



City of Palo Alto

City Council Staff Report

(ID # 5719)

Report Type: Consent Calendar

Meeting Date: 5/11/2015

Summary Title: Palo Alto Players Office Space Lease at Lucie Stern

Title: Approval of a Lease Agreement Between City of Palo Alto and Palo Alto Players-Peninsula Center Stage for Office Space Use at Lucie Stern Community Center Located at 1305 Middlefield Road, Palo Alto

From: City Manager

Lead Department: Administrative Services

RECOMMENDATION

Staff recommends that the City Council authorize the City Manager or his designee to execute a three (3) year lease agreement (Attachment A) between the City of Palo Alto and Palo Alto Players-Peninsula Center Stage.

EXECUTIVE SUMMARY

Palo Alto Players-Peninsula Center Stage (Lessee) currently leases from the City of Palo Alto (City) approximately 500 square feet of office space ("the Premises") at Lucie Stern Community Center located at 1305 Middlefield Road, Palo Alto, California pursuant to that certain lease dated as of November 1, 2012.

The current lease will expire on June 30, 2015. Therefore, the lease term needs to be extended to accommodate the continuation of use and the support of the theater programs by the tenant. The new lease will extend the lease term for an additional three years and will grant the parties an option to extend the term for an additional three years.

BACKGROUND

On November 1, 2012 the City entered into a thirty-two (32) month lease with Palo Alto Players for 500 square feet of office space at Lucie Stern Community Center. The purpose of the lease was to supply office space for the Lessee to deliver administration support for the benefits of providing quality theater work for the residents of local communities. The Lessee has been using the office space to manage, administer and support the theater programs at the Lucie Stern Theater.

DISCUSSION

Brief History

Born in the Great Depression, Palo Alto Players became the Peninsula's first theatre company in 1931 when a group of 100 like-minded citizens gathered together to create a theatre dedicated to its community. Initially, productions were held at a makeshift performance space in the Palo Alto Community House adjacent to the train station (now MacArthur Park Restaurant). The Players soon gained a patron in their front row center - audience member Lucie Stern, who donated funds to give them a home, the Palo Alto Community Theatre, now a part of the city-owned Lucie Stern Community Center, at Rinconada Park. Truly a home-grown organization, Palo Alto Players' productions are seen by over 1,100 season subscribers and more than 13,000 residents throughout the Peninsula annually. Palo Alto Players has been shaping the artistic scene in Silicon Valley long before there was a Silicon Valley, and this opportunity to impact the artistic landscape of California is a responsibility Palo Alto Players takes seriously. True to its mission, Palo Alto Players casts local actors in all five main-stage productions, highlights the work of local directors and designers, and fills its orchestra pit with local musicians. Much has changed in the 84 years since Palo Alto Players first began, but the Players is proud to continue its storied tradition of live theatre, born of the community and performed for the community.

Palo Alto Players is the oldest theatre group on the Peninsula, currently in its 84th year of producing diverse programming that highlights local talent and tells stories of particular resonance for the local community.

Mission

Palo Alto Players is committed to providing a meaningful theatre experience for both audience and production participants. Intrinsic in this is the belief that theatre benefits the community-at-large and enhances the quality of life of those who are touched by it through education, enlightenment, and enrichment. In support of this mission, we are committed to: 1.) Diversity in programming; 2.) Accessibility to all those interested; and 3.) Support of theatrical training and career development.

Budget

Palo Alto Players' annual budget for staffing, general operations, and direct production costs for its season of five plays and musicals at the City-owned Lucie Stern Theater is approximately \$725,000. An estimated 60% of each annual budget is earned in ticket sales and other earned income, 25% is contributed, and the remaining is derived from investments. In addition, per the agreement between the City of Palo Alto and Palo Alto Players, all tickets sold are assessed an additional "facility usage fee" of \$2 per ticket. These fees are collected and remitted to the City of Palo Alto following each production. In the 2013-14 season, these fees totaled nearly \$24,000.

Premises

The five hundred square foot Premises is located in the Lucie Stern Community building. Specifically, it provides office space for the administrative staff to support and run the theater programs. The Lessee currently pays \$2.36 per square foot for rent, the new lease rate will

adjust by 2.5% on July 1, 2015 and it will increase by 2.5% annually during the term of the lease. Lessee and the City have an option to renew the lease for an additional three years at the end of the lease term on June 30, 2018.

RESOURCE IMPACT

Beginning July 1, 2015, the lessee will pay monthly rent at a rate of \$2.42 per square foot for a total of \$14,514 in FY 2016. Thereafter, rent will be increased by 2.5% at the beginning of FY 2017 and FY 2018.

POLICY IMPLICATIONS

This recommendation is consistent with existing City policies to support the cultural program in the City of Palo Alto to enrich the lives of residents in the local communities.

ENVIRONMENTAL REVIEW

Approval of the lease for City owned office space is exempt from the requirements of the California Environmental Quality Act.

Attachments:

- Attachment A: Lease Agreement Between the City & Palo Alto Players (DOCX)

Attachment A

LEASE AGREEMENT TEMPLATE-USER INSTRUCTIONS

WHEN TO USE FORM: This form should only be used when the City is leasing City owned property to someone else. If the City is leasing property from a private party DO NOT USE this form.

