



Agenda Item #: II A: Action Item

Date: August 30, 2022

To: Magnolia Educational & Research Foundation dba Magnolia Public Schools ("**MPS**")
Board of Directors (the "**Board**")

From: MPS Audit/Facilities Committee

Staff Lead: Patrick Ontiveros, General Counsel & Director of Facilities
Mustafa Sahin, Project Manager

RE: Approval of Resolutions Related to 18242 Sherman Way and 18220-18238 Sherman Way

I. Proposed Recommendation(s)

Previously presented at the MPS Audit/Facilities Committee Meeting

Staff recommends and moves that the MPS Board approve the following actions:

- (1) the assignment by MPS to MPM Sherman Winnetka LLC (the "**Winnetka Ave LLC**") of all its right, title and interest in and to that certain agreement for the purchase of the property located at 18242-44 Sherman Way in Reseda (APNs: 2125-036-096 and -099) (the "**18242 Sherman Way Property**") including the right to take title to the Property;
- (2) the execution of that certain Lease Agreement by and between MPS and Winnetka Ave LLC (the "**18242 Lease**") for the use and occupancy of the 18242 Sherman Way Property by Magnolia Science Academy—1 ("**MSA—1**");
- (3) the receipt by MPS from MPM Sherman Way LLC of \$1,268,717.50 under that certain First Amendment to Amended and Restated Lease Agreement (the "**First Amendment**") for the property located at 18220-18238 Sherman Way, presently occupied by MSA--1 (the "**Existing Premises**"), by and between MPS and MPM Sherman Way LLC, pursuant to which MPM Sherman Way LLC has refunded or will refund to MPS a portion of its rent because of the sale of land and diminution in value of the Existing Premises;
- (4) the execution by MPS of the First Amendment;
- (5) under the 18242 Lease, the payment by MPS to Winnetka Ave LLC of non-refundable advanced rent in the amount of \$938,000 (inclusive of a good faith deposit of \$50,000 made by MPS and \$888,000 in new money);
- (6) the execution by MPS, on behalf of Winnetka Ave LLC as its sole manager, of all documents, including all loan documents, for the acquisition by Winnetka Ave LLC of the 18242 Sherman Way Property; and
- (7) the execution by the MPS CEO and Superintendent, or his designees, of such documents and instruments as may be necessary to undertake and complete the foregoing actions.



II. Background

Prior Board Actions

At its November 18, 2021 meeting, the MPS Board approved MPS signing a purchase and sale agreement for the purchase of the 18242 Sherman Way Property and making a good faith, refundable, escrow deposit of Fifty Thousand Dollars (\$50,000). Escrow for the purchase and sale of the 18242 Sherman Way Property was opened on January 28, 2022. At its April 7, 2022 meeting the MPS Board approved Staff to exercise the option to extend the due diligence period by thirty (30) days. Subsequently, MPS Staff approved the removal of all contingencies. Thereafter, the owner of the 18242 Sherman Way Property exercised its right to extend the date for the closing of escrow two times, 30 days each time.

Current Requested Actions

Assignment of Right to Take Title and Execution of New Lease

MPS Staff recommends assigning the purchase agreement and all rights and interests in it to a newly formed limited liability company, Winnetka Ave LLC, wholly owned by MPM, which will hold title to the 18242 Sherman Way Property at the close of escrow. This structure will allow MERF to receive SB740 funding. Winnetka Ave LLC will lease the 18242 Sherman Way Property to MPS for the benefit and occupancy by MSA—1 under a new lease agreement, the 18242 Lease, a copy of which is attached as Exhibit A.

Execution of First Amendment and Receipt of Refund

MPS Staff recommends that MPS sign the First Amendment. The First Amendment modifies the existing lease (also referenced as the Amended and Restate Lease) between MPM Sherman Way LLC and MPS. It refunds to MPS a sum in the amount of the net proceeds from the sale of a portion of the Existing Premises in the amount of \$1,268,717.50. MPM Sherman Way LLC sold a 25 foot strip of land to the City of Los Angeles which diminished the value of the Existing Premises.

