

SECOND AMENDMENT TO LEASE

(Parcel L)

THIS SECOND AMENDMENT TO LEASE (this "Second Amendment") is made as of January 8, 2015, 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"), as amended by a First Amendment to Lease dated as of September 28, 2011 (the "First Amendment") 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 Second Amendment shall have the meaning given to such terms in the Original Lease. The Original Lease, as amended by the First Amendment and this Second Amendment, shall be referred to as the "Lease".

B. Tenant wishes to extend the term of the Original Lease for an additional six years and two months and expand the permitted uses of the Premises, and City consents to such extension on the terms and conditions as set forth in this Second 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. Approval Date. This Second Amendment shall be effective on the later to occur of (a) City's Board of Supervisors and the Mayor, in their sole and absolute discretion, adopting a resolution approving this Second Amendment in accordance with all applicable laws and (b) this Second Amendment is duly executed and delivered by City and Tenant.

2. Term. 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 January 31, 2021.

3. Rent. Section 15.4 of the Original Lease shall be deleted in its entirety. As of November 1, 2015, all references to the "Base Rent" in the Original Lease shall be automatically modified to refer to the "Extended Term Rent", and Section 5.1 of the Original Lease shall be deleted in its entirety and replaced with the following language:

5.1 Rent.

(a) **Extended Term Rent.** As of November 1, 2015, the "Extended Term Rent" shall mean an amount equal to the greater of (i) the minimum guaranteed amount of \$66,884.04 and (ii) 5.25% of the annual average Gross Revenues (as defined below) for the period between November 1, 2010 and December 31, 2014. As of November 1,

2018, the "Extended Term Rent" shall mean an amount equal to the greater of (i) the minimum guaranteed amount of \$66,884.04 and (ii) 5.25% of the annual average Gross Revenues for the period between January 1, 2015 and December 31, 2017.

Notwithstanding that Gross Revenues are used to determine the Extended Term Rent, City shall have no right to seek an increase in Gross Revenues by directing the operation of the business operations of Tenant or Subtenant at the Premises, including how such businesses are run or the days or hours they are open for business.

"Gross Revenues" shall mean all amounts received and receivable from all sales, business, performances, or other activities conducted in, from or attributable to the Premises by Tenant or by any other party conducting any of such activities in, upon, or from any part of the Premises as Tenant's sublessee, licensee, concessionaire, contractor or subcontractor (each, a "Subtenant"), including amounts received from orders or bookings for rental or sales of merchandise made by telephone, mail or online or through third parties. The following items shall be excluded from Gross Revenues for purposes of calculating the Extended Term Rent: (i) returns and refunds and (ii) the amount of any sales tax, parking tax, or similar tax or imposition, imposed on all sales or charges where such sales tax, similar tax or imposition is billed to the purchaser as a special item.

(b) Extended Term Rent Adjustments. Commencing on November 1, 2015, but excluding November 1, 2018, the Extended Term Rent payable by Tenant shall be increased on each November 1 (each, an "Adjustment Date") to equal 102.5% of the Extended Term Rent payable for the twelve (12) month period immediately preceding such Adjustment Date.

(c) Payment. Throughout the Term beginning on November 1, 2015, Tenant shall pay to City the Extended Term Rent, as such amount is adjusted pursuant to the foregoing subsection (b). The Extended Term Rent shall be paid to City in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever, together with all Additional Charges due and payable at such time, on or before the first day of each month. All sums payable by Tenant to City hereunder shall be paid in cash or by good (cashier's or certified) check to the City and County of San Francisco in care of the Director of Property at 25 Van Ness Avenue, San Francisco, California 94102, or such other place as City may designate in writing. If Tenant pays by check and such check is not honored, then City may require Tenant to make all future payments in cash or by cashier's check. If the Term expires on a day other than the last day of a calendar month, then the Extended Term Rent for such fractional month shall be prorated based on a thirty (30) day month.