HOW TO COMPLETE FORM: To use this form, you will need to fill in the information requested in bold. Below is a summary of the major items of information and lease references that will need to be customized before completing the agreement:

- **Tenant:** **PALO ALTO PLAYERS-PENINSULA CENTER STAGE**
- **Address of Property:** **1305 Middlefield Road Palo Alto, CA 94301**
- **Square Footage and Description of Property:** **500 Square Feet of Office Space Located at Lucie Stern Community Center**
- **Lease Term with Start and End:** Date **7/1/2015 to 6/30/2018**
- **Length of Option Period:** **Three (3) years – Based on City and Tenant mutual agreement**
- **Monthly Rent:** **\$1,211.50 & Yearly Adjustment**
- **Amount of Security Deposit:** **\$1125.00**
- **Required Uses of Property:** **Office & Administration Functions**
- **Who Will Pay Utilities:** **Included in the Lease**
- **Who Will Perform Maintenance:** **Tenant Will Maintain the Interior of the Premise**
- **Who Will Maintain Common and other Areas:** **City**
- **What Construction Lessee Will Perform, Permission Needed, and End Date:** **N/A**
- **What Construction Cost Requires City Approval:** **N/A**
- **Parcel Map of Property** (Exhibit A)
- **General Map** (Exhibit B)
- **Premise** (Exhibit C)

Attachment A

LEASE AGREEMENT

**BETWEEN
CITY OF PALO ALTO
AND
PALO ALTO PLAYERS-PENINSULA CENTER STAGE**

TABLE OF CONTENTS

LEASE PROVISIONS

- 1. PREMISES.**
- 2. TERM.**
- 3. RENT**
- 4. SECURITY DEPOSIT**
- 5. USE OF PROPERTY**
- 6. HAZARDOUS MATERIALS**
- 7. UTILITIES AND OPERATING EXPENSES**
- 8. TAXES**
- 9. MAINTENANCE**
- 10. CONSTRUCTION BY LESSEE**
- 11. ALTERATIONS BY LESSEE**
- 12. HOLD HARMLESS/INDEMNIFICATION**
- 13. DAMAGE, DESTRUCTION AND TERMINATION**
- 14. SIGNS**
- 15. ASSIGNMENT AND SUBLETTING**
- 16. DEFAULTS; REMEDIES**
- 17. INTEREST ON PAST-DUE OBLIGATIONS**
- 18. HOLDING OVER**
- 19. CITY'S ACCESS**
- 20. INSURANCE**
- 21. RESERVATION OF AVIGATIONAL EASEMENT**

Attachment A

22. EMINENT DOMAIN
23. POST-ACQUISITION TENANCY
24. DISPUTE RESOLUTION
25. NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE CITY
27. INDEPENDENT CONTRACTOR
28. CONFLICT OF INTEREST
29. MEMORANDUM OF LEASE
30. ESTOPPEL CERTIFICATE
31. LIENS
32. VACATING
33. ABANDONMENT
34. NOTICES
35. TIME
36. AMENDMENTS
37. SIGNING AUTHORITY
38. CAPTIONS
39. SURRENDER OF LEASE NOT MERGER
40. INTEGRATED DOCUMENT
41. WAIVER
42. INTERPRETATIONS
43. SEVERABILITY CLAUSE
44. GOVERNING LAW
45. VENUE
46. COMPLIANCE WITH LAWS
47. BROKERS
48. ATTACHMENTS TO LEASE
49. EXHIBITS

LEASE AGREEMENT

**BETWEEN
CITY OF PALO ALTO
AND
PALO ALTO PLAYERS-PENINSULA CENTER STAGE**

This lease agreement (herein "Lease") is made and entered into this 1st, day of July 2015, by and between the **City of Palo Alto**, a California chartered municipal corporation (herein "City") and **Palo Alto Players-Peninsula Center Stage**, a non-profit, tax-exempt organization, (herein "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

This Agreement is made with respect to the following facts:

- A. The City is the fee simple owner of the real property commonly known as Lucie Stern Community Center located at 1305 Middlefield Road, Palo Alto, situated County of Santa Clara, State of California, Assessor's Parcel Number 116-01-013 and site plan shown respectively on **Exhibit "A" and Exhibit "B"** of this Agreement (the "Property")
- B. Lessee desires to occupy and use a portion of the Property which consists of an office suite of 500 square feet, more particularly described and shown in Exhibit "C" of this Agreement (the "Premise"), for the general purpose of administration support for the benefits of providing quality theater work for the city of Palo Alto residents
- C. The City of Palo Alto is willing to grant a Lease for the specific and limited uses described in this Agreement.

Now, therefore, in consideration of these recitals and the following covenants, terms, and conditions, Lessee and City mutually agree as follows:

LEASE PROVISIONS

1. PREMISES.

City hereby leases to Lessee, certain real property located in the City of Palo Alto, County of Santa Clara, State of California, commonly known as office space within **Lucie Stern Community Center** and more particularly shown in **Exhibit "C"** attached hereto and incorporated herein by reference. The Property consists of approximately Five Hundred (500) square feet of office space. Unless specifically provided, Lessee accepts the Premise "as-is" on

the date of execution of this Lease.

2. TERM.

2.1 Original Term. The term of this Lease shall be for three (3) years commencing on July 1, 2015 ("Delivery Date") and ending on **June 30, 2018**. Lessee shall, at the expiration of the term of this lease, or upon its earlier termination, surrender the Property in as good condition as it is now at the date of this lease. The Parties expect reasonable wear and tear.

2.3 Early Termination by City. If City in its sole discretion determines that it requires the Property for any public purpose, City may terminate this Lease upon thirty (30) days written notice.

2.4 Option. City and Lessee have the option based on mutual agreement to extend the Lease for an additional three (3) years after the expiration of the original term on June 30, 2018.

3. RENT.

3.1 Base Rent. The rent to be paid by Lessee shall be at \$2.42 per square foot in the amount of \$1,121.00 per month without deduction or offset. Rent shall be payable on the first day of each and every month commencing on the Delivery Date, at a place (or places) as may be designated in writing from time to time by City.

