

**BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO**

Appeal of  
LADY BENJAMIN PD CANNON, )  
Appellant(s) )  
vs. )  
ZONING ADMINISTRATOR, )  
Respondent )

Appeal No. **20-072**

**NOTICE OF APPEAL**

**NOTICE IS HEREBY GIVEN THAT** on October 15, 2020, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on September 30, 2020, of a Notice of Violation & Penalty (subject lot is improved with a building containing ground floor and basement commercial space and 4 dwelling units (5030 3rd St.) that fronts on 3rd Street, and a detached 3-car garage that fronts Revere Ave.; it also contains a one-story, detached, 700 sq. ft. structure (5024 3rd St) located at its interior corner; subject property is in violation of the Planning Code for noncompliance with section 171; including the establishment of an unpermitted internet service exchange within the basement and ground floor of 5030 3rd Street; and Section 317 for having an unauthorized dwelling unit within 5024 3rd Street) at 5024 & 5030 3rd Street.

**APPLICATION NO. 2018-016696ENF**

**FOR HEARING ON February 10, 2021**

Address of Appellant(s):

Address of Other Parties:

Lady Benjamin PD Cannon, Appellant(s) 5030 3rd Street San Francisco, CA 94124	N/A
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Date Filed: October 15, 2020

**CITY & COUNTY OF SAN FRANCISCO  
BOARD OF APPEALS  
PRELIMINARY STATEMENT FOR APPEAL NO. 20-072**

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I / We, **Lady Benjamin PD Cannon**, hereby appeal the following departmental action: **ISSUANCE of Notice of Violation & Penalty No. 2018-016696ENF** by the **Zoning Administrator** which was issued or became effective on: **September 30, 2020**, for the property located at: **5030 3rd Street**.

**BRIEFING SCHEDULE:**

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: 4:30 p.m. on **November 19, 2020, (no later than three Thursdays prior to the hearing date)**, The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy should be emailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org) and [scott.sanchez@sfgov.org](mailto:scott.sanchez@sfgov.org).

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **December 3, 2020, (no later than one Thursday prior to hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy should be emailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org), [scott.sanchez@sfgov.org](mailto:scott.sanchez@sfgov.org) and [ben@6by7.net](mailto:ben@6by7.net)

The Board's physical office is closed to the public and hard copies of the brief do NOT need to be submitted.

**Only photographs and drawings may be submitted by the parties at the hearing.**

Hearing Date: **Wednesday, December 9, 2020, 5:00 p.m.**, via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any change to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org). Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

**Please note** that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at [www.sfgov.org/boa](http://www.sfgov.org/boa) You may also request a copy of the packet of materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

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**The reasons for this appeal are as follows:**

Reasons will be set forth in the brief

**Appellant or Agent (Circle One):**

Signature: \_\_\_\_\_

Print Name: filed electronically by Lady Benjamin PD Cannon



## VIOLATION AND PENALTY DECISION

September 30, 2020

**Property Owner**

Jadallah Charles  
4 West 4th Ave #C  
San Mateo, CA 94402

**Site Address:** 5030 3rd Street  
**Assessor's Block/Lot:** 5338/ 005  
**Zoning District:** Bayview Neighborhood Commercial District  
**Complaint Number:** 2018-016696ENF  
**Code Violation:** Section 171, Unpermitted Establishment of an Internet Service Exchange Use, Section 317, Removal of an Unauthorized Dwelling Unit.  
**Administrative Penalty:** Up to \$250 Each Day of Violation  
**Response Due:** Within 15 days from the date of this Notice  
**Staff Contact:** Dario Jones, (628) 652-7405, [dario.jones@sfgov.org](mailto:dario.jones@sfgov.org)

The Planning Department finds the above-referenced property to be in violation of the Planning Code. As the owner of the subject property, you are a 'responsible' party to bring the above property into compliance with the Planning Code. Details of the violation are discussed below:

### Background

Per Planning Department records, the subject property is located within the Bayview Neighborhood Commercial District and consists of a 7,200, flag-shaped lot fronting on 3rd Street and Revere Avenue. The subject lot is improved with a building containing ground floor and basement commercial space and 4 dwelling units (5030 3<sup>rd</sup> Street) that fronts 3rd Street, and a detached three-car garage that fronts Revere Avenue. The subject lot also contains a one-story, detached, 700 square-foot structure (5024 3rd Street) located at its interior corner. Both 5024 and 5030 3rd Street are the subjects of this Notice of Violation and Penalty Decision letter.

### Description of Violation

The Zoning Administrator determined that the subject property is in violation of the Planning Code due to noncompliance with Planning Code Section 171; including the establishment of an unpermitted internet service exchange ("ISE") within the basement and ground floor of 5030 3<sup>rd</sup> Street; and Planning Code Section 317 for the requirement to legalize or remove an unauthorized dwelling unit ("UDU") within 5024 3<sup>rd</sup> Street.

Per Planning Code Section 102, an internet service exchange is defined as "A Utility and Infrastructure Use defined as a location that contains any of the following uses (excluding a Wireless Telecommunications Services Facility): switching equipment (whether wireline or wireless) that joins or connects occupants, customers, or subscribers

to enable customers or subscribers to transmit data, voice or video signals to each other; one or more computer systems and related equipment used to build, maintain, or process data, voice or video signals, and provide other data processing services; or a group of network servers.”

Per Planning Code Section 317, an unauthorized dwelling unit is defined as, “ one or more rooms within a building that have been used, without the benefit of a building permit, as a separate and distinct living or sleeping space independent from Residential Units on the same property. "Independent" shall mean that (i) the space has independent access that does not require entering a Residential Unit on the property and (ii) there is no open, visual connection to a Residential Unit on the property.”

Pursuant to Planning Code Section 171, structures and land in any zoning district shall be used only for the purposes listed in the Planning Code as permitted in that district, and in accordance with the regulations established for that district. Further, pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitations under the Planning Code shall comply within the development and use of land and structures. Failure to comply with any Planning Code provision constitutes a violation of the Planning Code and is subject to an enforcement process under Code Section 176.

## **Timeline of Investigation**

On December 10, 2018, the Planning Department received a complaint referral from the Office of Short-Term Rentals regarding an alleged UDU and the illegal operation of the ISE.

On February 2, 2019, a Building Permit (Application No. 2019.02.20.3398) was submitted to legalize the detached UDU.

On April 29, 2019, the permit to legalize the UDU was withdrawn. As such, the UDU continued to remain out of compliance with the Planning Code.

On May 14, 2019, Planning Department Staff, Tina Tam, conducted a site inspection and confirmed the existence of the UDU and the operation of an unpermitted internet service exchange (dba 6x7 Networks).

On August 14, 2019, the Planning Department sent you a Notice of Enforcement regarding the continued noncompliance of the UDU and the unpermitted internet service exchange. You were also advised to take corrective actions and provide evidence of compliance to the Planning Department within fifteen (15) days from that notice.

On September 11, 2019, Department staff, Dario Jones, conducted a second site inspection of the property. The findings reconfirmed the continued ISE operation in the basement and ground floor of 5030 3<sup>rd</sup> Street. In addition, staff confirmed that the UDU at 5024 3<sup>rd</sup> Street was not occupied.

On February 3, 2020, a Conditional Use Authorization Application (Case No., 2020-000526CUA) to remove the UDU was accepted by the Planning Department. However, the operation of the unpermitted ISE continued to remain in operation. Given the continued noncompliance of 5030 3rd Street, the Department reiterated to the property manager and wireless permit holder, Rebecca Lopes, that the Department could not process pending applications until the Planning Code violation had been abated.

On March 3, 2020, the Planning Department issued you a Notice of Violation (NOV) finding the subject property in violation of the Planning Code Section 171 for the creation of a UDU and the unpermitted establishment of the ISE within 5030 3<sup>rd</sup> Street. The NOV outlined the violation, how to correct the violation, administrative penalties, and the available appeal processes.

On March 3, 2020, the Planning Department received a request for a Zoning Administrator Hearing to appeal the NOV.

On September 2, 2020, the Zoning Administrator held a public hearing on the matter through a remote hearing on the Microsoft Teams platform. Planning Department staff in attendance included the Zoning Administrator, Corey A. Teague, Tina Tam, Code Enforcement Manager, and Dario Jones, Senior Enforcement Planner.

Members of the public in attendance included the property owner, Charles Jadallah, the property owner's legal representative, Daniel Bornstein, and the property manager, Rene Provencino. Also in attendance was the tenant of the subject commercial space, Ben Cannon of 6x7 Networks, and counsel, Jason Hains. In addition, Rebecca Lopes with Smartlink Group attended the hearing. Details of the violation and hearing are discussed below.

## **Evidence Presented at the Zoning Administrator Hearing**

During the Zoning Administrator hearing, the following testimony was received:

- The property owner stated the owner and tenant, 6x7 Networks, entered into a lease agreement (attached) in May 2018, for a storage use within the basement of 5030 3<sup>rd</sup> Street and within 5024 3<sup>rd</sup> Street.
- The property owner stated that a lease agreement was made provided the tenant's use of the subject property adhered to City ordinances. In addition, the property owner states that the tenant has performed unauthorized electrical work without the property owners' consent.
- The property owner stated that the kitchen was removed from the 5024 3<sup>rd</sup> Street.
- The property owner stated that he is seeking to entitle an additional 12 to 18 dwelling units for the property.
- The property manager stated that the lease agreement did not include the use of the ground floor by 6x7 Networks.

Prior to the hearing, the tenant (6x7 Networks) submitted the following documents (attached):

- a. A copy of a Department of Public Works Utility Excavation Permit
- b. Photos of USPS mailbox for 5024 3<sup>rd</sup> Street, Unit 5,
- c. Property Owners' Affidavit, dated January 29, 2019, regarding the intent to legalize the use of the detached structure as a residential unit.
- d. Photos of the tenants' contractor's license.

- During the hearing, the tenant stated that while their operation includes the use of the basement within 5030 3<sup>rd</sup> Street, they must also occupy the ground floor to meet requirements of the Building and Fire Codes.
  - The tenant also maintained that 6x7 Networks is not an internet service exchange use as it does not command the amount of electrical power needed to operate an ISE.
  - The tenant also stated that their use of the ground floor is akin to a design professional service office use and that the basement is a small server area for use by 6x7 Networks.
  - The tenant stated that 5024 3<sup>rd</sup> Street has been illegally used as a UDU for years. In addition, the tenant states that the property owner was aware of the legality of the UDU as evidenced with an affidavit signed by the property owner.
  - Counsel for the tenant stated that it is not in the interest of the City to issue a violation based on a landlord and tenant dispute.

The Zoning Administrator took the matter under advisement after hearing from all concerned parties.

## Submittals and Consideration After the Hearing

Subsequent to the hearing, the property owner submitted the signed and initialed lease for the basement space at 5030 3<sup>rd</sup> Street and Unit #5 within 5024 3<sup>rd</sup> Street. The lease term is 3 years commencing in June 1, 2018. The agreed use of the space was “Datacenter, colocation, telephone, internet exchange, ISP, CLEC, NDIEC, CLC, Carrier, access provider, wireless telecom and Design Professional co-work space.”

The Zoning Administrator has reviewed all submittals to date and considered statements made at the September 2, 2020, hearing. The following are the relevant points to support the final decision:

1. The most current 3-R Report for the property was issued on October 15, 2016. It determined that the property includes 4 dwellings and a commercial space. Building permits from 2006, 2013, and 2017 also state the property contains 4 dwelling units.
2. The property’s zoning district, the Bayview NCD, prohibits ISE and General Office uses. The description of the use of the basement and ground floor spaces in 5030 3<sup>rd</sup> Street vary, but tend to fall into one of these two land use classifications. It’s important to note that “co-working” space is typically considered to be a General Office use.
3. The tenant proposed their use to be Design Professional, which is defined in Planning Code Section 102 as:

*“A Non-Retail Sales and Service Use that provides professional design services to the general public or to other businesses and includes architectural, landscape architectural, engineering, interior design, and industrial design services. It does not include (1) the design services of graphic artists or other visual artists which are included in the definition of Arts Activities; or (2) the services of*

*advertising agencies or other services which are included in the definition of Professional Service or Non-Retail Professional Service, Financial Service or Medical Service. Design Professional in Neighborhood Commercial Districts is subject to the operating restrictions outlined in Section [202.2\(i\)](#).”*

Section 202.2(i) states:

“(i) Non-Retail Sales and Service Use; Design Professional. In order to preserve and enhance active commercial frontage in the City’s Neighborhood Commercial Districts, a Design Professional use located on the First Story or below within any Neighborhood Commercial or Neighborhood Commercial Transit District must provide its services to the general public.”