If the applicable annual average Gross Revenues is not determined at the time any monthly Extended Term Rent payment is due, Tenant shall pay City the minimum guaranteed amount applicable to such period and described in subsection (a) above. In such event, once the applicable annual average Gross Revenues is established for such period, if such amount is higher than such minimum guaranteed amount, Tenant shall deliver the remaining portion of monthly Extended Term Rent amounts owed for such period to City within thirty (30) days of receiving City's written determination of the applicable annual average Gross Revenues for such period.

4. Determination of Gross Revenues.

4.1 First Determination. On or before June 30, 2015, Tenant shall deliver to City a statement certified as being true and correct by an authorized officer or manager of Tenant and otherwise in form satisfactory to City (a "Gross Receipts Statement"), showing taxes paid and the Gross Receipts for the period between November 1, 2010 and December 31, 2014, together with copies of the state and federal tax returns filed by Tenant during such period and all backup documentation reasonably requested by City to verify the accuracy of such Gross Receipts Statement. If City disapproves of a delivered Gross Receipts Statement, City shall deliver written notice of such disapproval, and the reason therefor, to Tenant. If Tenant agrees with City's stated reason for disapproving a submitted Gross Receipts Statement, Tenant shall promptly deliver a corrected Gross Receipts Statement to City for review. If Tenant does not agree with City's stated reason for disapproving a submitted Gross Receipts Statement, Tenant shall notify City of such disagreement in writing within ten (10) days of receiving City's notice of disapproval of such Gross Receipts Statement and, within ten (10) days of City's receipt of such notice from Tenant, City and Tenant shall meet to discuss and resolve such matter.

If City approves of a delivered Gross Receipts Statement, as may be modified pursuant to the foregoing paragraph, City shall confirm such approval in a writing to Tenant, which writing shall confirm the annual average Gross Revenues for the period between November 1, 2010 and December 31, 2014, and the Extended Term Rent applicable for the period between November 1, 2015 and October 31, 2018.

4.2 Second Determination. On or before June 30, 2018, Tenant shall deliver to City a Gross Receipts Statement for the period between January 1, 2015 and December 31, 2017, together with copies of the state and federal tax returns filed by Tenant during such period and all backup documentation reasonably requested by City to verify the accuracy of such Gross Receipts Statement. If City disapproves of a delivered Gross Receipts Statement, City shall deliver written notice of such disapproval, and the reason therefor, to Tenant. If Tenant agrees with City's stated reason for disapproving a submitted Gross Receipts Statement, Tenant shall promptly deliver a corrected Gross Receipts Statement to City for review. If Tenant does not agree with City's stated reason for disapproving a submitted Gross Receipts Statement, Tenant shall notify City of such disagreement in writing within ten (10) days of receiving City's notice of disapproval of such Gross Receipts Statement and, within ten (10) days of City's receipt of such notice from Tenant, City and Tenant shall meet to discuss and resolve such matter.

If City approves of a delivered Gross Receipts Statement, as may be modified pursuant to the foregoing paragraph, City shall confirm such approval in a writing to Tenant, which writing shall confirm the annual average Gross Revenues for the period between January 1, 2015 and December 31, 2017, and the Extended Term Rent applicable for the period between November 1, 2018 and the Expiration Date.

4.3 Cash Register Receipts. A "Subtenant" shall mean each party that Tenant allows to conduct operations at, or use, any portion of the Premises, including Licensee. On or before January 1, 2015, Tenant shall install a cash register that has separate function keys with non-resettable daily sequential transaction numbers and non-resettable daily cumulative sales totals and of a type that can print and save receipts (each, an "Approved Cash Register") for all of its sales operations at the Premises, and shall require each of its Subtenants conducting any sales operations at the Premises to conduct its operations at the Premises with an Approved Cash Register at the Premises. Tenant shall further comply, and cause its Subtenants to comply, with the following provisions:

(a) Each Approved Cash Register shall register every transaction made at the Premises, including every type of Gross Receipts, and the tape or digital record of each such

Approved Cash Register shall be accessible to and subject to inspection by the City's Director of Property or his/her designee, provided that such inspection shall be conducted in a manner reasonable designed to minimize interference with the conduct of business using such Approved Cash Register, and City shall not perform such inspection unless a manager of the business using such Approved Cash Register is present. Tenant shall make, and shall have each Subtenant make, a manager available to City for such inspection during business hours upon request (which may be oral) by City.