3.2 Annual Increase. During the Term of this Lease, the Base Rent shall be increased two percent (2.5 %) on each July first following the Lease Commencement Date. The first adjustment date will take place on July 1, 2016.

3.3 Late Charge. Lessee acknowledges late payment 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 five percent (5%) 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.

3.4. Rent Payment Procedures. Lessee's obligation to pay rent shall commence upon the commencement of this Lease. If the term commences or terminates on a date other than the first of any month, monthly rent for the first and last month of this Lease shall be prorated based on a 30-day month. Rent payments shall be delivered to **City's Revenue Collections Division, 250 Hamilton Avenue, PO Box 10250, Palo Alto, CA 94303**. The designated place of payment may be changed at any time by City upon ten (10) days' written notice to Lessee. Lessee

specifically agrees that acceptance of any late or incorrect rentals submitted by Lessee shall not constitute an acquiescence or waiver by City and shall not prevent City from enforcing Section 3.3 (Late Charge) or any other remedy provided in this Lease. Acceptance of rent shall not constitute approval of any unauthorized sublease or use, nor constitute a waiver of any non-monetary breach. 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.

3.5. Partial Payment. 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. City may accept and deposit said check without prejudice to its right to recover the balance. Any endorsements or statements on the check or any letter accompanying the check shall not be deemed an accord and/or satisfaction. 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.

4. SECURITY DEPOSIT.

4.1 Security Deposit. City has already holds an amount of \$1,125.00 as a security deposit. City may use these funds as are reasonably necessary to remedy any Lessee default(s) in the payment of rent, to repair damages caused by Lessee, or expenses incurred to clean the Property 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 the total security deposit upon receipt of ten (10) days written notice.

4.2 Return of Security Deposit. The balance of security deposit, if any, shall be mailed to Lessee's last known address within thirty (30) days of surrender of Property.

5. USE OF PROPERTY.

5.1 Required Uses. Throughout the term of this Lease, Lessee shall provide the following uses, services and activities ("Required Uses") The Palo Players shall use the leased space (offices) for the purpose of administration and management of the Palo Alto Players and their productions, including but not limited to planning, ticket sales, fundraising management, storage of office and membership records, and the transaction of business associated with the production of play performed by the Plays at the Lucie Stern Community Theatre. The office shall not be sub-let to other agencies but may be used, with the permission of the Players, by staff or performers of other theatre productions, such as preparation before performances.

5.2 Permitted Uses. In addition to the Required Uses, Lessee may also use the Premises for the following uses: staff development, employee training, script review, meetings with business contacts of the Players. Premises may not be used for any other purposes without City's prior written consent, which consent may be withheld in the sole and absolute discretion of the City.

There may be times when access to the offices via the Lucie Stern patio is limited or restricted because of events, rentals or maintenance of the patio. During such times access will be through the theatre building entrances. Premises may not be used for any other purposes without City's prior written consent, which consent may be withheld in the sole and absolute discretion of the City.

5.3 Prohibited Uses. Lessee shall not use Premises for any purpose not expressly permitted hereunder. Lessee shall not 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. Lessee shall not do or permit to be done anything in any manner which unreasonably disturbs the users of the City Property or the occupants of neighboring property. Specifically, and without limiting the above, Lessee agrees not to cause any unreasonable odor, noise, vibration, power emission, 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. Lessee will not use Property 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 said Property; and no tree or shrub thereon shall be destroyed or removed or other waste committed of said Property. No bicycles, motorcycles, automobiles or other mechanical means of transportation shall be placed or stored anywhere on the Property except for the garage or driveway. No repair, overhaul or modification of any motor vehicle shall take place on the Property or the street in front of said Property. Lessee, at his/her expense, shall keep the Property in as good condition as it was at the beginning of the terms hereof, except damage occasioned by ordinary wear and tear, and except damage to the roof, sidewalks and underground plumbing, which is not the fault of Lessee.

5.4 Condition, Use of Premises. City makes no warranty or representation of any kind concerning the condition of the Premises, or the fitness of the Premises for the use intended by Lessee, and hereby disclaims any personal knowledge with respect thereto, it being expressly understood by the parties that Lessee has personally inspected the Premises, knows its condition, finds it fit for Lessee's intended use, accepts it as is, and has ascertained that it can be used exclusively for the limited purposes specified in Section 5.1.

6. HAZARDOUS MATERIALS.

6.4 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.

6.2. 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.

6.3 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.

6.4 Assignment and Subletting. It shall not be unreasonable for City to withhold its consent to an assignment or subletting to such proposed assignee or sublessee if: (i) any anticipated use of the Premises by any proposed assignee or sublessee involves the generation or storage, use, treatment, 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.

6.5 Hazardous Materials Indemnity. Lessee shall indemnify, defend (by counsel reasonably acceptable to City), protect, and hold Landlord harmless from and against any and all claims, liabilities, penalties, forfeitures, losses, and/or expenses, including without limitation, diminution in value of the Premises, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact or marketing of the Premises 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, 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 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. 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. 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, 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.

6.6 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.

7. UTILITIES AND OPERATING EXPENSES.

7.1. Operating Cost. City shall furnish to the Property reasonable quantities of gas, electricity, water, sewer and refuse collections services as required for Lessee's use. The Lessee shall also be allowed use of internet access as exists within the Premises. However, if City is required to construct new or additional utility installations, including, without limitation, wiring, plumbing, conduits, and mains, resulting from Lessee's special requirements, Lessee shall on demand pay to City the total cost of such items. Lessee will be responsible for cost of any additional upgrade for new electrical circuits and wiring to accommodate its new office computer information system.