The subject unpermitted **commercial** use does not provide “architectural, landscape architectural, engineering, interior design, [or] industrial design services,” nor any similar services. Instead, it seems to provide data, connectivity, and associated services to the business community. It does not provide service on-site to the general public.

4. It is difficult to determine the most recent legal use of the ground floor and/or basement level commercial space at 5030 3<sup>rd</sup> Street. However, any change of use would have required a building permit, even if the proposed use was principally permitted. No such permit was issued related to the use of those spaces related to the current tenant (6x7 Networks).

## Decision

**NOTICE OF VIOLATION UPHELD.** Pursuant to Planning Code Section 176, the Zoning Administrator has a duty in administration and enforcement of the Planning Code. Accordingly, the Zoning Administrator upholds the Notice of Violation issued on March 3, 2020, as the property owner has failed to demonstrate compliance with the Planning Code as described above. The subject property owner shall abate the violation as follows:

1. You may legalize the unauthorized dwelling unit, located at 5024 3<sup>rd</sup> Street, through the Unit Legalization Program. As part of the Unit Legalization Program, please be prepared to provide documentation that the dwelling unit existed before January 1, 2013. For more information regarding legalizing unauthorized dwelling units, you may contact the Department of Building Inspection’s “Unit Legalization Counter.” This option will require you to submit a Building Permit application and floor plans for a change of use.
2. You may also legalize the unauthorized dwelling unit through the Accessory Dwelling Unit Program. Pursuant to Planning Code Section 207(c)(4), on a lot with four or less existing units, one new accessory dwelling unit may be permitted. This option will require you to submit a Building Permit application and floor plans for a change of use.
3. Alternatively, if you choose not to legalize the unauthorized dwelling unit, you must continue to pursue your application for Conditional Use Authorization with the Planning Department to remove the

unauthorized dwelling unit per Planning Code Section 317.

4. The unpermitted establishment of the internet service exchange (and/or General Office) use is not permitted in the Bayview Neighborhood Commercial Zoning District. As such, the Planning Code does not provide a path to legalize the use. Therefore, you must cease all operations of the internet service exchange (and/or General Office) use (dba 6X7 Networks) located on the ground floor and basement of the subject property located at 5030 3<sup>rd</sup> Street.
  
5. The responsible party must provide adequate evidence to demonstrate that either no violation exists or that the violation has been abated. Please provide evidence including (such as dimensioned plans, Building Permits, photos, etc.). An additional site visit may also be required to verify compliance. You may also need to obtain a building permit for any other alterations done at the property. The work approved under any permits to abate violation must commence promptly and be continued diligently to completion with a final inspection and/or issuance of certificate of final completion.

For questions regarding the building permit process, please contact the Department of Building Inspection (DBI) at:

49 South Van Ness Avenue, 2nd/5th Floor  
San Francisco, CA 94103  
Phone: 628.652.3200  
Email: [permitcenter@sfgov.org](mailto:permitcenter@sfgov.org)  
Website: [www.sfgov.org/dbi](http://www.sfgov.org/dbi)

For questions regarding the planning process, please contact the Planning counter at the Permit Center at:

49 South Van Ness Avenue, 2nd Floor  
San Francisco, CA 94103  
Phone: 628.652.7300  
Email: [pic@sfgov.org](mailto:pic@sfgov.org)  
Website: [www.sfplanning.org](http://www.sfplanning.org)

## Timeline to Respond

A Shelter in Place order was issued for San Francisco due to the COVID-19 pandemic on March 16, 2020, which was set to expire on April 7, 2020. On March 31, 2020, Order of the Health Officer No. C19-07b extended the previously issued Shelter in Place from April 7, 2020 to May 3, 2020. On April 29, 2020, Order of the Health Officer No. C19-07c further extended the previously issued Shelter in Place to May 31, 2020. On May 22, 2020, Stay-Safe-At-Home Order of the Health Officer No. C19-07e was issued to amend, clarify, and continue certain terms of the prior Shelter in Place orders. On June 1 and June 11, 2020, Stay-Safe-At-Home Order was updated and replaced previous C19-07 orders: C19-07d (May 18), C19-07c (April 29), C19-07b (March 31) and C19-07 (March 16).



The timeline to respond to this Violation and Penalty Decision is fifteen (15) days. As such, we highly encourage you to immediately reach out to the assigned Enforcement Planner to discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline.

While many City agencies (including the Department of Building Inspection - DBI) are open, we understand there may be challenges and delays related to the processing of necessary applications to abate violations during the Stay-Safe-At-Home Order. You can find more information regarding Planning Department procedures during the Stay-Safe-At-Home Order here: <https://sfplanning.org/covid-19>.

The Department recognizes the challenges of the City's Stay-Safe-At-Home Order and its underlying cause. However, corrective actions should be taken as early as reasonably possible. Please contact the assigned Enforcement Planner with questions and/or to submit evidence of correction. Delays in abatement of the violation beyond the timeline outlined above will result in further enforcement action by the Planning Department, including assessment of administrative penalties at \$250 per day.

## Administrative Penalties

If any responsible party does not appeal this notice to the Board of Appeals within 15-days from the date of this notice, this Violation and Penalty Decision notice will become final. However, administrative penalties will not begin to accrue until the 15-day period to respond expires. Beginning on the following day, administrative penalties of up to \$250 per day to the responsible party will start to accrue for each day the violation continues unabated. If such penalties are assessed, the Planning Department will issue a Notice of Penalty, and the penalty amount shall be paid within 30 days from the issuance date of Notice of Penalty. Additional penalties will continue to accrue until a corrective action is taken to abate the violation. Please be advised that payment of the penalty does not excuse failure to correct the violation or bar further enforcement action.

## Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for "Time and Materials" to recover the cost of correcting Planning Code violations. Accordingly, a fee of **\$5,132.42** for "Time and Materials" cost associated with the Code Enforcement investigation is now due to the Planning Department. Please submit a check payable to "Planning Department Code Enforcement Fund" within 15 days from the date of this notice. Additional fees will continue to accrue until the violation is abated. This fee is separate from the administrative penalties as described above and is not appealable.

## Failure to Pay Penalties and Fees

Any Administrative Penalties and Enforcement Fees not paid within the specified time period noted above may be forwarded to the Bureau of Delinquent Revenue (BDR) for collection pursuant to Article V, Section 10.39 of the San Francisco Administrative Code. The BDR may apply a 25% surcharge for their collection services. Please note that such surcharge will be considered part of the cost of correcting the violation, and you (the responsible party) will be responsible for such charges.

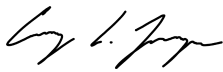
## Appeal

This Violation and Penalty Decision notice and any assessed penalties may be appealed to the Board of Appeals within the 15-day time limit from the date of this Violation and Penalty Decision notice at:

49 South Van Ness Avenue, Suite 1475  
San Francisco, CA 94103  
Phone: 628.652.1150  
Website: [www.sfgov.org/bdappeal](http://www.sfgov.org/bdappeal)

The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day that the violation exists, excluding the period of time that the matter has been pending either before the Zoning Administrator or before the Board of Appeals.

Sincerely,



Corey A. Teague, AICP  
Zoning Administrator

Enc: Evidence submitted by Property Owner:

- Lease Agreement

Evidence submitted by Tenant:

- Copy of a Department of Public Works Utility Excavation Permit
- Photos of USPS mailbox for 5024 3<sup>rd</sup> Street, Unit 5
- Property Owners' Affidavit, dated January 29, 2019
- Photos of the tenants' contractor's license

CC: Rena Provencino, Property Manager, [renaprovincio@gmail.com](mailto:renaprovincio@gmail.com)  
Ben Cannon, 6x7 Networks, [ben@6by7.net](mailto:ben@6by7.net)  
Rebecca Lopes, Wireless Permit Holder, [rebecca.lopes@smartlinkgroup.com](mailto:rebecca.lopes@smartlinkgroup.com)  
Jason Hains, Counsel for 6x7 Networks, [jasonh@evictiondefense.org](mailto:jasonh@evictiondefense.org)  
Daniel Bornstein, Counsel for Property Owner, [daniel@bornstein.law](mailto:daniel@bornstein.law)  
Dario Jones, Senior Enforcement Planner



## STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - GROSS

### 1. Basic Provisions ("Basic Provisions").

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only March 1, 2018,  
is made by and between Charles Jadallah

\_\_\_\_\_, ("Lessor")

and 6x7 Networks LLC

\_\_\_\_\_, ("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 5030 3rd St & 5024 3rd St Unit 5, located in the City of San Francisco, County of San Francisco, State of CA, with zip code 94124, as outlined on Exhibit \_\_\_\_\_ attached hereto ("**Premises**") and generally described as (describe briefly the nature of the Premises): Basement (5030 3rd St) and rear storage building (5024 3rd St. #5)

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("**Building**") and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "**Project**." (See also Paragraph 2)

1.2(b) **Parking:** 0 unreserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 **Term:** 3 years and \_\_\_\_\_ months ("**Original Term**") commencing June 1, 2018 ("**Commencement Date**") and ending May 31, 2021 ("**Expiration Date**"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing May 14, 2018 ("**Early Possession Date**"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$ 2,100.00 per month ("**Base Rent**"), payable on the First (1st) day of each month commencing June 1, 2018. (See also Paragraph 4)

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

1.6 **Lessee's Share of Common Area Operating Expenses:** \_\_\_\_\_ percent ( \_\_\_\_\_ %) ("**Lessee's Share**"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

### 1.7 Base Rent and Other Monies Paid Upon Execution:

(a) **Base Rent:** \$ 2,100.00 for the period June 1, 2018 - June 30, 2018.

(b) **Common Area Operating Expenses:** \$ \_\_\_\_\_ for the period \_\_\_\_\_.

(c) **Security Deposit:** \$ 2,100.00 ("**Security Deposit**"). (See also Paragraph 5)

(d) **Other:** \$ \_\_\_\_\_ for \_\_\_\_\_.

(e) **Total Due Upon Execution of this Lease:** \$ 4,200.00.

1.8 **Agreed Use:** Datacenter, colocation, telephone, internet exchange, ISP, CLEC, NDIEC, CLC, Carrier, access provider, wireless telecom and Design Professional co-work space.

\_\_\_\_\_ . (See also Paragraph 6)

DS  
BC

INITIALS

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MTG-24.00, Revised 01-03-2017

DS  
CJ

INITIALS

XX  
Main Pmc, 520 S. El Camino Real, San Mateo, CA 94402  
XX

6x7 Networks LLC

1.9 **Insuring Party.** Lessor is the "Insuring Party". (See also Paragraph 8)

1.10 **Real Estate Brokers:** (See also Paragraph 15 and 25)

(a) **Representation:** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- \_\_\_\_\_ represents Lessor exclusively ("**Lessor's Broker**");
- \_\_\_\_\_ represents Lessee exclusively ("**Lessee's Broker**"); or
- \_\_\_\_\_ represents both Lessor and Lessee ("**Dual Agency**").

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

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

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

- an Addendum consisting of Paragraphs 50 through 61 ;
- a site plan depicting the Premises;
- a site plan depicting the Project;
- a current set of the Rules and Regulations for the Project;
- a current set of the Rules and Regulations adopted by the owners' association;
- a Work Letter;
- other (specify): \_\_\_\_\_

**2. Premises.**

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

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

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

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

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

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

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

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

**2.6 Vehicle Parking.** Lessee shall be entitled to use the number of Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "**Permitted Size Vehicles.**" Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

**2.7 Common Areas - Definition.** The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roofs, roadways, walkways, driveways and landscaped areas.

**2.8 Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

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2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

- (a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;
- (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
- (c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;
- (d) To add additional buildings and improvements to the Common Areas;
- (e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and
- (f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. **Term.**

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

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

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

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

4. **Rent.**

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

4.2 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

- (a) The following costs relating to the ownership and operation of the Project are defined as "**Common Area Operating Expenses**":
  - (i) Costs relating to the operation, repair and maintenance, in neat, clean, good order and condition, but not the replacement (see subparagraph (e)), of the following:
    - (aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.
    - (bb) Exterior signs and any tenant directories.
    - (cc) Any fire sprinkler systems.
    - (dd) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.
  - (ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.
  - (iii) The cost of trash disposal, pest control services, property management, security services, owner's association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

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- (iv) Reserves set aside for maintenance and repair of Common Areas and Common Area equipment.
- (v) Any increase above the Base Real Property Taxes (as defined in Paragraph 10).
- (vi) Any "Insurance Cost Increase" (as defined in Paragraph 8).
- (vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.
- (viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the

Project.