(b) Any Approved Cash Register that is a mechanical cash register must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit capacity or greater, as determined by the City's Director of Property based on the type of business, with a four-digit overrun counter. If computerized cash registers or other similar electronic devices are used, that system must accurately record all sales on the Premises and be no more subject to tampering than mechanical cash registers.

(c) Each sale or other transaction on the Premises must be recorded at the time of each sale or other transaction, in the presence of the customer, and Tenant or the applicable Subtenant shall present a receipt from such sale or other transaction to the customer. Each customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register types. All cash receipts must include the identification of Tenant or Subtenant, as applicable. Each Approved Cash Register (including computerized cash registers or other similar electronic devices) shall be serviced by an established contractor approved by City's Director of Property. At City's Director of Property request, Tenant must furnish to City a statement from an established contractor that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by City's Director of Property.

(d) Upon the installation or removal of any Approved Cash Register (including computerized cash registers or other similar electronic devices) used on the Premises, Tenant must immediately furnish to City's Director of Property notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s) (including computerized cash registers or other similar electronic devices). Any repair contractor employed to repair or replace any cash register (including computerized cash registers or other similar electronic devices if used) on the Premises is hereby authorized and directed to disclose and furnish to City or its auditors any information obtained by the contractor in the course of making such repair or replacement pertaining to such cash register (including computerized cash registers or other similar electronic devices if used). City shall have the right during business hours to examine the totals of the Approved Cash Register(s) (including computerized cash registers or other similar electronic devices if used) used on the Premises and to inspect for compliance with this Section.

4.4. Books and Records; Annual Reporting; Audits

(a) Tenant agrees to keep, and to cause its Subtenants to keep, accurate books and records according to generally accepted accounting principles. For purposes herein "books and records" shall include, but not be limited to, daily sales journals, cash register tapes, pre-numbered receipts, guest checks, sales tickets, monthly sales summaries summarizing daily sales, general ledgers, income statements, sales tax returns, income tax returns and any other bookkeeping documents Tenant utilizes in its business operations. Tenant shall not co-mingle personal funds with business funds.

(b) Commencing as of June 30, 2016, and on each April 1 thereafter through June 30, 2018 (each, a "Reporting Date"), Tenant shall deliver to City a statement (the "Annual Gross Receipts Statement"), certified as correct by Tenant's authorized officer or manager, certified or audited by a certified public accountant, and otherwise in form satisfactory to City. The Annual Gross Receipts Statement shall set forth the Gross Receipts, as defined above and shown on Tenant's books, for the calendar year immediately preceding such Reporting Date broken down by category.

(c) Tenant agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City, for the purpose of examining such books and records to determine the accuracy of Tenant's earnings from Tenant's operations with respect to the Premises. Such books and records shall be kept through January 31, 2025 and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing these accounts; except that, if an audit is made before January 31, 2025 within such four-year period and City claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. If an audit reveals that Tenant has understated its Gross Receipts, Tenant shall pay City, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to City. If Tenant understates its Gross Receipts by three percent (3%) or more, the cost of the audit shall be borne by Tenant. If Tenant understates its Gross Receipts with knowledge of such understatement or by reason of gross negligence, then, in addition to paying for the cost of the audit, on the first such occasion Tenant shall pay City ten (10) times the amount of the difference between the amount City should have received and amount City actually received.

5. Permitted Uses. In addition to the permitted uses of the Premises specified in Section 7.1 of the Original Lease, Tenant may use the Premises and the permitted Improvements for arts and cultural activities, including performances, exhibitions, and rehearsals, provided that such other uses are permitted under Laws applicable to such uses at the Premises. Tenant acknowledges and agrees that City is entering into this Second Amendment in its proprietary capacity as a property owner, and not in its regulatory capacity, and that any such uses of the Premises may not be permitted, or subject to restrictions established, by City acting in its regulatory capacity. Tenant further acknowledges and agrees that placing or removing any works of art placed on or from the Premises requires the prior consent of City's Art Commission.