8. TAXES.

8.1 Real Property Taxes Defined. The term "real property taxes" as used herein shall mean all taxes, assessments, levies and other charges, general and special, foreseen and unforeseen, now or hereafter imposed by any governmental or quasi-governmental authority or special district

having the direct or indirect power to tax or levy assessments, which are levied or assessed against or with respect to: (i) value, occupancy, use or possession of the Premises and/or the Improvements; (ii) any improvements, fixtures, equipment and other real or personal property of Lessee that are an integral part of the Premises; or, (iii) use of the Premises, Improvements public utilities or energy within the Premises. The term “real property taxes” shall also mean all charges, levies or fees imposed by reason of environmental regulation or other governmental control of the premises and/or the Improvements, new or altered excise, transaction, sales, privilege, assessment, or other taxes or charges now or hereafter imposed upon City as a result of this Lease, and all costs and fees (including attorneys’ fees) incurred by City in contesting any real property taxes and in negotiating with public authorities as to any real property taxes affecting the Premises. If any real property taxes are based upon property or rents unrelated to the Premises and/or the Improvements, then only that part of such tax that is fairly allocable to the Premises and/or the Improvements, as determined by City, on the basis of the assessor’s worksheets or other available information, shall be included within the meaning of the term “real property taxes.”

8.2 Payment of Real Property Taxes. Lessee shall pay Lessee’s share of all real property taxes (as defined in Section 8.1 above) 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 tax bill and notice of City’s determination hereunder. Lessee’s liability to pay real property taxes 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.

8.3 Revenue and Taxation Code. Lessee specifically acknowledges it is familiar with section 107.6 of the California Revenue and Taxation Code. Lessee realizes that a possessory interest subject to property taxes may be created, agrees to pay any such tax, and hereby waives any rights Lessee may have under said California Revenue and Taxation Code section 107.6.

8.4 Personal Property Taxes. Lessee shall pay before delinquent, or if requested by City, reimburse City for, any and all taxes, fees, and assessments associated with the Property, the personal property contained in the premises and other taxes, fees, and assessments regarding any activities which take place at the Property. Lessee recognizes and understands in accepting this Lease that its interest therein may be subject to a possible possessory interest tax that City or County may impose on such interest and that such tax payment shall not reduce any rent due City hereunder and any such tax shall be the liability of and be paid by Lessee.

9. MAINTENANCE.

9.1 City and Lessee Responsibilities. Lessee at Lessee’s expense, shall perform all maintenance and repairs, including all painting, and all maintenance of landscaped areas necessary to keep the Premises and all improvements thereto in first-class order, repair, and condition, and shall keep the Premises in a safe, clean, wholesome, and sanitary condition to the complete satisfaction of City, and in compliance with all applicable laws, throughout the term of

this Lease. In addition, Lessee shall maintain, at Lessee's expense, all equipment, furnishings and trade fixtures upon the Premises required for the maintenance and operation of a first-class business of the type to be conducted pursuant to this Lease.

OR, IF APPLICABLE: City shall be responsible for the maintenance and repair of the structure located on the Premises and main support systems not exclusively serving the Premises, including roof repair, electrical system repair, exterior painting and structural repairs.

9.2 Waiver of Civil Code. Lessee expressly waives the benefit of any statute now or hereinafter in effect, including the provisions of sections 1941 and 1942 of the Civil Code of California, 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 further agrees that if and when any repairs, alterations, additions or betterments shall be made by Lessee as required by this paragraph, Lessee shall promptly pay for all labor done or materials furnished and shall keep the Premises free and clear of any lien or encumbrance of any kind whatsoever. If Lessee fails to make any repairs or perform any maintenance work for which Lessee is responsible within a reasonable time (as determined by the City Manager in the City Manager's sole discretion) after demand by the City, City shall have the right, but not the obligation, to make the repairs at Lessee's expense; within ten (10) days of receipt of a bill, Lessee shall reimburse City for the cost of such repairs, including a fifteen percent (15% administrative overhead fee. The making of such repairs or performance of maintenance by City shall in no event be construed as a waiver of the duty of Lessee to make repairs or perform maintenance as provided in this Section.

9.3 Maintenance of Common Areas. City shall maintain or cause to be maintained, including repair and replacement as necessary, the following common areas serving the Premises and other premises. Although the City provides for the maintenance of the restrooms, the Players are to be good "roommates" by helping to keep the restrooms tidy and clean (take out the trash when the baskets are full) rather than totally relying on the contracted janitor. The janitor will take care of the heavy maintenance tasks, such as sealing the restroom floors.

10. CONSTRUCTION BY LESSEE.

10.1 Minimum Construction. If needed, Lessee shall in an efficient and workmanlike manner, cause to be designed, constructed, and installed within the Premises, at no cost to City, appropriate improvements to adequately accommodate the services and uses required and permitted by this Lease. Lessee shall prepare the plans and specifications for approval by the City's Building Division and Planning & Community Development Divisions as required by the Palo Alto Municipal Code for construction done or caused to be done by Lessee on the Premises as permitted or required by this Lease. Lessee shall keep the Premises free and clear of all claims and liens resulting from construction done by or for Lessee. Promptly after completion of construction, Lessee shall provide to the City Manager a statement of the reasonable and actual costs of construction for the initial improvements, which statement shall be certified as to accuracy and signed by Lessee under penalty of perjury.

10.2 Ownership of Improvements. All improvements constructed, erected, or installed upon the Premises must be free and clear of all liens, claims, or liability for labor or material and shall become the property of City, at its election, upon expiration or earlier termination of this lease and upon City's election, shall remain upon the Premises upon termination of this Lease. Title to all equipment, furniture, furnishings, and trade fixtures placed by Lessee upon the Premises shall remain in Lessee, and replacements, substitutions and modifications thereof may be made by Lessee throughout the term of this Lease. Lessee may remove such fixtures and furnishings upon termination of this Lease if Lessee is not then in default under this Lease, provided that Lessee shall repair to the satisfaction of City any damage to the Premises and improvements caused by such removal and provided that usual and customary lighting, plumbing and heating fixtures shall remain upon the Premises upon termination of this Lease.