(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Common Area Operating Expenses shall not include the cost of replacing equipment or capital components such as the roof, foundations, exterior walls or Common Area capital improvements, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(f) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

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

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

**6. Use.**

**6.1 Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or

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electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

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

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

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

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

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

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

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make

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such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

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

**6.4 Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

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

**7.1 Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

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

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

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

**7.2 Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

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7.3 **Utility Installations; Trade Fixtures; Alterations.**

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

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

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

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

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

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

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

8. **Insurance; Indemnity.**

8.1 **Payment of Premium Increases.**

(a) As used herein, the term "**Insurance Cost Increase**" is defined as any increase in the actual cost of the insurance applicable to the Building and/or the Project and required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), over and above the Base Premium, as hereinafter defined, calculated on an annual basis. Insurance Cost Increase shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. The term Insurance Cost Increase shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. The "**Base Premium**" shall be the annual premium applicable to the 12 month period immediately preceding the Start Date. If, however, the Project was not insured for the entirety of such 12 month period, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the Start Date, assuming the most nominal use

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possible of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

(b) Lessee shall pay any Insurance Cost Increase to Lessor pursuant to Paragraph 4.2. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

**8.2 Liability Insurance.**

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

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

**8.3 Property Insurance - Building, Improvements and Rental Value.**

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

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

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

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

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

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

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

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

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

**8.6 Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any

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deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

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

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

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

9. **Damage or Destruction.**

9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

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

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

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

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as

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soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

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

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

9.6 **Abatement of Rent; Lessee's Remedies.**

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

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

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

10. **Real Property Taxes.**

10.1 **Definitions.**

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

(b) **"Base Real Property Taxes."** As used herein, the term **"Base Real Property Taxes"** shall be the amount of Real Property Taxes, which are assessed against the Premises, Building, Project or Common Areas in the calendar year during which the Lease is executed. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other tenants or by Lessor for the exclusive enjoyment of such other Tenants. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

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

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

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

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

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

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

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

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

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

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

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

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

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

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

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

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

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

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

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(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

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

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

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

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

13. **Default; Breach; Remedies.**

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

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

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

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

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

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

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

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

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

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(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

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

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

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

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

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

**13.6 Breach by Lessor.**

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

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

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

15. **Brokerage Fees.**

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

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

16. **Estoppel Certificates.**

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

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

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

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

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

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

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

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

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

23. **Notices.**

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

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

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

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

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

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

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

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

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

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to

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protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

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

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

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

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

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

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

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

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

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

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

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

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other

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premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

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

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

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

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

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

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

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

39. **Options.** If Lessee is granted an option, as defined below, then the following provisions shall apply.

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

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

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

39.4 **Effect of Default on Options.**

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

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

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

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

41. **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall

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be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution.**

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

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

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

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

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

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

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

48. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease

is  is not attached to this Lease.

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

(a) The Premises:

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

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

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

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

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

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

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

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

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

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

Executed at: \_\_\_\_\_  
On: \_\_\_\_\_

Executed at: \_\_\_\_\_  
On: \_\_\_\_\_

**By LESSOR:**  
**Charles Jadallah**

**By LESSEE:**  
**6x7 Networks LLC**

DocuSigned by:  
By: *Charles Jadallah* 6/11/2018 | 3:41 PM PDT  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

DocuSigned by:  
By: *Ben Cannon* 6/11/2018 | 3:40 PM PDT  
Name Printed: **Ben Cannon**  
Title: \_\_\_\_\_

Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
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Federal ID No. \_\_\_\_\_

**BROKER:**

**BROKER:**

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Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Att: \_\_\_\_\_  
Title: \_\_\_\_\_  
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Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Federal ID No. \_\_\_\_\_

Federal ID No. \_\_\_\_\_

Broker/Agent BRE License #: \_\_\_\_\_

Broker/Agent BRE License #: \_\_\_\_\_

**AIR CRE. 500 North Brand Blvd, Suite 900, Glendale, CA 91203, Tel 213-687-8777, Email [contracts@aircre.com](mailto:contracts@aircre.com)**  
**NOTICE: No part of the works may be reproduced in any form without permission in writing.**

DS  
*BC*

DS  
*W*

Charles Jadallah; Owner

4 W 4th Ave, Suite C,

San Mateo Ca

Charliejad@yahoo.com

January. 29. 2019

Affidavit.

Project: legalization of back unit 5020-5030 3rd St. San Francisco, CA 94124 (back unit)

Department of Building Inspection

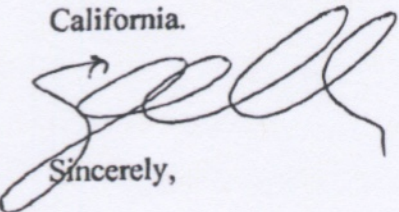
To whom it may concern:

I have been the Owner of 5030 3rd Street since September of 2009. I purchased the building/accessory buildings, including an approximately 700 sq. ft. free standing unit at the rear of the property in about 2010. The building/accessory buildings were constructed in 1923, (evident on the Historic Sanborn map). The unit has a full bathroom and kitchen.

This unit was rented out for many years thru 2017. Also, long time renters in the main building support that the unit was rented before my purchasing the property.

I would like to formally legalize the unit and request your support for this to happen through the proper channels.

I declare under penalty of perjury that the foregoing is true and correct in the State of California.

  
Sincerely,



**19EXC-01887 (Original: 19EXC-00722)  
 Renewed**

**Utility Excavation Permit**

Address : 5030 03RD ST

Cost: \$1,303.00

Block:5338 Lot: 005 Zip: 94124

Pursuant to Article 2.4 of the Public Works Code in conjunction to DPW Order 187,005 permission, revocable at the will of the Director of Public Works, to excavate and restore the public right-of-way is granted to Permittee.

**Permittee**

Name: Zayo Group

**MANDATORY COORDINATION WITH CONFLICTING PERMITS IS REQUIRED. PERMIT HOLDER SHALL NOT COMMENCE WORK WITHOUT FIRST PROPERLY COORDINATING WITH EXISTING PERMIT HOLDERS AS NOTED ON THE EXCEPTION PAGE(S) OF THIS PERMIT. IF THIS PERMIT CONFLICTS WITH A CITY PROJECT OR OTHER APPROVED PERMIT, THE PERMIT HOLDER OF THIS PERMIT SHALL BE RESPONSIBLE FOR THE PROPER COORDINATION AND EVALUATION OF THE SITE PRIOR TO COMMENCING WORK.**

**EmergencyConfirmationNumber**



**Conditions**

Requirements listed on the Conditions page(s) are applicable to Zayo Group .

Small/Medium Permit: The permittee is required to complete the work within 14 days from the start date that work commences. Failure to complete the work in 14 days will result in requiring from the permittee a new permit application and a 30-day notice.

The permittee shall comply with all existing traffic controls and parking restrictions. The permittee shall also comply with any additional restrictions under the Special Traffic Permit issued by SFMTA. For information related to construction traffic restrictions please reference the latest edition of Regulations for Working in San Francisco Streets, the Blue Book. To download a copy of the Blue Book, please visit <https://www.sfmta.com/services/streets-sidewalks/construction-regulations>.

During construction, if the proposed excavation damages the existing (upgraded) ramp(s), the permittee shall be required to replace in-kind the existing ramp(s).

During construction, if the proposed excavation affects the existing ramp(s), the permittee shall be required to submit drawings for replacement curb ramps meeting current standards.

25% Restoration Rule: If the total length of the trench excavation on the street is more than 25% the length of the street, the ACWS shall be for the entire length of the street for all affected lanes and shall be rectangular. If the edge of trench excavation is less than 6-feet to a crosswalk, the ACWS shall conform at the crosswalk

-----

All previous special conditions attached to the original permit are still valid and applicable for (Permit 19EXC-01887). == (Tue Apr 02 2019 )

<b>24 Hour / 7 Day Contact:</b>	(916) 910-8670
<b>Service Address/Project:</b>	5030 3rd St- Primary
<b>Construction Start Date</b>	
<b>Start Date</b>	04/08/2019
<b>Permit expires on:</b>	04/19/2019
<b>Purpose</b>	Data
<b>Type of facility:</b>	
<b>Excavation Reason</b>	Place Conduit
<b>Excavation Reason Description</b>	

<b>Method:</b>	Open Cut: Sawcut
<b>TrackingNumber1</b>	
<b>TrackingNumber2</b>	
<b>Project Size</b>	545
<b>Inspection</b>	Work shall not commence until this permit has been activated by Public Works. The permittee shall contact Public Works at (415) 554-7149 to activate the permit and schedule inspection at least 72 hours prior to work. Failure to follow the activation process prior to commencing work may result in a correction notice and possible notice of violation.

The undersigned Permittee hereby agrees to comply with all requirements and conditions noted on this permit

**Approved Date : 04/02/2019**

**\*\*When drilling/excavating in sidewalk area, entire flag(s) must be replaced.\*\***

\_\_\_\_\_  
Applicant/Permittee                      Date

Distribution:  
Inside BSM: Utility Inspection

**Printed : 4/2/2019 4:50:24 PM**      Plan Checker                      Nick Lopez

**call Ray Oropeza for a Pre-Con at 554-4923**

**STREET EXCAVATION REQUIREMENTS:**

1. The permittee shall call Underground Service Alert (U.S.A.), telephone number 811, 48 hours prior to any excavation.
2. The permittee shall follow the standards for temporary towaway/no parking signs established in DPW Order 183160.
3. All work including sidewalk and pavement cutting and removal, lagging, excavation, backfill, and sidewalk and pavement restoration shall be done by a licensed contractor and in accordance with the requirements of the latest edition of Standard Specifications and Plans of San Francisco Public Works, and Department of Public Works Order Nos. 187,005.
4.
  - a. Concrete Bus pads shall be constructed in accordance with the most current revision of San Francisco Public Works Standard Plan, File No. 96,607.
  - b. Reinforced concrete sidewalk shall be constructed in accordance with the most current revision of San Francisco Public Works Standard Plan File No. 96,608.
5. Sidewalk and permanent pavement marking restoration shall include the replacement of traffic lane and crosswalk striping, parking stall markings, and curb painting that might have been damaged during street excavation. For permanent pavement marking restoration, the permit holder shall deliver one set of the excavation plans to the San Francisco Municipal Transportation Agency at 1 South Van Ness Avenue, 7th Floor. The SFMTA shall send an estimate of the cost of restoring permanent pavement markings to the Contractor. The Contractor shall send a check for the estimated cost to the SFMTA within 15 working days. The Contractor shall email confirmation to the SFMTA Transportation Engineering Division at [trafficpermits@sfmta.com](mailto:trafficpermits@sfmta.com) when the paving has been accepted by the SFPW-BSM Inspector. The SFMTA Paint Shop will install the permanent pavement markings.
6. The permittee shall submit a non-refundable fee to Bureau of Street-Use and Mapping to pay for City Inspection of the backfill and pavement restoration. At least 48 hours in advance, the permittee shall make arrangements with the Street Improvement Section Inspectors, 554-7149, for an inspection schedule.
7. The permittee shall file and maintain an excavation bond in the sum of \$25,000.00 with the Department of Public Works, to guarantee the maintenance of the pavement in the excavation area for a period of 3 years following the completion of the backfill and pavement restoration pursuant to Article 2.4.40 of the Public Works Code.
8. The permittee shall conduct construction operations in accordance with the requirements of Article 900 Section 903(a) and (b) of the Traffic Code. The permittee shall contact the MTA 7th Floor 1 South Van Ness Ave telephone 701-4500, for specific restrictions before starting work.
9. The permittee shall obtain the required permits, if any, from regulating agencies of the State of California.
10. The permittee shall verify the locations of any City or public service utility company facilities that may be affected by the work authorized by this permit and shall assume all responsibility for any damage to such facilities. The permittee shall make satisfactory arrangements and payments for any necessary temporary relocation of City or public utility company facilities.
11. The permittee shall pay the required fee for sewer installation permit at the Plumbing Inspection Division, Department of Building Inspection, 1660 Mission Street and arrange for inspection of this work, telephone 558-6054.
12. The permittee shall obtain a tree permit from Urban Forestry before planting/removing any tree or shrub. Contact at (415) 554-6700.
13. Per DPW Order 178,806, the recycling of Cobble Stones and Granite Curb shall follow as:
  - a. Cobblestones shall be clean of dirt prior to transporting. Extreme care shall be taken during the transporting the cobblestones to minimize damage before delivery to City. The cobblestones shall be neatly and securely placed on pallets so they can be moved about safely after the delivery. The Minimum size of cobblestone shall be 4 inches square (16 square inches). The cobblestones shall be delivered, including off loading, to 901 14th Street on Treasure Island or at alternative location directed by the Department within the City of San Francisco. Contact the Department forty-eight hours (48 hours) prior to delivery. The Department can be reached at (415) 695-6673.
  - b. Granite Curb shall be neatly and securely placed on pallets so they can be moved about safely after delivery. The Contractor shall exercise care in transporting the granite curb to minimize damage. The length limit of recyclable granite curbs shall be no less than four feet. The granite curb shall be delivered, including off loading, to 901 14th Street on Treasure Island or at an alternative location directed by the Department within the City of San Francisco. Contact Bureau of Street and Sewer Repair (BSSR) at least forty-eight hours (48 hours) prior to delivery. BSSR can be reached at (415) 695-6673.
14. In consideration of this Permit being issued for the work described in the application, Permittee on its behalf and that of any successor or assign, and on behalf of any lessee, promises and agrees to perform all the terms of this Permit and to comply with all applicable laws, ordinances and regulations.
15. Permittee agrees on its behalf and that of any successor or assign to hold harmless, defend, and indemnify the City and County of San Francisco, including, without limitation, each of its commissions, departments, officers, agents and employees (hereinafter collectively referred to as the "City") from and against any and all losses, liabilities, expenses, claims, demands, injuries, damages, fines, penalties, costs or judgments including, without limitation, attorneys' fees and costs (collectively, "claims") of any kind allegedly arising directly or indirectly from (i) any act by, omission by, or negligence of, Permittee or its subcontractors, or the officers, agents, or employees of either, while engaged in the performance of the work authorized by this Permit, or while in or about the property subject to this Permit for any reason connected in any way whatsoever with the performance of the work authorized by this Permit, or allegedly resulting directly or indirectly from the maintenance or installation of any equipment, facilities or structures authorized under this Permit, (ii) any accident or injury to any contractor or subcontractor, or any officer, agent, or employee of either of them, while engaged in the performance of the work authorized by this Permit, or while in or about the property, for any reason connected with the performance of the work authorized by this Permit, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the work authorized by this Permit, (iii) injuries or damages to real or personal property, good will, and persons in, upon or in any way allegedly connected with the work authorized by this Permit from any cause or claims arising at any time, and (iv) any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by Permittee in, under, on or about the property subject to this Permit or into the environment. As used herein, "hazardous material" means any substance, waste or material which, because of its quantity, concentration of physical or chemical characteristics is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.
16. Permittee must hold harmless, indemnify and defend the City regardless of the alleged negligence of the City or any other party, except only for claims resulting directly from the sole negligence or willful misconduct of the City. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Permittee by the City and continues at all times thereafter. Permittee agrees that the indemnification obligations assumed under this Permit shall survive expiration of the Permit or completion of work.
17. Pursuant to state law, all survey monuments must be preserved. No work (including saw cutting) may commence within 20' of a survey monument until an application for Monument Referencing has been approved and notification of monument referencing has occurred. Prior to construction, all CCSF survey monuments shall be referenced by a licensed Land Surveyor on a Corner Record or Record of Survey if any construction will take place within 20 ft. of a monument. For any questions please email [Monument.Preservation@sfdpw.org](mailto:Monument.Preservation@sfdpw.org) or call 415-554-5827. Note, all survey monuments shall be preserved per state law and disturbance of a survey monument is a crime. Not all survey monuments are visible.
18. Permittee shall obtain and maintain through the terms of this Permit general liability, automobile liability or workers' compensation insurance as the City deems necessary to protect the City against claims for damages for personal injury, accidental death and property damage allegedly arising from any work done under this Permit. Such insurance shall in no way limit Permittee's indemnity hereunder. Certificates of insurance, in form and with insurers satisfactory to the City, evidencing all coverages above shall be furnished to the City before