6. Fence and Sign Improvements.

6.1 Fence Work. Tenant shall improve the City Fence, which is chain link, in a manner that is more visually attractive but continues to provide security for the Premises and allows for visibility into the Premises from the adjacent streets (the "Upgraded Fence"), within the six (6) month period immediately following the Approval Date. Tenant shall provide City with the draft plans, and written cost estimate, to City for review within sixty (60) days following the Approval Date. If City does not approve of such submitted plans or cost estimate, City shall provide Tenant with written notice for such disapproval and Tenant shall promptly provide revised plans or a revised cost estimate, as applicable, to City for review. Any plans for improvements to the existing City Fence (the "Fence Work") approved by City in writing shall be the "Final Fence Plans" and any written cost estimate for the Fence Work approved by City in writing shall be the "Fence Budget". Once City approves of the Final Fence Plans, Tenant shall promptly obtain and deliver copies of any permits required under Law for the Fence Work to City's Director of Property, and following such delivery, Tenant shall promptly commence, and diligently pursue to completion, the Fence Work in strict accordance with the Final Fence Plans and the Fence Budget, which may not be modified without City's prior written consent to such modification.

6.2 Signage. Tenant shall install, at its sole cost, the signage depicted in the attached Exhibit A (the "Future Use Sign") within sixty (60) days following the Approval Date. The Future Use Sign shall be placed in a location that is visible from the portion of Octavia Street that abuts the Premises and shall be no less than three feet by three feet. The creation and installation of the Future Use Sign shall be the "Signage Work".

6.3 Performance Requirements.

(a) Tenant shall require from each contractor and subcontractor performing any Fence Work or Signage Work on or about the Premises a policy of general public liability insurance, with such limits as may reasonably be required by City at the time of approving the Final Plans, but in any event not less than Two Million Dollars (\$2,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in Section 18.2(c) of the Original Lease.

(b) The Fence Work and Signage Work shall be done (i) by duly licensed and bonded contractors or mechanics approved by the City, (ii) in a good and professional manner, (iii) in strict compliance with all Laws, including any regulatory permits or approvals required therefor, (iv) in compliance with the applicable prevailing wage and local hire requirements specified in Section 10 below, and (v) subject to all other conditions that the City may reasonably impose, including, without limitation, provision of such completion security as is acceptable to City.

(c) City shall have the right to inspect the performance of the Fence Work and the Signage Work at the Premises at all times.

6.4 Ownership; Maintenance. The New Fence and Future Use Sign shall be Tenant's personal property during the Term, but shall automatically become the City's property on the termination or expiration of the Lease. Tenant shall maintain, at its sole cost, the New Fence and Future Use Sign in a good, first class condition during the Term, and perform all maintenance, repairs, and replacements necessary to keep the New Fence and Future Use Sign in such condition. If Tenant installs any plantings at the Premises, Tenant shall further maintain, at its sole cost, such plantings in a good and neat condition during the Term.

6.5 Fence Work Rent Credit. If Tenant completes the Fence Work in compliance with this Section, Tenant shall have the right to receive a rent credit for the amounts it pays third parties for the performance of the Fence Work, up to the maximum amount in the Fence Budget, as follows. Within thirty (30) days of completing the Fence Work, Tenant shall deliver the invoices and other documents reasonably request by City that evidence Tenant's payment of third party costs for the Fence Work. If City approves of such documentation, which approval shall not be unreasonably withheld, City shall notify Tenant of such approval in writing (the "Cost Approval Notice"), and the next installment of monthly Base Rent payable after Tenant's receipt of the Cost Approval Notice shall be reduced by the third party costs approved by City in the Cost Approval Notice.