10.3 Indemnity for Claims Arising Out of Construction. Lessee shall defend and indemnify City against all claims, liabilities, and losses of any type arising out of work performed on the Premises by Lessee, together with reasonable attorneys' fees and all costs and expenses reasonably incurred by City in negotiating, settling, defending or otherwise protecting against such claims.

10.4 Assurance of Completion. Prior to commencement of any construction or alteration expected to cost more than \$5,000, Lessee shall furnish the City Manager evidence that assures City that sufficient monies will be available to complete the proposed work. The amount of such assurance shall be at least the total estimated construction cost. Evidence of such assurance shall take one of the forms set out below and shall guarantee Lessee's full and faithful performance of all of the terms, covenants, and conditions of this Lease:

- A. Completion Bond;
- B. Performance, labor and material bonds, supplied by Lessee's contractor or contractors, provided the bonds are issued jointly to Lessee and City;
- C. Irrevocable letter of credit from a financial institution; or
- D. Any combination of the above.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and be acceptable to the City Manager. All bonds and letters of credit shall be in a form acceptable to the City Manager, and shall insure faithful and full observance and performance by Lessee of all of the terms, conditions, covenants, and agreements relating to the construction of improvements or alterations in accordance with this Lease.

10.5 Certificate of Inspection. Upon completion of construction of any building, Lessee shall submit to the City Manager a Certificate of Inspection, verifying that the construction was completed in conformance with Title 20 of the California Code of Regulations for residential construction, or in conformance with Title 24 of the California Code of Regulations for non-residential construction.

10.6 As Built Plans. Lessee shall provide the City Manager with a complete set of reproducible “as built plans” reflecting actual construction within or upon the Premises upon completion of any: (i) new construction; (ii) structural alterations; or, (iii) non-structural alterations costing more than \$25,000.

11. ALTERATIONS BY LESSEE

Lessee shall not make any alterations or improvements to the Premises without obtaining the prior written consent of the City Manager. Lessee may, at any time and at its sole expense, install and place business fixtures and equipment within the Premises, provided such fixtures and installation have been reviewed and approved by the City Manager.

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. This indemnity shall be in addition to the Hazardous Materials indemnity contained in this Lease and shall survive shall survive the expiration of or early termination of the Lease Term.

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 City Property, from any cause whatsoever, except to the extent caused by City’s active negligence or willful misconduct.

13. DAMAGE, DESTRUCTION AND TERMINATION

13.1 Nontermination and Nonabatement. Except as provided herein, no destruction or damage to the Premises by fire, windstorm or other casualty, whether insured or uninsured, shall entitle Lessee to terminate this Lease. City and Lessee waive the provisions of any statutes which relate to termination of a lease when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

13.2 Force Majeure. Prevention, delay or stoppage due to strikes, lockouts, labor disputes, Acts of God, inability to obtain labor, inability to obtain 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 (financial inability excepted), shall excuse the performance by 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.

13.3 Restoration of Premises by Lessee.

13.3.1 Destruction Due to Risk Covered by Insurance. If, during the term, the Premises are totally or partially destroyed from a risk covered by the insurance described in Section 20 (Insurance), rendering the Premises totally or partially inaccessible or unusable, Lessee shall restore the Premises to substantially the same condition as it was in immediately before destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

A. Minor Loss. If, during the term of this Lease, the Premises are destroyed from a risk covered by the insurance described in Section 20 (Insurance), and the total amount of loss does not exceed twenty thousand dollars (\$20,000), Lessee shall make the loss adjustment with the insurance company insuring the loss. The proceeds shall be paid directly to Lessee for the sole purpose of making the restoration of the Premises in accordance with this Lease.

B. Major Loss-Insurance Trustee. If, during the term of this Lease, the Premises are destroyed from a risk covered by the insurance described in Section 20 (Insurance), and the total amount of loss exceeds the amount set forth in paragraph (1), Lessee shall make the loss adjustment with the insurance company insuring the loss and on receipt of the proceeds shall immediately pay them to an institutional lender or title company as may be jointly selected by the parties ("the Insurance Trustee").

13.3.2 Destruction Due to Risk Not Covered by Insurance. If, during the term, the Premises are totally or partially destroyed from a risk covered by the insurance described in Section 20 (Insurance), rendering the Premises totally or partially inaccessible or unusable, Lessee shall restore the Premises to substantially the same condition as it was in immediately before destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

If the cost of restoration exceeds ten percent (10%) of the then replacement value of the Premises totally or partially destroyed, Lessee can elect to terminate this

Lease by giving notice to City within sixty (60) days after determining the restoration cost and replacement value. If Lessee elects to terminate this Lease, City, within thirty (30) days after receiving Lessee's notice to terminate, can elect to pay to Lessee, at the time City notifies Lessee of its election, the difference between ten percent (10%) of the replacement value of the Premises and the actual cost of restoration, in which case Lessee shall restore the Premises. On City's making its election to contribute, each party shall deposit immediately the amount of its contribution with such institutional lender or Title Company as may be jointly selected by the parties ("the Insurance Trustee"). If the Destruction does not exceed ten percent (10%) of the then replacement value of the Premises, Lessee shall immediately deposit the cost of restoration with the Insurance Trustee as provided in Exhibit (c). This Lease shall terminate if Lessee elects to terminate this Lease and City does not elect to contribute toward the cost of restoration as provided in this section.