commencing any operations under this Permit, with complete copies of policies furnished promptly upon City request.

19. The permittee and any permitted successor or assign recognize and understand that this permit may create a possessory interest.

## Conditions

==>NOTES: Per the Public Works Excavation Code (DPW Order 187005):

All works approved under this permit are subject to current DPW Orders: DPW Order 187005, Regulations for Excavating and Restoring Streets in San Francisco; DPW Order 181305, Reinforced Concrete Bus Pads; DPW Order 181306, Reinforced Concrete Sidewalk.

- 1) ' T ' trench shall be the standard restoration practice for all trenches. The restoration of the concrete base and pavement will be equal to 1 ft. as measured from the edge of the trench;
- 2) The minimum pavement restoration requirements (mill and fill) for trenches exceeding 25% of the length of the block shall include the restoration of all affected lanes for the entire length of the block. For streets that are not delineated by painted lanes, the pavement restoration requirements (mill and fill) shall be up to the center line of the street.;
- 3) For excavation in the intersection, the restoration shall be to pave all affected quadrants. If three (3) or more quadrants are affected by the trench, the entire intersection must be restored.

==>Per DPW sign specifications, all projects impacting the length of one (1) block face or more will require the installation of a project information sign for the duration of the project. The project information sign should be located at either end of the project facing oncoming vehicular traffic. For larger projects that exceed five (5) blocks, the project information sign should be placed at five (5) block intervals in both directions. The signage is intended to keep the public informed of the intent of the project, project schedule, contact information and allow for updates as needed.

==>If concrete street, gutter or parking strip is excavated, the Applicant shall remove and replace the entire concrete section from construction joint to construction joint. No new construction joint will be allowed.

==>When drilling/excavating in the sidewalk area, entire sidewalk flag(s) must be replaced to adjacent score lines.

Placement or installation of any utility facilities within the curb return area is prohibited per DPW Order No. 185854.

==>Placement or installation of any utility facilities within the curb return area is prohibited per DPW Order No. 185854.

==>The Department of Public Works approves this permit pursuant to the following special conditions, which the Department of Public Works incorporates into the permit and makes a part thereof.

### SPECIAL PERMIT CONDITIONS:

This permit is approved under the following conditions:

- 1) If the work is anticipated to take longer than fourteen (14) calendar days, the Applicant shall comply with Code Section 2.4.50(b)(i), provide written notice(s) delivered by mail to each property owners on the block(s) affected by the excavation at least thirty (30) days prior to start of construction. The Applicant shall also comply with Code Section 2.4.50(b)(ii) and (b)(iii), post and maintain notice(s) at the site of the excavation and deliver a written notice to each dwelling unit on the block(s) affected by the excavation at least ten (10) days prior to start of construction. All work (excavation to final paving) shall be completed within fourteen (14) calendar days per Excavation Code and to the satisfaction of the assigned City inspector.
- 2) The Applicant shall comply with Code Section 2.4.50(a), post and maintain notice(s) at the site of the excavation 72 hours prior to start of construction.
- 3) The Applicant shall comply with Code Section 2.4.55(b)(i), such that each excavation will be backfilled and compacted within 120 hours from the time the construction related to the excavation is completed, and immediately place and maintain temporary pavement (hot patch) over the excavation(s).
- 4) The Applicant shall coordinate all work with other construction projects and events known or unforeseen such as to minimize the impact of construction project on the general public and/or event(s).
- 5) The Applicant shall comply with all existing traffic controls, parking restrictions, and the MTA Blue Book, or comply with any restrictions under a Special Traffic Permit issued by SFMTA. To download a copy of the Blue Book, please visit <https://www.sfmta.com/services/streets-sidewalks/construction-regulations>. The Applicant's work shall be in accordance with DPT Blue Book or with any DPT approved traffic routing plans or MTA Special Traffic Permit.
- 6) The Applicant shall replace any existing traffic stripings and markings that are removed or damaged by the work activity with temporary stripings and markings after the restoration of the pavement as specified on Section 6.2 'Pavement Markings' of DPT's 'Blue Book' and the Applicant shall pay to MTA the cost of replacing the permanent pavement markings. For any questions, please call Conrad Magat of DPT at (415) 701-4680.
- 7) The Applicant shall restore all trenches per the Excavation Code.
- 8) The Applicant shall remove all temporary pavement markings including USA markings on both the sidewalk and street at the conclusion of the excavation.
- 9) In the event that excavation occurs in angular return and/or crosswalk, the Applicant shall evaluate the curb ramps at each end of the affected crosswalk and, if applicable, reconstruct curb ramps to current standards, per DPW Order 184350. All curb ramp installation shall comply with ADA requirements.
- 10) The Applicant shall submit compaction test results done by a certified material testing laboratory as required by the excavation code prior to pavement restoration. [NOTE: Per Article 2.4 of the Public Works Code, the required compaction test shall be one (1) set of three (3) compaction tests per one (1) regular city block, or as specified by the DPW assigned inspector. Copies of the compaction test results shall be provided to the assigned DPW inspector.] Failure to comply with the above requirements may render this permit void and may subject Applicant to a fine or citation.
- 11) The Applicant shall provide safe access for all pedestrians at all times. Special attention must be paid to provide ingress and egress to businesses and driveways.

- 12) The Applicant shall coordinate all work with MUNI so as to avoid disruption to MUNI services. Please call Carlos Carrillo of Muni at (415) 567-8745 to coordinate the schedule of work.
- 13) The Applicant shall discuss and coordinate with Muni with regards to relocating bus stops if necessary for pedestrian safety. Please call Carlos Carrillo of Muni at (415) 567-8745 for coordination.
- 14) The Applicant shall hire SF police officers as needed to control traffic in order to minimize the impact of the construction on the general public.
- 15) The Applicant shall cooperate and participate in all public outreach and information including community meetings.
- 16) The Applicant is prohibited from installing or placing any above ground facilities without prior approval from the Bureau of Street Use and Mapping through a separate permit.
- 17) The Applicant shall only excavate on one (1) side of the street at a time, including intersections unless:
- a). written prior approval is obtained from DPT;
  - b). approval is obtained from the City inspector in charge of this permit.
- 18) The Applicant shall prepare and file a corner record with the City and County Surveyor prior to the commencement of any project within 20 feet of any survey monument per DPW Order 187005 Section 4.3

Failure to comply with the above requirements may render this permit void and will subject the Applicant to a fine or citation.

All previous special conditions attached to the original permit are still valid and applicable for (Permit 19EXC-01887). == (Tue Apr 02 2019 )

# Permit Addresses

19EXC-01887

\*RW = RockWheel, SMC = Surface Mounted Cabinets, S/W = Sidewalk Work, DB = Directional Boring,  
 BP= Reinforced Concrete Bus Pad, UB = Reinforced Concrete for Utility Pull Boxes and Curb Ramps  
 Green background: Staging Only

Number of blocks: 4    Total repair size:545 sqft    Total Streetspace:160    Total Sidewalk: sqft

ID	Street Name	From St	To St	Sides	*Other	Asphalt	Concrete	Street Space Feet	Sidewalk Feet
5	03RD ST	MENDELL ST \ PALOU AVE	QUESADA AVE	Even	RW : False SMC : False S/W Only : False DB: False BP: False UB: False	300	0	40	
4		QUESADA AVE	BAY VIEW ST \ REVERE AVE	Even	RW : False SMC : False S/W Only : False DB: False BP: False UB: False	150	0	40	
<b>Total</b>						<b>450</b>	<b>0</b>	<b>80</b>	
1	KEITH ST	PALOU AVE	QUESADA AVE	Odd	RW : False SMC : False S/W Only : False DB: False BP: False UB: False	50	0	40	
<b>Total</b>						<b>50</b>	<b>0</b>	<b>40</b>	
2	PALOU AVE	03RD ST \ MENDELL ST	NEWHALL ST	Even	RW : False SMC : False S/W Only : False DB: False BP: False UB: False	45	0	40	
<b>Total</b>						<b>45</b>	<b>0</b>	<b>40</b>	

# Exceptions - Coordination

*It is mandatory that you coordinate your permit with the following jobs listed. You will be required to call each contact listed and create a note including the date contact was made, agreed coordination, name of contact, or date message(s) left if unable to reach a contact.*

## Street Use Conflicts:

Job #	Activity	Contact	
	- Truck Permits: For Restriction Information: Phone: (415) 701-4683 truckpermits@sfmta.com		<input type="checkbox"/>
Your Notes:			
Streets:	03RD ST / MENDELL ST \ PALOU AVE - QUESADA AVE - EAST		
	- Under G095 requirement, Contractor shall contact Muni Overhead Line Division of any work 10 feet in horizontal or vertical direction of overhead lines. Contact: Clifford Smethurst @ Clifford.Smethurst@sfmta.com, (415) 554-9220.		<input type="checkbox"/>
Your Notes:			
Streets:	PALOU AVE / 03RD ST \ MENDELL ST - NEWHALL ST -		
	- All work (excavation to final paving) must be coordinated with the Muni Third Street Light Rail Project. Please call Ha Nguyen of Muni at #554-1767 to coordinate all work.		<input type="checkbox"/>
Your Notes:			
Streets:	03RD ST / MENDELL ST \ PALOU AVE - QUESADA AVE - EAST		

## Permit Conflicts:

permit	Dates	Agency	Contact	
Your Notes:				
Streets:				