7. Tenant's Licensee. Tenant represents and warrants that Licensee is the only party operating at the Premises or otherwise authorized by Tenant to use or occupy the Premises. Prior to the Approval 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.

8. Security Deposit. As of the Approval Date, the sum for the security deposit specified in

Section 1 of the Original Lease shall be automatically adjusted to \$5,573.67.

9. **Insurance Requirements.** The minimum limit required for comprehensive or commercial general liability insurance under Section 18.1(b) of the Original Lease shall be modified to be a minimum limit of not less than Two Million Dollars (\$2,000,000) each occurrence, and the following subsection shall be added to Section 18.1 of the Original Lease:

"(d) **Food Products and Liquor Liability Insurance.** Food Products Liability Insurance and Liquor Liability Insurance, each with limits of not less than One Million Dollars (\$1,000,000)."

10. **Prevailing Wages.** Section 24.21 of the Original Lease is hereby deleted in its entirety and replaced with the following language:

24.21 Prevailing Wages.

(a) **Fence Work, Improvements, and Public Works.** Tenant agrees that any person performing labor for Tenant for the Fence Work, for any Improvements, or for any "public works" at the Premises shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. The terms "public work" and "paid for in whole or part out of public funds" as used in this Section are defined in California Labor Code Section 1720 et seq., as amended. Tenant shall include in any contract for such labor for the Fence Work, any Improvements, and any public work a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.

(b) **Theatrical Workers.** Tenant acknowledges that City law entitles individual engaged in theatrical or technical services related to the presentation of a Show at the Premises, including individuals engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services, to be paid not less than the Prevailing Rate of Wages (which includes fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the Show is free and open to the public or meets any of the other exemptions in San Francisco Administrative Code Section 21C.4(b). Capitalized terms in this subsection shall have the meanings provided in San Francisco Administrative Code Section 21.C4. As a condition of this Second Amendment, Tenant agrees as follows:

(1) Tenant shall comply with the obligations in San Francisco Administrative Code Section 21C.4, and shall require its subtenants, contractors, and subcontractors to comply with the obligations in San Francisco Administrative Code Section 21C.4, including the payment of Prevailing Rate of Wages to individuals engaged in theatrical or technical services related to the presentation of a Show at the Premises. In addition, if Tenant or its subtenant, contractor, or any subcontractor fails to comply with

these obligations, City shall have all available remedies against Tenant to secure compliance and seek redress for workers who provided the services as described in San Francisco Administrative Code Section 21C.7, together with the remedies set forth in this Lease.

(2) City may inspect and/or audit any workplace, job site, books and records pertaining to the presentation of a Show at the Premises, and may interview any individual who provides, or has provided, work involving theatrical or technical services for the Show at the Premises.

(3) Tenant shall provide to City (and to require any Subtenant who maintains such records to provide to City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate the presentation of a Show at the Premises.

(c) Special Events or Trade Shows. Tenant acknowledges that City law entitles individuals engaged in work involving the on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, and decorative materials in connection with trade shows, conventions, expositions, and other special events on City property to receive the Prevailing Rate of Wages (which includes fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the event is free and open to the public or meets any of the other exemptions in San Francisco Administrative Code Section 21C.8(b). Capitalized terms in this subsection shall have the meanings provided in Sections 21.C8. Accordingly, Tenant, as a condition of this Second Amendment, agrees that:

(1) Tenant shall comply with the obligations in San Francisco Administrative Code Section 21C.8, and shall require Tenant's subtenants, contractors, and any subcontractors, to comply with the obligations in Section 21C.8, including the payment of Prevailing Wage Rates to workers engaged in On-site work on Trade Shows or Special Events. In addition, if Tenant or its subtenant, contractor (or any subcontractor) fails to comply with these obligations, City shall have all available remedies against Tenant to secure compliance and seek redress for workers who provided the services as described in Section 21C.7, together with the remedies set forth in this Second Amendment.

(2) City may inspect and/or audit any workplace, job site, books and records pertaining to On-site work on Trade Shows or Special Events at the Premises, and may interview any individual who provides, or has provided, On-site work on Trade Shows or Special Events at the Premises.