If the Premises are destroyed from a risk not covered by the insurance described in Section 20 (Insurance), and Lessee has the obligation to restore the Premises as provided in subsection (B), both parties shall deposit with the Insurance Trustee their respective contributions toward the cost of restoration. All sums deposited with the Insurance Trustee shall be held for the following purposes and the Insurance Trustee shall have the following powers and duties:

The sums shall be paid in installments by the Insurance Trustee to the contractor retained by Lessee as construction progresses, for payment of the cost of Restoration. A 10% retention fund shall be established that will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the Premises are free of all mechanics' liens and lienable claims.

Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Lessee showing the amount due. If the Insurance Trustee, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Lessee, the Insurance Trustee shall have the right to appoint an architect or an engineer to supervise construction and to make payments on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the insurance trustee out of the trust fund. Both parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee to perform its obligations under this section.

If the sums held by the Insurance Trustee are not sufficient to pay the actual cost of restoration Lessee shall deposit the amount of the deficiency with the Insurance Trustee within fifteen (15) days after request by the Insurance Trustee indicating

the amount of the deficiency. Any undisbursed funds after compliance with the provisions of this section shall be delivered to City to the extent of City's contribution to the fund, and the balance, if any, shall be paid to Lessee. All actual costs and charges of the Insurance Trustee shall be paid by Lessee.

If the Insurance Trustee resigns or for any reason is unwilling to act or continue to act, City shall substitute a new trustee in the place of the designated Insurance Trustee. The new trustee must be an institutional lender or title company.

13.3.3 Procedure for Restoring Premises. When Lessee is obligated to restore the premises within sixty (60) days Lessee at its cost shall prepare final plans, specifications, and working drawings complying with applicable Laws that will be necessary for restoration of the Premises. The plans, specifications, and working drawings must be approved by City. City shall have thirty (30) days after receipt of the plans and specifications and working drawings to either approve or disapprove the plans, specifications, and working drawings and return them to Lessee. If City disapproves the plans, specifications, and working drawings, City shall notify Lessee of its objections and City's proposed solution to each objection. Lessee acknowledges that the plans, specifications, and working drawings shall be subject to approval of the appropriate governmental bodies and that they will be prepared in such a manner as to obtain that approval.

The restoration shall be accomplished as follows:

A. Lessee shall complete the restoration within 60 working days after final plans and specifications and working drawings have been approved by the appropriate governmental bodies and all required permits have been obtained (subject to a reasonable extension for delays resulting from causes beyond Lessee's reasonable control).

B. Lessee shall retain a licensed contractor that is bondable. The contractor shall be required to carry public liability and property damage insurance, standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction in accordance with Section 20 (Insurance). Such insurance shall contain waiver of subrogation clauses in favor of City and Lessee in accordance with the Provisions of Exhibit B.

C. Lessee shall notify City of the date of commencement of the restoration at least ten (10) days before commencement of the restoration to enable City to post and record notices of nonresponsibility. The contractor retained by Lessee shall not commence construction until a completion bond and a labor and materials bond have been delivered to City to insure completion of the construction.

D. Lessee shall accomplish the restoration in a manner that will cause the least

inconvenience, annoyance, and disruption at the Premises.

E. On completion of the restoration Lessee shall immediately record a notice of completion in the county in which the Premises are located.

F. The restoration shall not be commenced until sums sufficient to cover the cost of restoration are placed with the Insurance Trustee as provided in this section.

14. SIGNS.

Lessee shall not place, construct, maintain, or allow any signs upon the Premises without prior written consent of City.

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 Property or any part thereof, nor any right or privilege appurtenant thereto, nor allow or permit any other person(s) to occupy or use the Property, or any portion thereof, without the prior written consent of City. This Lease shall be binding upon any permitted assignee or successor of Lessee. Consent by City to one assignment, subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. No assignment, subletting, or encumbrance by Lessee shall release it from or in any way alter any of Lessee's obligations under this Lease. Lessee may have the Property delivered to a subsidiary company of Lessee, but such arrangement shall in no way alter Lessee's responsibilities hereunder with respect to the Property. 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 assignee of Lessee or any 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 said assignee.

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 section 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 provided in this Lease, 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 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 Improvements 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 Improvements; expenses of reletting, including necessary renovation and alteration of the Premises and Improvements; 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 and other payments as they become 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. City shall have all remedies provided by law and equity.

16.3 No Relief from Forfeiture After Default. Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 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.

16.4 Disposition of Abandoned Personal Property. If the Lessee fails to remove any personal property belonging to Lessee from the Premises after forty-five (45) days of the expiration or termination of this Lease, such property shall at the option of City be deemed to have been transferred to City. City shall have the right to remove and to dispose of such property without liability to Lessee or to any person claiming under Lessee, and the City shall have no need to account for such property.

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. HOLDING OVER.

If Lessee remains in possession of the Premises or any part thereof after the expiration of the term or option term hereof, such occupancy shall be a tenancy from month to month with all the obligations of this Lease applicable to Lessee and at a monthly rental obligation of ten percent (10%) increase over the Base Rent in effect at the time of expiration. Nothing contained in this Lease shall give to Lessee the right to occupy the Property after the expiration of the term, or upon an earlier termination for breach.

19. CITY'S ACCESS.

19.1 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, for the purpose of inspecting same, showing same to prospective purchasers, lenders or lessees, 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.

19.2 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 the Improvements. 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, implementing or changing any City approved security system, device, operation or plan.

19.3 New 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.

20. INSURANCE.

Lessee's responsibility for the Property begins immediately upon delivery and Lessee, at its sole cost and expense, and at no cost to City, shall purchase and maintain in full force and effect during the entire term of this Lease insurance coverage in amounts 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 "D". Lessee also agrees to secure renter's liability insurance.