# Exceptions

19EXC-01887

Street Name	From St	To St	Message	Job	Contact	Dates
<b>03RD ST</b>						
	MENDELL ST \ PALOU AVE	QUESADA AVE - EAST	Banners are allowed on this street			
	MENDELL ST \ PALOU AVE	QUESADA AVE - EAST	Blocks with Bicycle Route designations require special attention. For details see Section 10 of DPT's Blue Book and Section 6.3 of DPW's Order No. 171.442.			
	MENDELL ST \ PALOU AVE	QUESADA AVE - EAST	DPT Blue Book Traffic Restriction. Time of day during which lanes must be kept clear: EAST 24 HOURS EVERYDAY // WEST 24 HOURS EVERYDAY			
	MENDELL ST \ PALOU AVE	QUESADA AVE - EAST	Muni Tracks Present.			
	MENDELL ST \ PALOU AVE	QUESADA AVE - EAST	Please refer to Figure 12 of Section 9.4(A) of the DPW Order No. 171,442 for special conditions for excavation in the vicinity of AWSS.			
	QUESADA AVE	BAY VIEW ST \ REVERE AVE - EAST	Banners are allowed on this street			
	QUESADA AVE	BAY VIEW ST \ REVERE AVE - EAST	Blocks with Bicycle Route designations require special attention. For details see Section 10 of DPT's Blue Book and Section 6.3 of DPW's Order No. 171.442.			
	QUESADA AVE	BAY VIEW ST \ REVERE AVE - EAST	DPT Blue Book Traffic Restriction. Time of day during which lanes must be kept clear: EAST 24 HOURS EVERYDAY // WEST 24 HOURS EVERYDAY			
	QUESADA AVE	BAY VIEW ST \ REVERE AVE - EAST	Muni Tracks Present.			
	QUESADA AVE	BAY VIEW ST \ REVERE AVE - EAST	Please refer to Figure 12 of Section 9.4(A) of the DPW Order No. 171,442 for special conditions for excavation in the vicinity of AWSS.			
<b>KEITH ST</b>						
	PALOU AVE	QUESADA AVE -	Blocks with Bicycle Route designations require special attention. For details see Section 10 of DPT's Blue Book and Section 6.3 of DPW's Order No. 171.442.			
<b>PALOU AVE</b>						
	03RD ST \ MENDELL ST	NEWHALL ST -	Banners are allowed on this street			

Street Name	From St	To St	Message	Job	Contact	Dates
	03RD ST \ MENDELL ST	NEWHALL ST -	Blocks with Bicycle Route designations require special attention. For details see Section 10 of DPT's Blue Book and Section 6.3 of DPW's Order No. 171.442.			
	03RD ST \ MENDELL ST	NEWHALL ST -	Please refer to Figure 12 of Section 9.4(A) of the DPW Order No. 171,442 for special conditions for excavation in the vicinity of AWSS.			
	03RD ST \ MENDELL ST	NEWHALL ST -	Conflict with existing Street Use Permit.	12ECN-0413	800-743-5000 - 800-743-5000	Apr 5 2012-
	03RD ST \ MENDELL ST	NEWHALL ST -	Conflict with existing Street Use Permit.	12ECN-0475	800-743-5000 - 800-743-5000	Apr 25 2012-
	03RD ST \ MENDELL ST	NEWHALL ST -	Conflict with existing Street Use Permit.	12ECN-0535	Refer to Agent5504900 - Refer to Agent5504900	May 10 2012-
	03RD ST \ MENDELL ST	NEWHALL ST -	Conflict with existing Street Use Permit.	13ECN-0138	800-743-5000 - 800-743-5000	Jan 28 2013-
	03RD ST \ MENDELL ST	NEWHALL ST -	Conflict with existing Street Use Permit.	14ECN-0712	800-743-5000 - 800-743-5000	Jun 19 2014-
	03RD ST \ MENDELL ST	NEWHALL ST -	Conflict with existing Street Use Permit.	15ECN-0353	800-743-5000 - 800-743-5000	Apr 6 2015-
	03RD ST \ MENDELL ST	NEWHALL ST -	Conflict with existing Street Use Permit.	18ECN-0802	415-695-3330 - 415-695-3330	Oct 3 2018-
	03RD ST \ MENDELL ST	NEWHALL ST -	Proposed Excavation.	SF DPW IDC - Hydraulic	Lesley Wong -	Oct 19 2023-Jul 5 2024

# No Diagram submitted

**DISCOVERY - Re: Zoning Administrator Hearing - 5030 3rd Street**

Ben Cannon &lt;ben@6by7.net&gt;

Wed 9/2/2020 10:29 AM

**To:** Jones, Dario (CPC) <dario.jones@sfgov.org>; Jason Hain <jasonh@evictiondefense.org>; Gary Banks <gwbanks@hotmail.com>; Arnold Townsend <revtword@hotmail.com>  
**Cc:** Tam, Tina (CPC) <tina.tam@sfgov.org>

 2 attachments (689 KB)

19EXC-01887\_04-02-2019.pdf; Ben-Dec-Charlie.PDF copy.pdf;

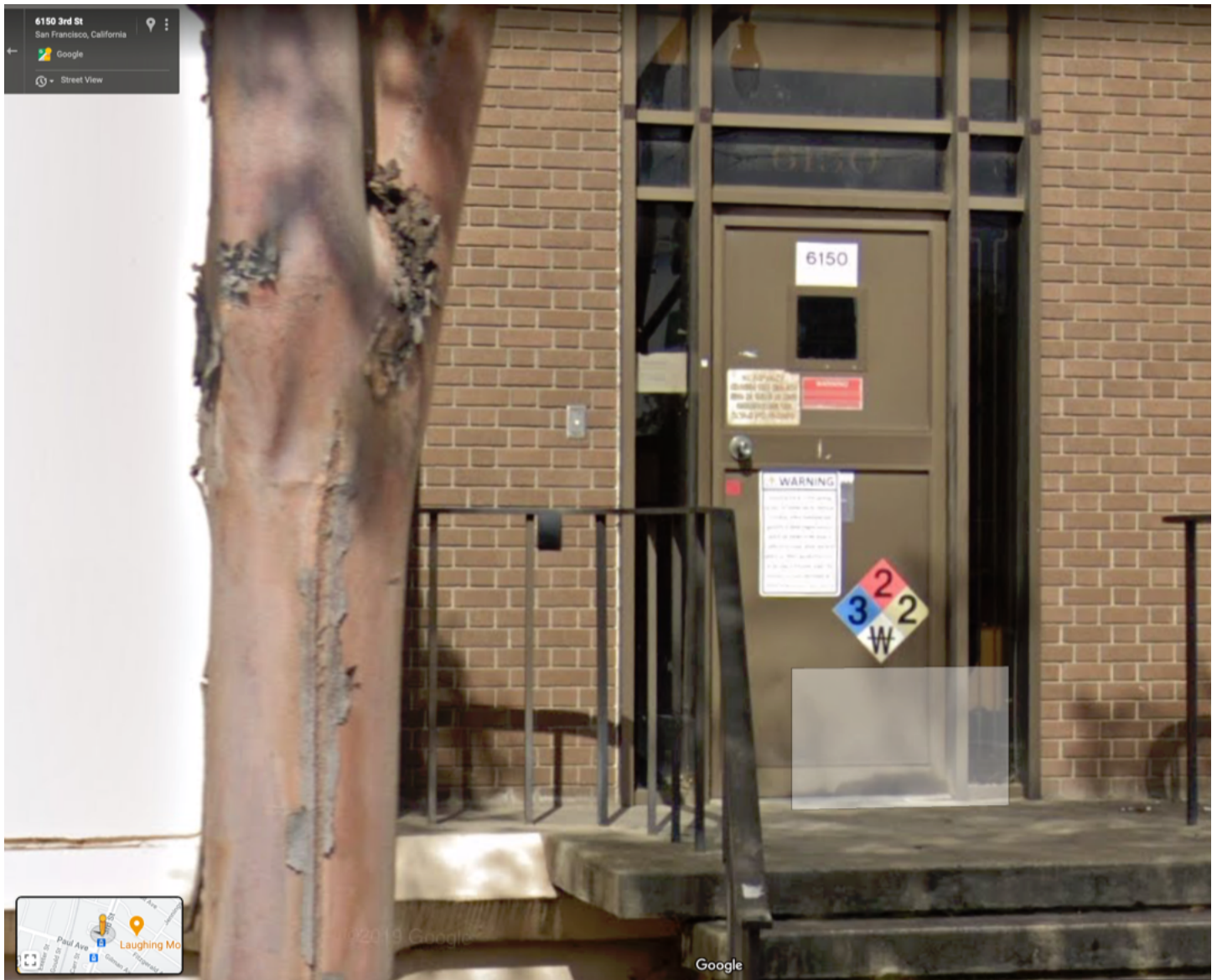
This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please find attached the following discovery, and exhibits, to be entered into evidence during the hearing. Including without limitation,


- \* Evidence of the Tax Assessor's assessment of the unit in question, and building itself as 7-units
  - \* The 6-unit US Postal Service installed mailbox showing the correct address of 5024 3rd st, unit 5.
  - \* US postal mail receipt.
  - \* "The cottage" label showing decades of distress.
  - \* Declaration of Charles Jadallah to the effect that the unit is Residential, legal-nonconforming, and that the Kitchen is pre-existing.
- As to allegations we installed an Internet Exchange, they are dead-on-arrival, as we have not even installed a power upgrade to the building, which would be a required threshold issue to evaluate whether an Exchange had been created. (It still has not).
- \* Also attached is the City DPW issued fiber permit for our consulting company, and the facade and address of the AT&T Central Office, just down the road from us, at 6150 3rd st. Finally, my certificate inducting me into the American Society of Civil Engineers, and my Contractor's licenses (I have a total of 3)

-Ben





5030 3rd st san francisco



### SNFCCA17 Central Office

Telephone company

Directions Save Nearby Send to your phone Share

**Verify info with this place**  
Hours or services may differ due to COVID-19

- 6150 3rd St, San Francisco, CA 94124
- PJF3+8P Brisbane, California
- Claim this business
- Add a label

Suggest an edit


**Add missing information**

- Add phone number
- Add hours
- Add website

**Photos**

- All
- Street View & 360°

Add a photo

















Ms. Benjamin PD Cannon, ASCE  
6x7 Networks & 6x7 Telecom, LLC  
CEO  
[ben@6by7.net](mailto:ben@6by7.net)  
"The only fully end-to-end encrypted global telecommunications company in the world."  
FCC License KJ6FJJ

# Assessor's Report



**Parcel** 5338005  
**Address** 5024-5030 3RD ST

<b>Assessed Values</b>		<b>Construction Type</b> -	
<b>Land</b>	\$1,129,226.00	<b>Use Type</b>	Apartment & Commercial Store
<b>Structure</b>	\$734,498.00	<b>Units</b>	7
<b>Fixtures</b>	-	<b>Stories</b>	2
<b>Personal Property</b>	\$310.00	<b>Rooms</b>	17
<b>Last Sale</b>	2/10/2006	<b>Rooms</b>	8
<b>Last Sale Price</b>	\$1,400,000.00	<b>Bathrooms</b>	7
<b>Year Built</b>	1923	<b>Basement</b>	-
<b>Building Area</b>	9,610 sq ft	<b>Parcel Shape</b>	Other (not square or rectangular)
<b>Parcel Area</b>	7,200 sq ft	<b>Parcel Depth</b>	-
<b>Parcel Frontage</b>	-		

Please send questions about this report to the [Office of the Assessor-Recorder](#).

Close

## Welcome to our Permit / Complaint Tracking System!

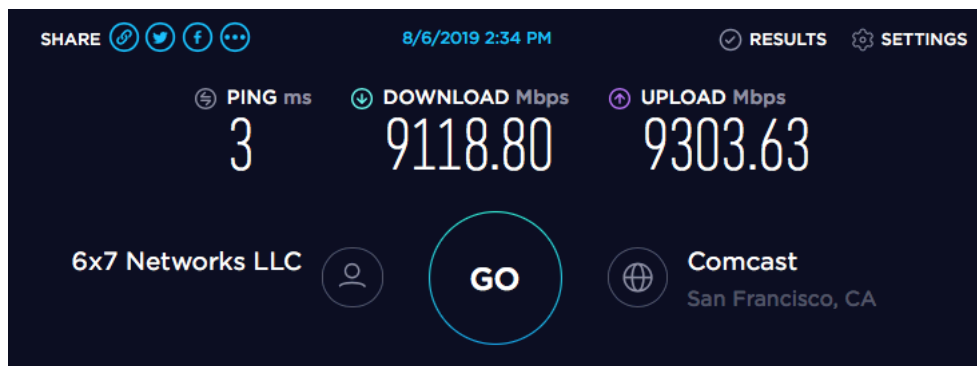
Permit Summary Information:

Permit (Application) Number	Plans Revision No.	Received	Number of Plan Sets	Completed	Total Special Inspections
201902203398				0	0

Ms. Benjamin PD Cannon, ASCE  
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-Ben

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Lady Benjamin PD Cannon, ASCE  
6x7 Networks & 6x7 Telecom, LLC  
CEO

[ben@6by7.net](mailto:ben@6by7.net)

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On Sep 1, 2020, at 1:46 PM, Jones, Dario (CPC) <[dario.jones@sfgov.org](mailto:dario.jones@sfgov.org)> wrote:

Ben,

I am writing to inform you that there will be an informal Zoning Administrator hearing (via Zoom) to reconsider the Department's Notice of Violation against the property for 5030 3rd Street.

