rent owing immediately prior to the commencement of the Extended Term.

3.2.2 Not later than sixty (60) days after City's notice to Lessee of the Market Rate, Lessee shall give notice to City of Lessee's election to: (i) accept City's determination of Market Rate; or (ii) to have the Market Rate determined by the "arbitration" procedure set forth in subsection 3.2.3 below. If Lessee fails to notify City within said sixty (60) day period of Lessee's election, Lessee shall be deemed to have accepted City's determination of the then Market Rate and to have waived its rights to an "arbitration" thereof. Lessee's notice under either subsection (i) or (ii) above shall be deemed Lessee's exercise of the Option.

3.2.3 If Lessee has timely elected to have an "arbitration" of the amount(s) and component(s) of the then Market Rate, then the following shall be utilized to make and implement such election: Upon the valid exercise of Lessee's election to have an "arbitration" of the then Market Rate, then not later than ten (10) days after Lessee's notice to have such an "arbitration" of the then Market Rate, City and Lessee shall each designate, by written notice give to the other party setting forth the designated person's address, a qualified appraiser who shall have had at least ten years' experience relevant to the commercial retail space in the Watsonville market area (the "Arbitrators"). It is expected that the Arbitrators will familiarize themselves with this Lease, the exhibits and riders hereto and such other documents as are deemed relevant by the Arbitrators or either or both of them. Each of the Arbitrators shall submit to City and Lessee, within sixty (60) days after his or her appointment, his or her written determination of the then Market Rate with respect to the Premises. If the lower of said two determinations is not less than ninety-five percent (95%) of the other determination, then the average of the two determinations shall be deemed to be the then Market Rate and conclusive and binding as between the parties. If such not be the case, then the Arbitrators shall mutually select a third qualified and impartial Appraiser who shall also have had at least ten years' experience relevant to the commercial retail space in the Watsonville market area (the "Third

Arbitrator”). The Third Arbitrator shall, within sixty (60) days of his appointment, deliver his written determination to City and Lessee of which of the Arbitrator's Market Rate determinations is most accurate, and that determination shall be the deemed Market Rate which shall be conclusive and binding as between the parties. Each party shall be responsible for all fees and costs incurred in the determination of Market Rate by their own Arbitrator, and the parties shall share equally the fees and costs incurred in the determination of Market Rate by the Third Arbitrator. If Lessee becomes obligated to pay Rent with respect to the Extended Term prior to when the applicable Market Rate has been determined in accordance with the foregoing, Lessee shall commence paying Rent utilizing City's determination of the then Market Rate. Following determination of the applicable Market Rate in accordance with the foregoing, City and Lessee shall, by a cash payment within thirty (30) days of the date of such determination, adjust between themselves the difference, if any, between the Rent paid by Lessee pursuant to the foregoing sentence and the Rent actually owed by Lessee pursuant to the terms of this Lease for that time period.

4. **SECURITY DEPOSIT.**

Lessee has tendered to City an amount of Zero Dollars (\$0) as a security deposit. City confirms that it is not currently holding any security deposit from Lessee under this Lease or any prior lease agreements. 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 a **retail use** 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. At no cost to Lessee, City either has, or shall, supply, furnish, install, finish and deliver in warm vanilla shell, the Premises, in full compliance with all applicable laws (including, without limitation, the ADA), regulations and building codes applicable to new construction, disregarding variances and grandfathered/grandmothered rights, all at City's sole cost and expense, and which shall comprise and is defined as the "Base Building".

6.4 Use of Adjacent Parking Lot. Lessee and its customers shall have the right to use the unreserved, unassigned parking spaces located in the City parking lot as shown on Exhibit A on a first come basis. These parking spaces are made available to all of the tenants/lessees of the Building and are 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 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, the amount of \$1,200 per month, as the an amount agreed upon by the parties to be Lessee’s share of the Common Area Expenses. These expenses may be reassessed and updated by the Lessee from time to time.

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.

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.

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. Tenant will not place or suffer to be placed or maintained on any exterior door, roof, wall or window of the building within which the Leased Premises are located any sign, awning or canopy, or advertising matter or other thing of any kind, and will not place or maintain or permit, or suffer to be placed or maintained, any decoration, lettering or advertising matter on the glass of any window or door of the said building within which the Leased Premises are located without first obtaining Landlord's written approval. In no event shall any: (a) neon, flashing or moving sign(s), or (b) sign(s) which shall interfere with the visibility of any sign, awning, canopy, advertising matter, or decoration of any kind of any other business or occupant of the Beach Street Garage of which the Leased Premises are a part, be permitted hereunder. Tenant further agrees to maintain any such sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved in good condition and repair at all times. 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 sublessee 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 of 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 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, such consent not to be

unreasonably delayed, withheld, or denied. 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.

18.1.1 City will conduct Premises inspections on a quarterly basis to identify maintenance issues that require attention. City will provide to Lessee a report specifying such maintenance issues as are identified that are Lessee's responsibility under this Lease, and if appropriate, City will provide the estimated cost for services to perform the maintenance.

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.

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. **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 the same condition in which it was received. Lessee shall allow City to inspect the Premises to verify the condition of the Premises and its contents.

30. **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.

31. **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.

32. **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.

33. **NOTICES.**

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

City of Watsonville
City Clerk
275 Main Street, Suite 400
Watsonville, CA 95076

And to Lessee addressed as follows:

Lessee's Notice Address:

In Sook Yum
27 West Beach Street
Watsonville, CA 95076

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.

34. **TIME.**

Time shall be of the essence in this Lease.

35. **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.

36. **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.

