

## FIRST AMENDMENT TO LEASE

(Parcel L)

THIS FIRST AMENDMENT TO LEASE (this "Amendment") is made as of 9/28, 2011, in San Francisco, California, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), and PROXYDEVELOPMENT, LLC, a California limited liability company ("Tenant").

### RECITALS

A. City and Tenant are parties to a Lease dated as of July 14, 2010 (the "Original Lease"), for premises located near the northeast corner of Fell and Octavia Streets, San Francisco, as further depicted in Exhibit A to the Original Lease. All undefined, initially-capitalized terms used in this Amendment shall have the meaning given to such terms in the Original Lease.

B. Tenant wishes to extend the term of the Original Lease from four years to five years, and City consents to such extension on the terms and conditions as set forth in this Amendment.

### AGREEMENT

NOW, THEREFORE, in consideration of the matters described in the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, City and Tenant agree as follows:

1. Term. As of the date this Amendment is fully executed and delivered (the "Effective Date"), Section 4.2 of the Original Lease is hereby deleted in its entirety and replaced with the following language:

4.2 Commencement Date and Expiration Date. The "Commencement Date" shall be November 1, 2010, and the "Expiration Date" shall be the fifth (5<sup>th</sup>) anniversary of the Commencement Date.

2. Initial Improvement Charges. Within sixty (60) days following the Effective Date, Tenant shall deliver the Initial Improvements statement of costs, invoices and other documents required under Section 8.3(c) of the Original Lease to City for its review.

3. Tenant's Licensee. Tenant represents and warrants that Biergarten, LLC, a California limited liability company ("Licensee") is the only party operating at the Premises or otherwise authorized by Tenant to use or occupy the Premises. Within sixty (60) days following the Effective Date, Tenant shall deliver to City an estoppel certificate in the form attached hereto as Exhibit B ("Estoppel"), duly completed and executed by Tenant and Licensee, and a copy of any written agreement ("License") between Tenant and Licensee with respect to Licensee's use of the Premises. Tenant acknowledges that City's consent to the use of the Premises by the Licensee is conditioned on City's receipt and approval of the Estoppel and License. If City approves of the Licensee after reviewing the Estoppel and the License, City shall deliver written notice thereof to Tenant and Licensee within sixty (60) days of City's receipt of the Estoppel and License.

3. No Joint Venture. Neither this Amendment nor any activity by the City hereunder creates a partnership or joint venture between the City and Tenant relating to the Premises, the Original Lease or otherwise. This Amendment does not constitute authorization or approval by the City of any activity conducted at the Premises by Tenant or any of its Agents (as defined in the Original Lease), permittees or sublessees, and the City shall in no way be responsible for the

acts or omissions of Tenant or any of Agents, its permittees or sublessees on the Premises or otherwise.

4. Attorneys Fees. In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

5. References. No express reference to this Amendment is necessary in any instrument or document that refers to the Original Lease. As of the Effective Date, any reference to the Original Lease after the date of this Amendment shall be deemed a reference to the Original Lease as amended by this Amendment.

6. Applicable Law. This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

7. Miscellaneous. Except as expressly modified herein, the terms, covenants and conditions of the Original Lease shall remain unmodified and in full force and effect. This Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment shall not constitute a waiver of relinquishment of any rights that City may have relating to the Original Lease. Tenant and City hereby ratify and confirm all of the provisions of the Original Lease as amended by this Amendment.

TENANT:

PROXYDEVELOPMENT, LLC,  
a California limited liability company

By:   
Douglas Burnham, Manager

Date: 07.28.2011

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By:   
John Updike, Acting Director of Property

Date: 9/28/2011

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:   
Carol Wong, Deputy City Attorney

**Exhibit A**

**List of Tenant Licensees**

- Biergarten, LLC

**EXHIBIT B**

**Licensee Estoppel Certificate**

This Estoppel Certificate (this "Certificate") is made as of \_\_\_\_\_, 2011 ("Effective Date"), by PROXYDEVELOPMENT, LLC, a California limited liability company ("Subtenant"), and \_\_\_\_\_ ("Licensee"), for the benefit of the City and County of San Francisco, a municipal corporation ("City").

RECITALS

A. City leases the property located in San Francisco, California, commonly known as Parcel K and depicted on the attached Schedule 1 ("Premises"), from the Redevelopment Agency of the City and County of San Francisco ("Master Landlord") pursuant to a Ground Lease dated as of January 30, 2004, as amended by a First Amendment to Ground Lease dated as of March 16, 2010, and a Second Amendment to Ground Lease dated as of April 19, 2011 (as amended, the "Master Lease").

B. Subtenant subleases the Premises pursuant to a Lease dated as of July 14, 2010, as amended by a First Amendment to Lease dated as of \_\_\_\_\_, 2011 (as amended, the "Sublease").

C. Pursuant to a \_\_\_\_\_ between Subtenant and Licensee, dated as of \_\_\_\_\_ ("License"), Subtenant has authorized Licensee to use a portion of the Premises, and Subtenant and Licensee wish to confirm certain facts and request City's consent to Licensee's use of the Premises.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Subtenant and Licensee each hereby confirms, represents and warrants to City as follows:

1. Accuracy. All of the information specified above and elsewhere in this Certificate is accurate as of the Effective Date.

2. License. A complete and correct copy of the License attached hereto as Schedule 2, which is currently valid and in full force and effect, contains all of the understandings and agreements between Subtenant and Licensee with respect to the Premises, and has not been amended, supplemented or changed by letter agreement or otherwise, except as follows (if none, indicate so by writing "NONE" below):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. License Fee. Licensee is required to pay the following fees, charges and other payments to Subtenant in consideration for Licensee's use of the Premises, paid in the manner described below:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. Improvements. Licensee has installed the following improvements at the Premises:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Delivery of Master Lease and Sublease. Subtenant has delivered a complete and correct copy of the Master Lease and Sublease to Licensee, and Licensee acknowledges and agrees as follows: (i) Licensee's rights to use the Premises are subject and subordinate to the terms and conditions of the Master Lease and Sublease; (ii) any termination of the Master Lease or the Sublease shall terminate Subtenant's and Licensee's right to use or otherwise occupy the Premises; (iii) Licensee shall not take any action that would cause Subtenant to be in default under the Sublease or cause City to be in default under the Master Lease; (iv) neither City nor Master Landlord have any obligations to Licensee with respect to the Premises; and (v) City shall not be deemed to have approved of the License or Licensee's use of the Premises unless City delivers written consent thereto within sixty (60) days of City's receipt of the License and this Certificate, completed and executed by Subtenant and Licensee.

6. Due Execution and Authorization. The undersigned, and any person executing this Certificate on behalf of the undersigned, represent and warrant that they are duly authorized to execute this Certificate.

7. Successors and Assigns. This Certificate will be binding upon and inure to the benefit of Subtenant, Licensee and City, as well as their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, each of the undersigned has executed this Certificate as of the Effective Date.

SUBTENANT:

PROXYDEVELOPMENT, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Douglas Burnham, Manager

Date: \_\_\_\_\_

LICENSEE:

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

Schedule 1

Depiction of Premises

[see attached]

Schedule 2

License

[see attached]

**EXHIBIT C**

**Master Lease Second Amendment**