The subject property was found in violation for the creation of an unauthorized dwelling unit at the rear of the subject property and for the establishment of an unauthorized use (internet service exchange) located on the ground floor and basement of the apartment building fronting 3rd Street

The hearing will take place at 11:00 am.

Please confirm your attendance by 6 PM this evening. Once confirmed the Zoning Administrator will email you the Zoom link to join the hearing.

Thank you,

Dario Jones  
Senior Planner, Zoning Compliance Division  
Planning Department | City and County of San Francisco

**PLEASE NOTE MY NEW ADDRESS AND PHONE NUMBER AS OF AUGUST 17:**

49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103

Direct: 628-652-7405

[www.sfplanning.org](http://www.sfplanning.org)

[San Francisco Property Information Map](#)

**IN ORDER FOR US TO MOVE, OUR OFFICE WILL BE CLOSED WITH NO ACCESS TO PHONES OR E-MAIL ON THURSDAY, AUGUST 13 and FRIDAY, AUGUST 14. WE APPRECIATE YOUR PATIENCE.**

Due to COVID-19, San Francisco Planning is not providing any in-person services, but we are operating remotely. Our staff are [available by e-mail](#), and the Planning and Historic Preservation Commissions are convening remotely. The public is [encouraged to participate](#). Find more information on our services [here](#).





# SAN FRANCISCO PLANNING DEPARTMENT

## NOTICE OF VIOLATION

March 3, 2020

**Property Owner**  
Jadallah Charles  
4 West 4th Ave #C  
San Mateo, CA 94402

**Site Address:** 5030 3rd Street  
**Assessor's Block/Lot:** 5338/005  
**Zoning District:** NC-3, Neighborhood Commercial, Moderate Scale  
**Complaint Number:** 2018-016696ENF  
**Code Violation:** Section 171, Illegal Change of Use (Retail to Internet Service Exchange) and Creation of an Unauthorized Dwelling Unit;  
**Administrative Penalty:** Up to \$250 Each Day of Violation  
**Response Due:** Within 15 days from the date of this Notice  
**Staff Contact:** Dario Jones, (415) 558-6477, dario.jones@sfgov.org

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

The Planning Department has determined that the above-referenced property is in violation of the Planning Code. As the owner of the subject property, you are a responsible party to bring the above property into compliance with the Planning Code. Details of the violation are discussed below:

### DESCRIPTION OF VIOLATION

Planning Department ("Department") records indicate that the subject property ("Property") is a 7,200 square-foot flag-shaped lot fronting on 3<sup>rd</sup> Street and Revere Avenue. The Property is authorized for a three-story, 9,600 square-foot, mixed-use building with retail use on the ground floor and seven (7) dwelling units above. In addition to the mixed-use building fronting on 3<sup>rd</sup> Street, the Property contains a detached three-car garage fronting on Revere Avenue and another detached one-story building behind the garage. The Property is determined to be in violation of Planning Code Section 171 for the following:

- Planning Code Section 171: for the creation of an unauthorized dwelling unit ("UDU") within the detached one-story building behind the garage without the benefit of a Building Permit; and,
- Planning Code Section 171: for the establishment of an unauthorized Internet Service Exchange operation on the ground floor and basement of the three-story mixed-use building fronting on 3<sup>rd</sup> Street. An Internet Service Exchange operation is not a permitted use, and the Planning Code does not offer a path to legalize this use in the NC-3 Zoning District.

[www.sfplanning.org](http://www.sfplanning.org)

Planning Code Section 101 defines an Internet Service Exchange as a "Utility and Infrastructure Use defined as a location that contains any of the following uses (excluding a Wireless Telecommunications Services Facility): switching equipment (whether wireline or wireless) that joins or connects occupants, customers, or subscribers to enable customers or subscribers to transmit data, voice or video signals to each other; one or more computer systems and related equipment used to build, maintain, or process data, voice or video signals, and provide other data processing services; or a group of network servers."

Based upon your business operation and summary (as detailed in your 5/22/2019 email to Tina Tam, Code Enforcement Manager), you are an Internet Service Exchange use.

Pursuant to Planning Code Section 171, structures and land in any zoning district shall be used only for the purposes listed in the Planning Code as permitted in that district, and in accordance with the regulations established for that district. Further, pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitations under the Planning Code shall comply within the development and use of land and structures. Failure to comply with any Planning Code provision constitutes a violation of the Planning Code and is subject to an enforcement process under Code Section 176.

## **TIMELINE OF INVESTIGATION**

On February 20, 2019, a Building Permit (Application No. 2019.02.20.3398) was submitted to legalize the detached unauthorized dwelling unit.

On April 29, 2019, the above permit was withdrawn (see attached Permit Details Report). Therefore, the dwelling unit remains unauthorized, and the Property is determined to be in violation of Planning Code Section 171.

On August 14, 2019, the Planning Department sent you a Notice of Enforcement informing you about the violation and the abatement process. In that notice, you were advised to take corrective actions and provide evidence of compliance to the Planning Department within fifteen (15) days from August 14, 2019.

On September 11, 2019, Department staff, Dario Jones ("Staff"), conducted a site inspection of the Property. The findings included confirmation of the unauthorized dwelling unit. In addition, during the inspection of the Property, Staff witnessed general office use on the ground floor and the basement. However, Staff later confirmed the use on the ground floor and basement as an Internet Service Exchange use. As such, the operation of an Internet Service Exchange is not permitted, and the Planning Code does not offer a path to legalize this use. Therefore, the Internet Service Exchange must cease all operations and vacate the subject property.

On February 3, 2020, a Conditional Use Authorization Application (Case No., 2020-000526CUA) to seek authorization to remove the UDU was accepted by the Planning Department. However, the operation of the Internet Service Exchange continues to remain in operation. Therefore, the Property is determined to still be in violation of Planning Code Section 171.

## HOW TO CORRECT THE VIOLATION

1. The illegal establishment of the Internet Service Exchange use is not permitted in the NC-3 Zoning District and must cease all operations immediately. Until then, the CUA will be on hold and the property will continue to have two separate Planning Code violations (illegal dwelling in the rear, and illegal Internet Service Exchange use in the ground floor and basement).
2. Please contact the Department of Building Inspection (DBI), 1660 Mission Street, San Francisco, CA 94103, telephone: (415) 558-6088, website: [www.sfgov.org/dbi](http://www.sfgov.org/dbi), regarding the Building Permit Application process. Please visit the Planning Information Counter located on the fifth floor of 1660 Mission Street or website: [www.sf-planning.org](http://www.sf-planning.org) for any questions regarding the planning process.
3. The responsible party will need to provide adequate evidence to demonstrate that either no violation exists or that the violation has been abated. Please provide evidence including a building permit showing the ground floor façade alterations had been approved with a permit, or that the façade has been restored to its original condition. A site visit may also be required to verify compliance.

## TIMELINE TO RESPOND

The responsible party has **fifteen (15) days from the date of this notice** to either;

- 1) Correct the violation as noted above; or
- 2) Appeal this Notice of Violation, as noted below.

The corrective actions shall be taken as early as possible. Please contact the enforcement staff as noted above to submit evidence of correction. Any unreasonable delays in the abatement of the violation in the timeline set forth above will result in both the accrual of administrative penalties and further enforcement action by the Planning Department.

## APPEAL PROCESSES

If the responsible party believes that this order to remove a violation of the Planning Code is an abuse of discretion by the Zoning Administrator, the following appeal processes are available **within fifteen (15) days from the date of this notice**:

- 1) The responsible party may request a Zoning Administrator Hearing under Planning Code Section 176 to show cause why this Notice of Violation is issued in error and should be rescinded by submitting the Request for Zoning Administrator Hearing Form and supporting evidence to the Planning Department. The Zoning Administrator shall render a decision on the Notice of Violation within 30 days of such hearing. The responsible party may appeal the Zoning Administrator's decision to the Board of Appeals within 15 days from the date of the decision.
- 2) The responsible or any interested party may waive the right to a Zoning Administrator Hearing and proceed directly to appeal the Notice of Violation to the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, CA 94103, telephone: (415) 575-6880, website:

[www.sfgov.org/bdappeal](http://www.sfgov.org/bdappeal). The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation continues unabated, excluding the period of time the matter has been pending either before the Zoning Administrator or before the Board of Appeals.

## ADMINISTRATIVE PENALTIES

If any responsible party does not request any appeal process and does not take corrective action to abate the violation **within the 15-day time limit** as noted above, this Notice of Violation will become final. Beginning on the following day, administrative penalties of up to **\$250 per day for each code violation (there are two)** to the responsible party will start to accrue for each day the violation continues unabated. The penalty amount shall be paid **within 30 days** from the issuance date of a Notice of Penalty. After 30 days, the Planning Department may forward the matter to the Bureau of Delinquent Revenue ("BDR") for collection as authorized by Article V, Section 10.39 of the San Francisco Administrative Code. Please note that you will also be required to pay a 25% commission on the penalty amount and a 25% commission on the Department's Time and Material Fee for the BDR services. Please be advised that the payment of penalty does not excuse the failure to correct the violation or bar further enforcement action. Additional penalties will continue to accrue until corrective action is taken to abate the violation.

## ENFORCEMENT TIME AND MATERIALS FEE

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting the Planning Code violations. Accordingly, the responsible party is currently subject to a fee of **\$2,474.32** for 'Time and Materials' costs associated with the Code Enforcement investigation. **Please submit a check payable to the 'San Francisco Planning Department' for Code Enforcement within 15 days from the date of this notice.** Additional fees will continue to accrue until the violation is abated. This fee is separate from the administrative penalties described above and is not appealable.

## OTHER APPLICATIONS UNDER CONSIDERATION

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any new applications that you may wish to pursue in the future. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until the violation is corrected. We want to assist you in ensuring that the subject property is in full compliance with the Planning Code.

Please contact the enforcement planner noted above if you have any questions or wish to review the enforcement file related to the above matter. The enforcement file is available for public inspection at the Planning Department during normal office hours (Monday to Friday, 8:00 a.m. to 5:00 p.m., 1650 Mission Street, Room 400) and in the hearing room on the date, the matter is scheduled to be heard upon receipt of a request for a hearing.

5030 3rd Street  
Complaint No.: 2018-016696ENF

Notice of Violation  
March 3, 2020

Sincerely,



Tina Tam  
Acting Zoning Administrator

Enc.: Notice of Enforcement dated August 14, 2019  
Permit Details Report  
Correspondence

cc: Rena Provencio, Property Manager, via email: [Renaprovencio@gmail.com](mailto:Renaprovencio@gmail.com)  
**Anthony Pantaleoni, Architect**, via email: [Tony@kp-architects.com](mailto:Tony@kp-architects.com)  
**Ben Cannon**, CEO of 6x7 Networks and 6x7 Telecom, LLC ([ben@6by7.net](mailto:ben@6by7.net))



# SAN FRANCISCO PLANNING DEPARTMENT

## NOTICE OF ENFORCEMENT

August 14, 2019

**Property Owner**  
Jadallah Charles  
4 West 4th Ave #C  
San Mateo, CA 94402

**Site Address:** 5030 3rd Street  
**Assessor's Block/Lot:** 5338/ 005  
**Zoning District:** NC-3, Neighborhood Commercial, Moderate Scale  
**Complaint Number:** 2018-016696ENF  
**Code Violation:** 171, Unauthorized Dwelling Unit  
**Administrative Penalty:** Up to \$250 Each Day of Violation  
**Response Due:** Within 15 days from the date of this Notice  
**Staff Contact:** Dario Jones, (415) 558-6477, dario.jones@sfgov.org

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

The Planning Department has received a complaint that a Planning Code violation exists on the above referenced property that needs to be resolved. As the owner of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below:

### DESCRIPTION OF VIOLATION

Planning Department ("Department") records indicate that the subject property, a three-story, 9,600 square feet building, with seven (7) units, is currently authorized as an apartment and commercial use. The complaint pertains to the addition of a dwelling unit without the benefit of a Building Permit.

Coincidentally, Department records also indicate a Building Permit Application (No. 201902203398) was submitted on February 2, 2019, to legalize a detached unauthorized dwelling unit. However, that permit was withdrawn on April 29, 2019, (see attached Permit Details Report). Therefore, the dwelling unit remains unauthorized and the subject property ("Property") is determined to be in violation of Planning Code Section 171.