37. **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.

38. **SERVICE CHARGE.**

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

39. **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.

40. **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.

41. **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.

42. **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.

43. **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.

44. **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.

45. **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.

46. **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.

47. **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.

48. **GOVERNING LAW.**

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

49. **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.

50. **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.

51. **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.

52. **ACCESSIBILITY; DISABILITY LAWS.**

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

52.2 "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.”

52.3 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.

53. **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.

54. **NO BROKERAGE.**

City is represented in this transaction by SELF (“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 SELF (“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 WATSONVILLE, CALIFORNIA, a chartered California municipal corporation

Dated: _____

ATTEST:

By:

By _____
Irwin Ortiz
City Clerk

Tamara Vides
City Manager

APPROVED AS TO FORM:

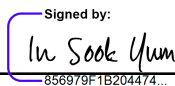
By _____
Samantha W. Zutler
City Attorney

“CITY”

IN SOOK YUM, AN INDIVIDUAL, DBA TOP USA CO., INC.

6/19/2025 | 11:27 AM PDT

Dated: _____

By:  _____
Signed by: 856979F1B204474...

Name: _____ In Sook Yum

Title: _____ President

Local Address: 27 West Beach Street, Watsonville CA. 95076

Email Address: topusa@sbcglobal.net

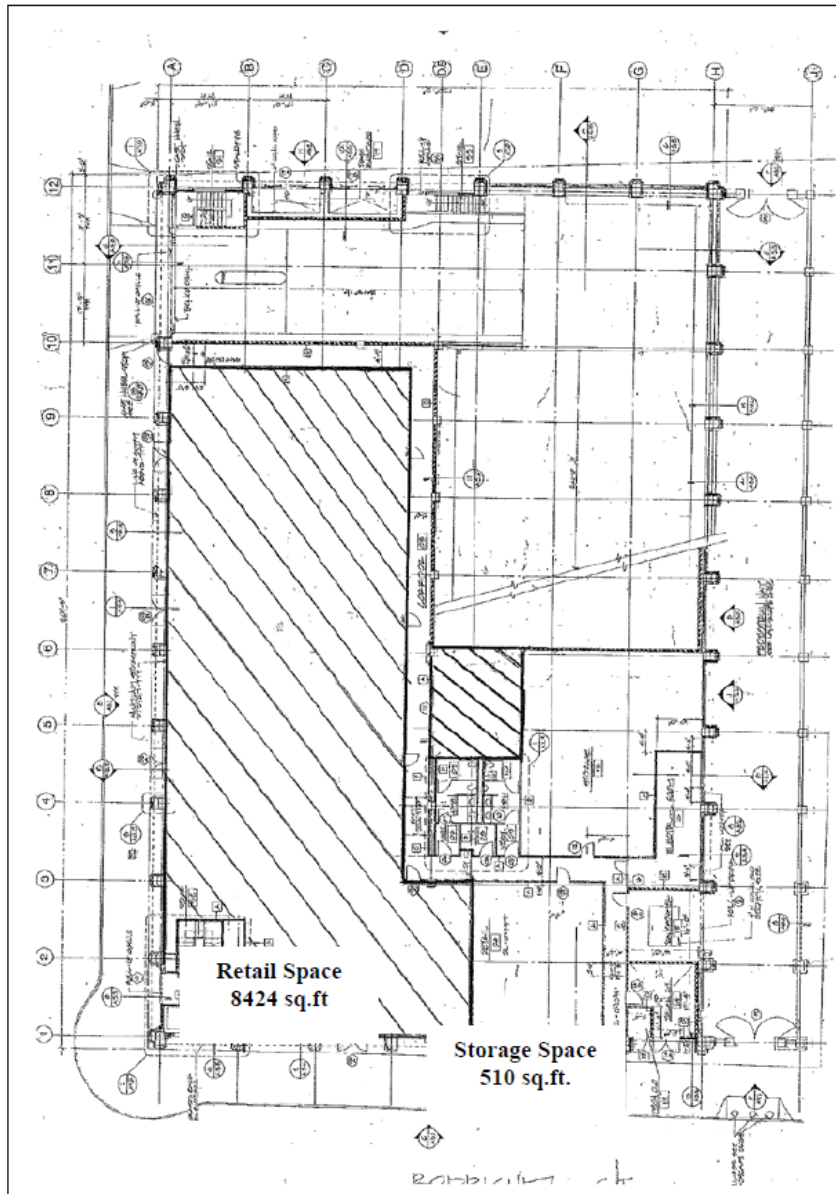
Telephone: 831-419-6135

“LESSEE”

**COMMERCIAL PROPERTY LEASE AGREEMENT
BY AND BETWEEN
CITY OF WATSONVILLE, CALIFORNIA
AND
IN SOOK YUM, DBA TOP USA CO.
EXHIBIT A**

**DESCRIPTION/SITE PLAN OF PREMISES, BUILDING
AND PROJECT INCLUDING PARKING LOT**

West Beach Street



Rodriguez Street

**COMMERCIAL PROPERTY LEASE AGREEMENT
BY AND BETWEEN
CITY OF WATSONVILLE, CALIFORNIA
AND
IN SOOK YUM, DBA TOP USA CO.**

EXHIBIT B

INVENTORY OF FIXTURES

The premises in being delivered unfurnished in a “warm vanilla shell”.

**COMMERCIAL PROPERTY LEASE AGREEMENT
BY AND BETWEEN
CITY OF WATSONVILLE, CALIFORNIA
AND
IN SOOK YUM, DBA TOP USA CO.**

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 thirty (30) days' prior written 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.