(3) Tenant shall provide to City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate a Trade Show or Special Event at the Premises.

11. **Pesticide Use.** Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated

quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant's staff or contractors.

If Tenant or Tenant's contractor will apply pesticides to the Premises, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

12. First Source. Section 24.29 of the Original Lease is hereby deleted in its entirety and replaced with the following language:

24.29 First Source Agreement. Tenant and City are parties to the First Source Agreement attached to this Second Amendment as Exhibit C pursuant to San Francisco Administrative Code, Chapter 83 (the "First Source Agreement"). Any default by Tenant under the First Source Agreement shall be a default under the Lease.

13. Bottled Drinking Water. Unless exempt, Tenant agrees to comply fully with and be bound by, and to cause each Subtenant to comply with, all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided therein, as the same may be amended from time to time. The San Francisco Bottled Water Ordinance, among other matters, prohibits the sale or distribution of drinking water in a sealed rigid plastic bottle having a capacity of twenty-one (21) fluid ounces or less at the Premises with attendance of more than 100 people unless otherwise exempted therein. The current provisions of Chapter 24 are attached as Exhibit D to this Second Amendment and, together with any future amendments thereto, are incorporated herein by reference and made a part of the Lease as though fully set forth.

14. Criminal History Inquiries for Employment

(a) Unless exempt, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12 T"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all sublicenses of some or all of the Premises, and shall require all sublicensees to comply with such

provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of the Lease.

(c) Tenant and Subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and Subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and Subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and Subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or any Subtenant at the Premises, that the Tenant and Subtenants will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(g) Tenant and Subtenants shall post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(h) Tenant and Subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, City shall have the right to pursue any rights or remedies available under Chapter 12T or the Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of the Lease.

(i) If Tenant has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

15. No Joint Venture. Neither this Second 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 Second 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) or Subtenants, and the City shall in no way be responsible for the acts or omissions of Tenant or any of its Agents or Subtenants on the Premises or otherwise.

16. Attorneys Fees. In the event a dispute arises concerning this Second 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 Second 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.

17. References. No express reference to this Second 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 Second Amendment shall be deemed a reference to the Original Lease as amended by this Second Amendment.

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

19. Miscellaneous. Except as expressly modified herein, the terms, covenants and conditions of the Original Lease and First Amendment shall remain unmodified and in full force and effect. This Second 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 Second Amendment shall not constitute a waiver of relinquishment of any rights that City may have relating to the Original Lease or the First Amendment. Tenant and City hereby ratify and confirm all of the provisions of the Original Lease and the First Amendment as amended by this Second Amendment.

TENANT:

PROXYDEVELOPMENT, LLC,
a California limited liability company

By: 
Douglas Burnham, Sole Member

Date: 12.01.2015

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: 
John Updike, Director of Property

Date: 1/8/16

APPROVED AS TO FORM:

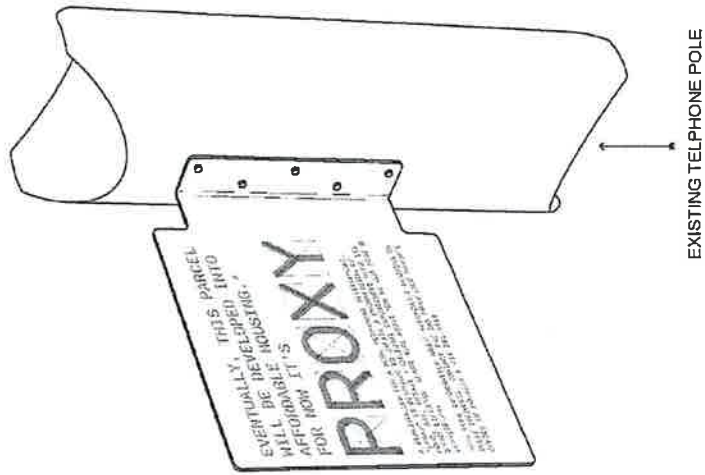
DENNIS J. HERRERA, City Attorney

By: 