Pursuant to Planning Code Section 171 structures and land in any zoning district shall be used only for the purposes listed in the Planning Code as permitted in that district, and in accordance with the regulations established for that district. Further, pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures. Failure to comply with any Planning Code provision constitutes a violation of Planning Code and is subject to an enforcement process under Code Section 176.

[www.sfplanning.org](http://www.sfplanning.org)

## HOW TO CORRECT THE VIOLATION

1. You must contact the staff Planner listed in this notice to arrange for a site inspection of the Property within fifteen (15) days from the date of this notice.
2. You may legalize the unauthorized dwelling unit through the Unit Legalization Program. As part of the Unit Legalization Program, please be prepared to provide documentation that the dwelling unit existed before January 1, 2013. For more information regarding legalizing unauthorized dwelling units, you may visit the Department of Building Inspection's "Unit Legalization Counter," at Counter #8, 1660 Mission Street, 1st Floor or call (415) 558-6117. Please submit a Building Permit application and floor plans for a change of use.
3. You may also legalize the unauthorized dwelling unit through the Accessory Dwelling Unit Program. Pursuant to Planning Code Section 207(c)(4), on a lot with four or less existing units, one new accessory dwelling unit may be permitted. Please submit a Building Permit application and floor plans for change of use.
4. Alternatively, if you choose to not legalize the unauthorized dwelling unit, you must file for a Conditional Use Authorization application with the Planning Department to seek authorization to remove the unauthorized dwelling unit per Planning Code Section 317.
5. Please contact the Department of Building Inspection (DBI), 1660 Mission Street, San Francisco, CA 94103, telephone: (415) 558-6088, website: [www.sfgov.org/dbi](http://www.sfgov.org/dbi), regarding the Building Permit Application process. Please visit the Planning Information Counter located at the first floor of 1660 Mission Street or website: [www.sf-planning.org](http://www.sf-planning.org) for any questions regarding the planning process.
6. The responsible party will need to provide adequate evidence to demonstrate that either no violation exists or that the violation has been abated. Please provide evidence including a building permit showing the ground floor façade alterations had been approved with a permit, or that the façade has been restored to its original condition. A site visit may also be required to verify compliance.

## TIMELINE TO RESPOND

The responsible party has **fifteen (15) days from the date of this notice** to contact the staff planner noted at the top of this notice and submit evidence to demonstrate that the corrective actions have been taken to bring the subject property into compliance with the Planning Code. The corrective actions shall be taken as early as possible. Any unreasonable delays in abatement of the violation may result in further enforcement action by the Planning Department.

## PENALTIES AND APPEAL RIGHTS

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code **within fifteen (15) days from the date of this notice** will result in issuance of a **Notice of Violation**

by the Zoning Administrator. Administrative penalties of up to **\$250 per day** will also be assessed to the responsible party for each day the violation continues thereafter. The Notice of Violation provides appeal processes noted below.

- 1) Request for Zoning Administrator Hearing. The Zoning Administrator's decision is appealable to the Board of Appeals.
- 2) Appeal of the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter has been pending either before the Zoning Administrator or before the Board of Appeals.

### **ENFORCEMENT TIME AND MATERIALS FEE**

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations and violations of Planning Commission and Planning Department's Conditions of Approval. Accordingly, the responsible party may be subject to an amount of \$1395.00 plus any additional accrued time and materials cost for Code Enforcement investigation and abatement of violation. This fee is separate from the administrative penalties described above and is not appealable.

### **OTHER APPLICATIONS UNDER CONSIDERATION**

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any new applications that you may wish to pursue in the future. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until the violation is corrected. We want to assist you in ensuring that the subject property is in full compliance with the Planning Code. You may contact the enforcement planner as noted above for any questions.

Enc: Permit Details Report for Building Permit No. 201902203398  
Cc: Patrick O'Riordan, Chief Building Inspector, Department of Building Inspection



**Permit Details Report**

**Report Date:** 8/14/2019 11:37:55 AM

Application Number: 201902203398  
 Form Number: 3  
 Address(es): 5338 / 005 / 1 5030 03RD ST  
 Description: LEGALIZATION OF AN ILLEGAL DETACHED UNIT. HALF BATH WILL BE ADDED. ORDINANCE #43-14.\*\*MAHER N/A\*\*  
 Cost: \$15,000.00  
 Occupancy Code: R-2  
 Building Use: 24 - APARTMENTS

**Disposition / Stage:**

Action Date	Stage	Comments
2/20/2019	TRIAGE	
2/20/2019	FILING	
2/20/2019	FILED	
4/29/2019	WITHDRAWN	

**Contact Details:**

**Contractor Details:**

**Addenda Details:**

**Description:**

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Phone	Hold Description
1	CES	2/20/19	2/20/19			2/20/19		415-558-6454	
2	BID-INSP	2/20/19	2/20/19			2/20/19	GIBSON PETER	415-558-6096	
3	HIS	2/20/19	2/20/19			2/20/19		415-558-6220	
4	PPC	4/29/19	4/29/19			4/29/19	MARIE OSORIO CHRISTINE	415-558-6133	4/29/19: Withdrawn per sponsor's request. Drawings lost. Fee paid. co

**Appointments:**

Appointment Date	Appointment AM/PM	Appointment Code	Appointment Type	Description	Time Slots
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**Inspections:**

Activity Date	Inspector	Inspection Description	Inspection Status
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**Special Inspections:**

Addenda No.	Completed Date	Inspected By	Inspection Code	Description	Remarks
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For information, or to schedule an inspection, call 558-6570 between 8:30 am and 3:00 pm.

[Station Code Descriptions and Phone Numbers](#)

[Online Permit and Complaint Tracking home page.](#)

**Technical Support for Online Services**

If you need help or have a question about this service, please visit our FAQ area.

**From:** Tina Tam (CPC)  
**To:** Rena Provencio  
**Cc:** Masry, Omar (CPC); Jones, Dario (CPC)  
**Subject:** RE: \*\*\*\*Second Request\*\*\*\*Re: 5024 3rd St site visit  
**Date:** Tuesday, June 18, 2019 1:10:55 PM

---

Hi Rena,

This case was assigned to Enforcement Planner, Dario Jones today. He will be preparing a Notice of Enforcement to the property owner. He will cc the tenant. Dario is on this email should you wish to contact him directly.

Tina Tam  
Principal Planner  
Code Enforcement Manager and Internship Coordinator

Planning Department, City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103  
Direct: 415-558-6325 Fax: 415-558-6409  
Email: [tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)  
Web: [www.sfplanning.org](http://www.sfplanning.org)

**From:** Rena Provencio <[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)>  
**Sent:** Tuesday, June 18, 2019 12:04 PM  
**To:** Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)>  
**Cc:** Rena Provencio <[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)>; Masry, Omar (CPC) <[omar.masry@sfgov.org](mailto:omar.masry@sfgov.org)>  
**Subject:** Re: \*\*\*\*Second Request\*\*\*\*Re: 5024 3rd St site visit

Hi Tina,

I hope this finds you well. I wanted to follow up on the complaint notice. Has everything been addressed? Is there anything else we need to do?

Best,

Rena Provencio  
Property Manager  
(650)685-6921  
[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)  
DRE 0148706

On May 22, 2019, at 10:43 PM, Rena Provencio <[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)> wrote:

Thank you for the info.  
I'll forward to the owner and his legal counsel.

Best,  
Rena Provencio (650)219-7404

Go confidently in the direction of your dreams. Live the life you've imagined. ~ Thoreau

Sent directly from my mind...

On May 22, 2019, at 11:36 PM, Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)> wrote:

I received this today. Omar and I will check in with the ZA tomorrow.

Tina Tam  
Principal Planner  
Code Enforcement Manager and Internship Coordinator  
Planning Department, City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103  
Direct: 415-558-6325 Fax: 415-558-6409  
Email: [tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)  
Web: [www.sfplanning.org](http://www.sfplanning.org)

**From:** Ben Cannon <[ben@6x7.net](mailto:ben@6x7.net)>  
**Sent:** Wednesday, May 22, 2019 12:19 PM  
**To:** Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)>  
**Cc:** Arnold Townsend <[revword@hotmail.com](mailto:revword@hotmail.com)>; Gary Banks <[gwbanks@hotmail.com](mailto:gwbanks@hotmail.com)>; [greenlobe.cs@gmail.com](mailto:greenlobe.cs@gmail.com); Masry, Omar (CPC) <[omar.masry@sfgov.org](mailto:omar.masry@sfgov.org)>; Chen, Josephine (CPC) <[josephine.chen@sfgov.org](mailto:josephine.chen@sfgov.org)>  
**Subject:** Re: \*\*\*\*Second Request\*\*\*\*Re: 5024 3rd St site visit

Hello Tina, thank you again for your help with this.

Please find attached, what I believe to be answers to all of your concerns.  
Because of my insanely busy I am now being assisted by Gary Banks and Reverend Arnold of FRH Consultancy. They will be contacting you today Wednesday May 22, 2019 to make sure you have everything you need to bring this process to a successful conclusion.

They can be reached at the following: Gary Banks 415 794-9556 email: [gwbanks@hotmail.com](mailto:gwbanks@hotmail.com)  
Arnold Townsend 415 407-6359 email: [revword@hotmail.com](mailto:revword@hotmail.com)

Hi Tina, thank you for taking the time with me, and for disclosing that someone filed a complaint for a change of use. I'd really like to know who that is.

This is a complex and multi-use property, with an ample and, I'm still learning storied, history of combined residential, utility, industrial, and retail serving uses.

Previously to us, it was an underground and illegal auto repair shop. I have ample photos and evidence, we had to undertake a monumental cleanup process and rendered safe many hazards and rectified many violations of the fire code.

1. We have an area in the front of the ground floor space that is to be open to the public for pop-ups and events, we are working with Larry McClendon of the City Office of Economic Development to do pop-up events here that are open to the public. This will comprise approx.1450 ft2 of space open to the public, with additional area for restrooms, etc. It is not clear we need a change of use for this, as the previous transitory pop-up uses seemed to cover that. Planning did say that for a Limited Restaurant (if we wanted to turn the cafe into one) would take a CoU.

We are also working with Earl Shaddix at EDOT for a facade upgrade, mostly limited to lighting at this time, but potentially including new/upgraded glass. This will be coordinated through their existing programs to insure compatibility with any historic concerns.

2. Behind that, in the back office, that historically was closed to the public, we have the offices of 6x7 Networks, my internet company (you will note that design professionals offices and Utility uses are allowed under NC3, plus the historic use of campaign offices which you disclosed seems to apply) which can only be on this ground floor, due to the code height issues we discussed on site..

Our customers include local businesses on 3rd st, as well as a diverse customer portfolio from residential internet customers, campuses like Fort Mason Center (US Government owned) and the Palace of Fine arts, to enterprise corporations like Chia and Qualpay, all the way to other telcos like Verizon, T-Mobile, Sonic, and others. We work closely with Related California who is building several projects for the City and County as we speak.

3. Downstairs is 7'3" - therefore it is below the building code height of 7'6" and not useable for any other uses besides storage and data storage/server rooms that are "unattended" meaning all offices for any staff have to be located elsewhere. The most rational definition of it is either a server room for upstairs or a utility central office, it contains primarily our critical OTN transport gear to get signals into and out of San Francisco for distribution into the metro area. This facility is strategically located along the MUNI right of way, which extends to the CALTRAIN right of way, and we have spent over \$250,000 on fiber cabling into this building. We do want backup generators for the critical gear, but this is not a large internet exchange like for instance 400Paul with 30 generators. We want 2, the minimum standard. Probably underground.

Since we had the previous uses, per Code Enforcement, of offices upstairs, and telecom downstairs, I am operating under both the impression, and the fact, from planning at the PIC desk, that Planning has indicated that we do not need a Change of Use for our current uses.

You mentioned that you have had "Problems" with "Extanet and others taking up office space for datacenters". Well, the space downstairs that will be the server room or central office area, cannot be used for anything else except storage which is hardly a highest or best use.

While we work with Extanet, I do not work for them, and they are not the owner or operator of this facility anymore, we are. (they retain ownership of the t-mobile site but I may be able to convince them to upgrade it and bring it into modern design standards as part of a proposal we are working on with them.

Finally;

4. Since this is a mixed use Residential and Commercial (NC3 zoned) facility, and we have what we believe to be legal nonconforming residential space in the back unit(s) - we have engaged the services of an Architect who is midway through the process of legalizing the unit through the ADU process.

I believe this addresses all of your concerns, please let me know if you have any additional questions or concerns. Thank you.

-Ben.