Lessee shall deposit with the City Manager, on or before the effective date of this Lease, certificates of insurance necessary to satisfy City that the insurance provisions of this Lease have been complied with, and to keep such insurance in effect and the certificates therefore on deposit with City during the entire term of this Lease. Should Lessee not provide evidence of such required coverage at least three (3) days prior to the expiration of any existing insurance coverage, City may purchase such insurance, on behalf of and at the expense of Lessee to provide six months of coverage.

City shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the City's Risk Manager (or comparable official), the insurance provisions in this Lease do not provide adequate protection for City and for members of the public using the Premises, the City Manager may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection as determined by the Risk Manager. City's requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risk that exists at the time a change in insurance is required.

The City Manager shall notify Lessee in writing of changes in the insurance requirements. If Lessee does not deposit copies of acceptable insurance policies with City incorporating such

changes within sixty (60) days of receipt of such notice, or in the event Lessee fails to maintain in effect any required insurance coverage, Lessee shall be in default under this lease without further notice to Lessee. Such failure shall constitute a material breach and shall be grounds for immediate termination of this Lease at the option of City.

The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder nor to fulfill the indemnification provision and requirements of this Lease. Notwithstanding the policy or policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by or connected with this Lease or with use or occupancy of the Premises.

21. RESERVATION OF AVIGATIONAL EASEMENT.

City hereby reserves for the use and benefits of the public, a right of avigation over the Premises for the passage of aircraft landing at, taking off, or operating from the adjacent airport operated by the County of Santa Clara. Lessee releases the City from all liability for noise, vibration, and any other related nuisance .

22. EMINENT DOMAIN.

22.1 If all or any part of the Premises (or the building in which the Premises are located) is condemned by a public entity in the lawful exercise of its power of eminent domain, this Lease shall cease as to the part condemned. The date of such termination shall be the effective date of possession of the whole or part of the Premises by the condemning public entity.

22.2 If only a part is condemned and the condemnation of that part does not substantially impair the capacity of the remainder to be used for the purposes required by this Lease, Lessee shall continue to be bound by the terms, covenants, and conditions of this Lease. However, the then monthly rent shall be reduced in proportion to the diminution in value of the Premises. If the condemnation of a part of the Premises substantially impairs the capacity of the remainder to be used for the purposes required by this Lease, Lessee may:

- A. Terminate this Lease and thereby be absolved of obligations under this Lease which have not accrued as of the date of possession by the condemning public entity; or
- B. Continue to occupy the remaining Premises and thereby continue to be bound by the terms, covenants and conditions of this Lease. If Lessee elects to continue in possession of the remainder of the Premises, the monthly rent shall be reduced in proportion to the diminution in value of the Premises.
- C. Lessee shall provide City with written notice advising City of Lessee's choice within thirty (30) days of possession of the part condemned by the condemning public entity.

22.3 City shall be entitled to and shall receive all compensation related to the condemnation, except that Lessee shall be entitled to: (a) that portion of the compensation which represents the value for the remainder of the Lease term of any Lessee-constructed improvements taken by the condemning public entity, which amount shall not exceed the actual cost of such improvements reduced in proportion to the relationship of the remaining Lease term to the original Lease term, using a straight line approach; and (b) any amount specifically designated as a moving allowance or as compensation for Lessee's personal property. Lessee shall have no claim against Landlord for the value of any unexpired term of this Lease.

23. POST-ACQUISITION TENANCY.

Lessee understands and agrees to waive all claims for relocation assistance and benefits under federal, state or local law.

24. DISPUTE RESOLUTION.

24.1 Unless otherwise mutually agreed to, 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.

24.2 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.

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

24.4 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.

25. 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.

26. NON-DISCRIMINATION

26.1 Non-discrimination in Lease Activities. Lessee agrees that in the performance of this Lease and in connection with all of the activities Lessee conducts on the Premises, it shall not discriminate against any employee or person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status,

familial status, weight or height of such person. Lessee acknowledges that is familiar with the provisions set forth in Section 2.30.510 of the Palo Alto Municipal Code relating to nondiscrimination in employment and Section 9.73 of the Palo Alto Municipal Code relating to City policy against arbitrary discrimination.

26.2 Human Rights Policy. In connection with all activities that are conducted upon the Premises, Lessee agrees to accept and enforce the statements of policy set forth in Section 9.73.010 which provides: "It is the policy of the City of Palo Alto to affirm, support and protect the human rights of every person within its jurisdiction. These rights include, but are not limited to, equal economic, political, and educational opportunity; equal accommodations in all business establishments in the city; and equal service and protection by all public agencies of the city."

27. INDEPENDENT CONTRACTOR.

It is agreed that Lessee shall act and be an independent contractor and not an agent nor employee of City.

28. CONFLICT OF INTEREST.

Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this agreement. Lessee warrants and covenants that no official or employee of City nor any business entity in which any official or employee of City is interested: (1) has been employed or retained to solicit or aid in the procuring of this agreement; or (2) will be employed in the performance of this agreement without the divulgence of such fact to City. In the event that City determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of City, Lessee upon request of City shall immediately terminate such employment. Violation of this provision constitutes a serious breach of this Lease and City may terminate this Lease as a result of such violation.

29. MEMORANDUM OF LEASE.

Following execution of this Lease, either party, at its sole expense, shall be entitled to record a Memorandum of Lease 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.

30. ESTOPPEL CERTIFICATE.

Lessee shall, from time to time, upon at least thirty (30) 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 City Property.

31. LIENS.

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

32. VACATING.

Upon termination of the tenancy, Lessee shall completely vacate the Property, including the removal of any and all of its property. Before departure, Lessee shall return keys and personal property listed on the inventory to City in good, clean and sanitary condition, reasonable wear and tear excepted. Lessee shall allow City to inspect the Property and complete a walk-through to verify the condition of the Property and its contents.