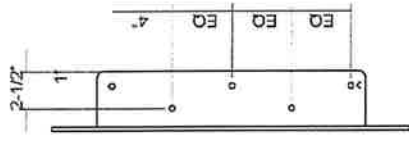
Carol Wong, Deputy City Attorney

Exhibit A

Depiction of Future Use Sign

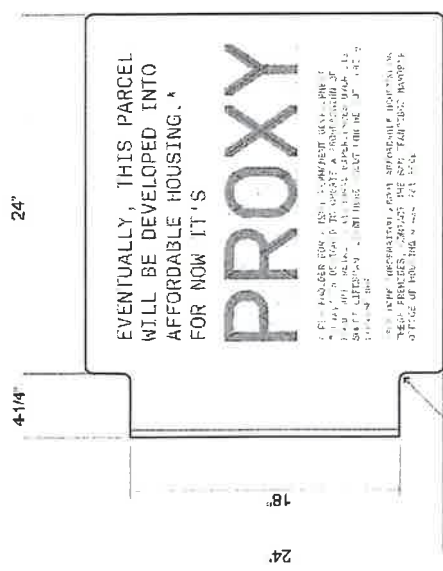


EXISTING TELEPHONE POLE



THROUGH HOLE FOR 3/8" LAG

MATERIAL: 1/4" ALUMINUM, STANDARD.



1/2" R. TYP

PROXY_CITY_SIGN_09/03/14 SCALE: 2"=1'-0"

Exhibit B

Licensee Estoppel Certificate

This Estoppel Certificate (this "Certificate") is made as of November 1st, 2011 ("Effective Date"), by PROXYDEVELOPMENT, LLC, a California limited liability company ("Tenant"), and Biergarten, LLC, a California limited liability company ("Licensee"), for the benefit of the City and County of San Francisco, a municipal corporation ("City").

RECITALS

A. City owns the property located in San Francisco, California, commonly known as Parcel L and depicted on the attached Schedule 1 ("Premises"), and Tenant leases the Premises pursuant to a Lease dated as of July 14, 2010, as amended by a First Amendment to Lease dated as of September 28, 2011 and a Second Amendment to Lease dated as of November 1st, 2015 (as amended, the "Lease").

C. Pursuant to a Commercial Net Lease between Tenant and Licensee, dated as of November 1st, 2015 ("License"), Tenant has authorized Licensee to use a portion of the Premises, and Tenant 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, Tenant 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 Tenant 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):
NONE

3. License Fee. Licensee is required to pay the following fees, charges and other payments to Tenant in consideration for Licensee's use of the Premises, paid in the manner described below:
A Base Rent in the amount of \$6,073.67.

4. Improvements. Licensee has installed the following improvements at the Premises:
Four shipping containers equipped with draft beer and food service equipment, refrigeration equipment, and beer garden tables and benches. Subgrade plumbing supply and waste, electrical service panels and subgrade distribution and tel/data panel and distribution. Landscape

improvements including a large tree and perimeter plants.

5. Delivery of Lease. Tenant has delivered a complete and correct copy of the Lease to Licensee, including the Second Amendment to Lease, 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 Lease; (ii) any termination of the Lease shall terminate Licensee's right to use or otherwise occupy the Premises; (iii) Licensee shall not take any action that would cause Tenant to be in default under the Lease; (iv) City has no obligations to Licensee with respect to the Premises; and (v) City shall not be deemed to have approved of the License, the License extension, or the 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 Tenant 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.