-Ben Cannon  
CEO 6x7 Networks & 6x7 Telecom, LLC  
[ben@6by7.net](mailto:ben@6by7.net)

<6x7\_speedTest.JPG>

-Ben Cannon  
CEO 6x7 Networks & 6x7 Telecom, LLC  
[ben@6by7.net](mailto:ben@6by7.net)

<6x7\_speedTest.JPG>

On May 21, 2019, at 9:10 AM, Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)> wrote:

Hi Ben,

I plan to meet with the Zoning Administrator this week. As discussed at our site inspection, you will provide me with a written description of your business at 5030 3<sup>rd</sup> Street. Along with information from our site observation, this will help us define your current land use and we will let you know if the use is permissible or not within this zoning district. I will need this by tomorrow morning. Many thanks.

Tina Tam  
Principal Planner  
Code Enforcement Manager and Internship Coordinator  
Planning Department, City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103  
Direct: 415-558-6325 Fax: 415-558-6409  
Email: [tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)  
Web: [www.sfpplanning.org](http://www.sfpplanning.org)

---

**From:** Ben Cannon <[ben@6by7.net](mailto:ben@6by7.net)>  
**Sent:** Friday, May 10, 2019 11:26 AM  
**To:** Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)>  
**Cc:** Rena Provencio <[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)>; Arnold Townsend <[rvtword@hotmail.com](mailto:rvtword@hotmail.com)>; Gary Banks <[gwbanks@hotmail.com](mailto:gwbanks@hotmail.com)>; [greenlobe.cs@gmail.com](mailto:greenlobe.cs@gmail.com); Masry, Omar (CPC) <[omar.masry@sfgov.org](mailto:omar.masry@sfgov.org)>; Chen, Josephine (CPC) <[josephine.chen@sfgov.org](mailto:josephine.chen@sfgov.org)>  
**Subject:** Re: \*\*\*\*Second Request!\*\*\*\*Re: 5024 3rd St site visit

Thank you Tina.

-Ben

On May 10, 2019, at 11:13 AM, Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)> wrote:

Hi Ben, Rena,

Omar is out of the office today. When he returns on Monday, we will confirm.

Josephine,

Can you reserve the CE car for Tuesday 5/14 from 2:30 to 4:00pm? Many thanks.

Tina Tam  
Principal Planner  
Code Enforcement Manager and Internship Coordinator  
Planning Department, City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103  
Direct: 415-558-6325 Fax: 415-558-6409  
Email: [tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)  
Web: [www.sfpplanning.org](http://www.sfpplanning.org)

---

**From:** Ben Cannon <[ben@6by7.net](mailto:ben@6by7.net)>  
**Sent:** Thursday, May 09, 2019 7:23 PM  
**To:** Rena Provencio <[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)>; Arnold Townsend <[rvtword@hotmail.com](mailto:rvtword@hotmail.com)>; Gary Banks <[gwbanks@hotmail.com](mailto:gwbanks@hotmail.com)>; [greenlobe.cs@gmail.com](mailto:greenlobe.cs@gmail.com)  
**Cc:** Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)>; Masry, Omar (CPC) <[omar.masry@sfgov.org](mailto:omar.masry@sfgov.org)>  
**Subject:** Re: \*\*\*\*Second Request!\*\*\*\*Re: 5024 3rd St site visit

+Gary & Rinard  
-Ben Cannon  
CEO 6x7 Networks & 6x7 Telecom, LLC  
[ben@6by7.net](mailto:ben@6by7.net)

<image001.jpg>

On May 9, 2019, at 7:22 PM, Ben Cannon <[ben@6x7.net](mailto:ben@6x7.net)> wrote:

Thanks Rena, 6x7 needs it's gov relations team for any city affairs.

We can accommodate you for building access this Tuesday May 14, 2019 at 3pm, please let me know if that is acceptable.

-Ben.

-Ben Cannon  
CEO 6x7 Networks & 6x7 Telecom, LLC  
[ben@6x7.net](mailto:ben@6x7.net)

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On May 9, 2019, at 3:44 PM, Rena Provencio <[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)> wrote:

Ben ~ it's going to be difficult to gather everyone together. You're the tenant that needs to grant access. Let's just get this done asap and not drag this out. I'm available Monday - Wednesday.

Rena Provencio,  
Property Manager  
(650) 685-6921  
[Renaprovencio@gmail.com](mailto:Renaprovencio@gmail.com)  
DRE 01408700

On May 9, 2019, at 3:39 PM, Ben Cannon <[ben@6x7.net](mailto:ben@6x7.net)> wrote:

I can do Tuesday or Friday next week, afternoons. Team?  
-Ben

-Ben Cannon  
CEO 6x7 Networks & 6x7 Telecom, LLC  
[ben@6x7.net](mailto:ben@6x7.net)

<6x7\_speedTest.JPG>

On May 9, 2019, at 3:38 PM, Arnold Townsend <[revtword@hotmail.com](mailto:revtword@hotmail.com)> wrote:

Next week Wednesday 10-noon, is bad other than that I'm fine. I left Tina a message waiting for the call back.

Get Outlook for JIOS

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**From:** Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)>  
**Sent:** Thursday, May 9, 2019 1:35:02 PM  
**To:** Ben Cannon; Rena Provencio; Arnold Townsend; Gary Banks; [greeneglobe.cs@gmail.com](mailto:greeneglobe.cs@gmail.com)  
**Cc:** Masry, Omar (CPC)  
**Subject:** RE: \*\*\*\*Second Request\*\*\*\*Re: 5024 3rd St site visit

Please email your response so we can all get the same information at the same time.

Omar and I need a couple of dates and times from you so we can reserve a city vehicle and conduct the site inspection.

Tina Tam  
Principal Planner  
Code Enforcement Manager and Internship Coordinator

Planning Department, City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103  
Direct: 415-558-6325 Fax: 415-558-6409  
Email: [tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)  
Web: [www.sfgplanning.org](http://www.sfgplanning.org)

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**From:** Ben Cannon <[ben@6x7.net](mailto:ben@6x7.net)>  
**Sent:** Thursday, May 09, 2019 11:40 AM  
**To:** Rena Provencio <[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)>; Arnold Townsend <[revtword@hotmail.com](mailto:revtword@hotmail.com)>; Gary Banks <[gwbanks@hotmail.com](mailto:gwbanks@hotmail.com)>; [greeneglobe.cs@gmail.com](mailto:greeneglobe.cs@gmail.com)  
**Cc:** Masry, Omar (CPC) <[omar.masry@sfgov.org](mailto:omar.masry@sfgov.org)>; Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)>  
**Subject:** Re: \*\*\*\*Second Request\*\*\*\*Re: 5024 3rd St site visit

+ Gary Arnold Rinard. Guys? What's a good time next week? Arnold did you and Tina talk yet?

-Ben Cannon  
CEO 6x7 Networks & 6x7 Telecom, LLC  
[ben@6x7.net](mailto:ben@6x7.net)

<image001.jpg>

On May 9, 2019, at 11:36 AM, Rena Provencio <[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)> wrote:

Hi Ben,

Please respond with a date and time that works for you.

Best,

Rena Provencio,  
Property Manager  
(650) 685-6921  
[Renaprovencio@gmail.com](mailto:Renaprovencio@gmail.com)  
DRE 01408700

On May 8, 2019, at 12:40 PM, Rena Provencio <[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)> wrote:

Thank you Tina.

Ben - please offer a few days and times that work for you Monday - Wednesday next week so we may complete the site visit.

Best,

Rena Provencio,  
Property Manager  
(650) 685-6921  
[Renaprovencio@gmail.com](mailto:Renaprovencio@gmail.com)  
DRE 01408700

On May 7, 2019, at 2:46 PM, Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)> wrote:

I suggest we look at next week. Please offer a couple of dates and times (except for next Thursday as I am out). Thank you.

**Tina Tam**  
Principal Planner  
Code Enforcement Manager and Internship Coordinator  
Planning Department, City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103  
Direct: 415-558-6325 Fax: 415-558-6409  
Email: [tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)  
Web: [www.sfplanning.org](http://www.sfplanning.org)

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**From:** Rena Provencio <[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)>  
**Sent:** Tuesday, May 07, 2019 2:25 PM  
**To:** Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)>  
**Cc:** Masry, Omar (CPC) <[omar.masry@sfgov.org](mailto:omar.masry@sfgov.org)>; Ben Cannon <[ben@cbv7.net](mailto:ben@cbv7.net)>  
**Subject:** Re: 5024 3rd St site visit

Ok, I'm sorry I can't be present tomorrow. Best I can offer is a letter time. I'm available to meet in the afternoon.

Best,  
Rena Provencio (650)219-7404

Go confidently in the direction of your dreams. Live the life you've imagined. ~ Thoreau

Sent directly from my mind...

On May 7, 2019, at 2:14 PM, Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)> wrote:

We are not available on Thursday.

**Tina Tam**  
Principal Planner  
Code Enforcement Manager and Internship Coordinator  
Planning Department, City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103  
Direct: 415-558-6325 Fax: 415-558-6409  
Email: [tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)  
Web: [www.sfplanning.org](http://www.sfplanning.org)

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**From:** Rena Provencio <[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)>  
**Sent:** Tuesday, May 07, 2019 2:11 PM  
**To:** Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)>  
**Cc:** Rena Provencio <[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)>; Masry, Omar (CPC) <[omar.masry@sfgov.org](mailto:omar.masry@sfgov.org)>; Ben Cannon <[ben@cbv7.net](mailto:ben@cbv7.net)>  
**Subject:** Re: 5024 3rd St site visit

Hi Tina,

I understood you needed access hence coordinating with the tenant. If that's not the case, can we keep 10:30 on Thursday? I already have a commitment at 10:30 tomorrow.

Best,

Rena Provencio,  
Property Manager  
(650) 685-6921  
[Renaprovencio@gmail.com](mailto:Renaprovencio@gmail.com)  
DRE 01408700

On May 7, 2019, at 1:56 PM, Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)> wrote:

Thanks, Rena,

Omar and I can meet you tomorrow morning (Wednesday at 10:30am). The tenant's attendance is welcome, but not required. Thank you.

**Tina Tam**  
Principal Planner  
Code Enforcement Manager and Internship Coordinator  
Planning Department, City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103  
Direct: 415-558-6325 Fax: 415-558-6409  
Email: [tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)

Web: [www.sfplanning.org](http://www.sfplanning.org)

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**From:** Rena Provencio  
<[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)>  
**Sent:** Tuesday, May 07, 2019 12:40 PM  
**To:** Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)>  
**Cc:** Rena Provencio  
<[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)>; Masry, Omar  
(CPC) <[omar.masry@sfgov.org](mailto:omar.masry@sfgov.org)>; Ben Cannon  
<[ben@shy7.net](mailto:ben@shy7.net)>  
**Subject:** Re: 5024 3rd St site visit

Hi Tina,

I'm happy to accommodate however it's not my schedule that has a conflict. The tenant requested the rescheduled date and time from our initial appt on Thursday. I'm waiting to here a date and time that works for him.

Ben ~ Please let us know a date and time so we can coordinate.

Best,

Rena Provencio,  
Property Manager  
(650) 685-6921  
[Renaprovencio@gmail.com](mailto:Renaprovencio@gmail.com)  
DRE 01408700

On May 7, 2019, at 12:34 PM, Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)> wrote:

Hi Rena,

I called and left you a voice message. Omar and I are available tomorrow morning at 10:30am. I hope his works for you. Please confirm.

**Tina Tam**  
Principal Planner  
Code Enforcement Manager and  
Internship Coordinator  
  
Planning Department, City and County  
of San Francisco  
1650 Mission Street, Suite 400, San  
Francisco, CA 94103  
Direct: 415-558-6325 Fax: 415-558-  
6409  
Email: [tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)  
Web: [www.sfplanning.org](http://www.sfplanning.org)

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**From:** Rena Provencio  
<[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)>  
**Sent:** Tuesday, May 07, 2019 11:15  
AM  
**To:** Tam, Tina (CPC)  
<[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)>  
**Cc:** Rena Provencio  
<[renaprovencio@gmail.com](mailto:renaprovencio@gmail.com)>;  
Masry, Omar (CPC)  
<[omar.masry@sfgov.org](mailto:omar.masry@sfgov.org)>  
**Subject:** 5024 3rd St site visit

This message is from outside the  
City email system. Do not open  
links or attachments from  
untrusted sources.

Hi Tina,

We have a scheduled site visit for Thursday, May 9th at 10:30 AM. Our tenant Ben Cannon is unavailable and would prefer we reschedule. I've asked Ben to give me days and times that work for him so I can coordinate.

Best,

Rena Provencio,  
Property Manager  
(650) 685-6921  
[Renaprovencio@gmail.com](mailto:Renaprovencio@gmail.com)  
DRE 01408700

APPELLANT'S BRIEF NOT SUBMITTED