33. ABANDONMENT.

Lessee's absence from the Property for three (3) consecutive days, without prior notice, during which time rent or other charges are delinquent, shall be deemed abandonment of the Property. Such abandonment will be deemed cause for immediate termination without notice. City shall thereupon be authorized to enter and take possession and to remove and dispose of the property of Lessee or its guests without any liability whatsoever to City.

34. NOTICES.

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

City of Palo Alto

Real Estate Division
Attention: Real Estate Manager
250 Hamilton Avenue
Palo Alto, CA 94301
Phone: 650-329-2264

Palo Alto Players

2596 Bay Road Suite D
Redwood City, CA 94063
Phone: 650.329.0891
Fax: 650.363.8582

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

35. TIME.

Time shall be of the essence in this Lease.

36. 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. 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.

38. CAPTIONS.

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.

39. 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 of any and all such subleases or subtenancies.

40. INTEGRATED DOCUMENT.

This Lease, including any exhibits attached hereto, embodies the entire agreement between City and Lessee. 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. All agreements with City are subject to approval of the City Council before City shall be bound thereby.

41. WAIVER.

Waiver by City of one or more conditions of performance or any breach of a condition under this Lease shall not be construed as a waiver of any other condition of performance or subsequent

breaches. 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.

42. 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.

43. 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.

44. GOVERNING LAW.

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

45. 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.

46. COMPLIANCE WITH LAWS.

The Parties hereto shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments in the performance of their rights, duties and obligations under this Lease.

47. BROKERS.

Each party represents that is has not had dealings with any real estate broker, finder, or other person, with respect to this lease in any manner. Each Party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person with whom the Indemnifying Party has or purportedly has dealt.

48. ATTACHMENTS TO LEASE.

The following exhibits are attached to and made a part of this Agreement:

- “A” – Parcel Map of Subject Property**
- “B” – Subject Property**
- “C” - Premise**
- “D” – Standard Insurance Requirements**

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

CITY:

TENANT:

CITY OF PALO ALTO (LESSOR) PALO ALTO PLAYERS-PENINSULA CENTER STAGE

By: _____

By: _____

City Manager or Designee

ATTEST:

Type of Corporation

City Clerk

APPROVED AS TO FORM:

By: _____
Senior Asst. City Attorney

LEASE AGREEMENT

**BETWEEN
CITY OF PALO ALTO
AND**

PALO ALTO PLAYERS-PENINSULA CENTER STAGE

EXHIBIT A

DESCRIPTION OF SUBJECT PROPERTY

**LEASE AGREEMENT
BY AND BETWEEN
CITY OF PALO ALTO, CALIFORNIA
AND
PALO ALTO PLAYERS-PENINSULA CENTER STAGE**

EXHIBIT B

**LEASE AGREEMENT
BY AND BETWEEN
CITY OF PALO ALTO, CALIFORNIA
AND
PALO ALTO PLAYERS-PENINSULA CENTER STAGE**

EXHIBIT D

STANDARD INSURANCE REQUIREMENTS

Insurance Requirements for Lessee:

Lessee shall purchase and maintain the insurance policies set forth below on all of its operations under this Lease at its sole cost and expense. Such policies shall be maintained for the full term of this Lease and the related warranty period (if applicable). For purposes of the insurance policies required under this Lease, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees and volunteers of the City of Palo Alto, California, individually or collectively.

Coverages (RL 28.1A) S

Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- 2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
- 4) Property insurance against all risks of loss to any tenant improvements or betterments

The policy or policies of insurance maintained by Lessee shall provide the following limits and coverages:

<u>POLICY</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
(1) Commercial General Liability	\$1,000,000 per each occurrence for bodily injury, personal injury and property damage
(2) Automobile Liability Including Owned, Hired and Non-Owned Automobiles	\$ 1,000,000 Combined Single Limit

(3) Workers' Compensation Statutory \$1,000,000 per
Employers Liability accident for bodily injury or disease

(4) Lessee's Property Insurance

Lessee shall procure and maintain property insurance coverage for:

- (a) all office furniture, trade fixture, office equipment, merchandise, and all other items of Lessee's property in, on, at, or about the premises and the building, include property installed by, for, or at the expense of Lessee;
- (b) all other improvements, betterments, alterations, and additions to the premises.

Lessee's property insurance must fulfill the following requirements:

- (a) it must be written on the broadest available "all risk" policy form or an equivalent form acceptable City of Palo Alto, including earthquake sprinkler leakage.
- (b) for no less than ninety percent (90%) of the full replacement cost (new without deduction for depreciation) of the covered items and property; and
- (c) the amounts of coverage must meet any coinsurance requirements of the policy or policies.

(RL 28.2)

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Insurance shall be in full force and effect commencing on the first day of the term of this Lease.

Each insurance policy required by this Lease shall:

1. Be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
2. Include a waiver of all rights of subrogation against the City and the members of the City Council and elective or appointive officers or employees, and each party

shall indemnify the other against any loss or expense including reasonable attorney fees, resulting from the failure to obtain such waiver.

3. Name the City of Palo Alto as a loss payee on the property policy.
4. Provide that the City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee; products and completed operations of the Lessee; premises owned, occupied or used by the Lessee; or automobiles owned, leased, hired or borrowed by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.
5. Provide that for any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
6. Provide that any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
7. Provide that Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
8. Lessee agrees to promptly pay to City as Additional Rent, upon demand, the amount of any increase in the rate of insurance on the Premises or on any other part of Building that results by reason of Lessee's act(s) or Lessee's permitting certain activities to take place.

Acceptability of Insurers

All insurance policies shall be issued by California-admitted carriers having current A.M. Best's ratings of no lower than A:-VII.