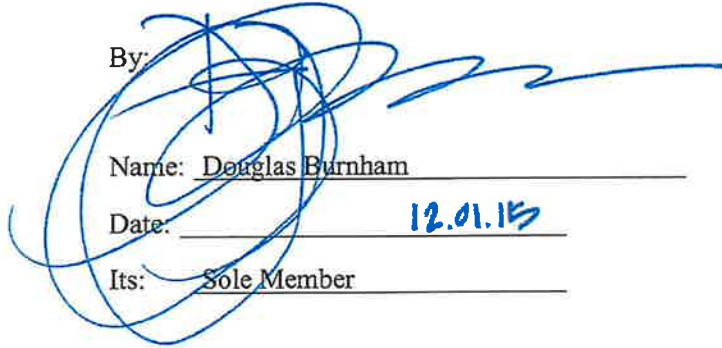
7. Successors and Assigns. This Certificate will be binding upon and inure to the benefit of Tenant, Licensee and City, as well as their respective heirs, legal representatives, successors and assigns.

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

TENANT:

PROXY development, LLC
a California limited liability company

By:



Name: Douglas Burnham

Date: 12.01.15

Its: Sole Member

LICENSEE:

By:



Name: Aaron Hulme

Date: 12/03/15

Its: Managing Member

Schedule 1

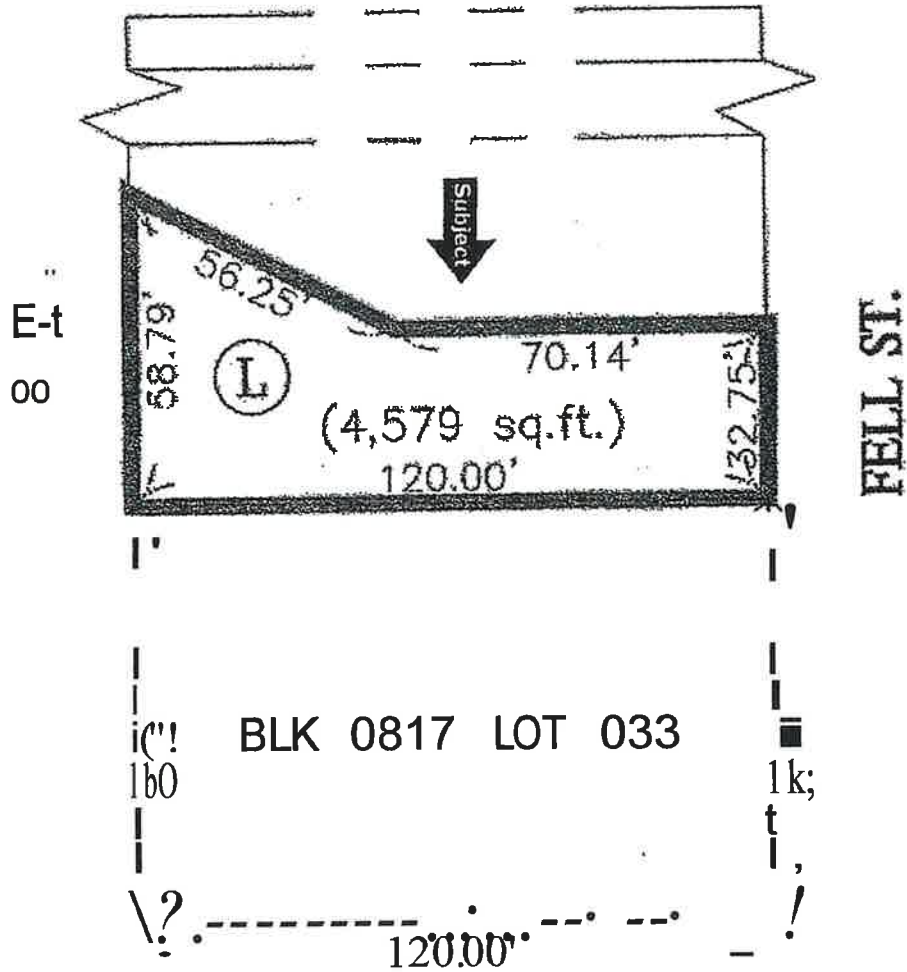
Depiction of Premises

[see attached]

(Parcel Map • Parcel L)



GOUGH ST.



FELL ST.

OCTAVIA BLVD.

central Freeway Parcel L

Schedule 2

License

[see attached]