Payment of Non-Refundable Advanced Rent to Winnetka Ave LLC and Execution of 18242 Sherman Way Lease

MPS Staff recommends that MPS pay advanced rent of \$938,000 (inclusive of a good faith deposit of \$50,000 made by MPS and \$888,000 in new money) to Winnetka Ave LLC under the 18242 Sherman Way Lease and sign the 18242 Sherman Way Lease.

Winnetka Ave LLC is receiving a loan from CLI Capital to purchase the 18242 Sherman Way Property. Separately, Winnetka Ave LLC's sole member MPM has authorized the receipt of the acquisition loan from CLI Capital. The loan, however, is for \$3,250,000 and the purchase price is \$4,000,000, requiring Winnetka Ave LLC to pay the difference. The advanced rent payment is needed by Winnetka Ave LLC in order to close escrow on the purchase of the 18242 Sherman Way Property.

MPS must sign the 18242 Sherman Way Lease with Winnetka Ave LLC in order for MSA—1 to use and occupy the 18242 Sherman Way Property. The rent payable to Winnetka Ave LLC under the 18242 Sherman Way Lease is equal to the debt service Winnetka Ave LLC will pay to CLI Capital.



III. Conclusion / Budget Impact

MPS will use a portion of the refund from MPM Sherman Way LLC to pay advanced rent to Winnetka Ave LLC. Therefore, there will be no impact to MSA—1's operating budget. Any remaining amounts will be kept in MSA-1's reserves.

Under the lease agreement for the 18242 Sherman Way Property, MSA—1 will owe rent to MPM Winnetka Ave LLC equal in amount to the amount owed by MPM Winnetka Ave LLC. From closing to June 1, 2023, all interest on the CLI loan will be capitalized, meaning no payments are required to be made and the accrued and unpaid interest will be added to the principal amount of the CLI loan. Therefore, since there will not be any payments made until June 1, 2023, MSA—1's operating budget will not be affected except for the commencement of payment on such date.

Exhibit A	18242 Sherman Way Lease	Pg. 4
Exhibit B	First Amendment	Pg. 33



Exhibit A

Lease Agreement by and Magnolia Educational & Research Foundation and MPM Sherman
Winnetka Ave LLC for the use and occupancy of the 18242 Sherman Way Property by
Magnolia Science Academy—1

LEASE AGREEMENT

by and between

MPM SHERMAN WINNETKA LLC,
a California limited liability company

as Lessor

and

**MAGNOLIA EDUCATIONAL &
RESEARCH FOUNDATION,**
a California nonprofit public benefit corporation

as Lessee

dated as of September 1, 2022

for the use and occupation of certain premises
by Lessee in the operation of

MAGNOLIA SCIENCE ACADEMY 1

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LEASE AGREEMENT

1. Basic Provisions.

1.1 **Parties.** This Lease Agreement (“Lease”) dated, for reference purposes only, as of September 1, 2022, is made by and between MPM SHERMAN WINNETKA LLC, a California limited liability company (“Lessor”), and MAGNOLIA EDUCATIONAL & RESEARCH FOUNDATION, a California nonprofit public benefit corporation (“Lessee”) (Lessor and Lessee being sometimes referred to herein collectively as the “Parties” and individually a “Party”). Lessee is entering into this Lease to provide for the use and occupation of the Premises (as defined below) by Lessee in the operation of MAGNOLIA SCIENCE ACADEMY 1, also known as MAGNOLIA SCIENCE ACADEMY (the “School”), a California public charter school operated by Lessee.

1.2 **Premises.** The real property and improvements commonly referred to as 18242 and 18244 Sherman Way, Reseda, California, 91135, located in the County of Los Angeles, State of California and marked on the attached Exhibit A constitute the “Premises.” (*See also* Section 2 below.)

1.3 **Term.** The term of this Lease shall commence on funding of the Loan described in Section 1.5 below, (the “Commencement Date”) and shall end on August 31, 2057 (the “Initial Term”) (or such other later date if Lessee exercises its extension option) (such date, as it may be extended, the “Expiration Date”). (*See also* Section 3 below.)

1.4 **Extension Option.** Lessee shall have two (2) options to extend the Initial Term, each for five (5) years (such extension terms collectively, the “Extension Term” and, collectively with the Initial Term, the “Term”) with the Rent during the Extension Term to be set at an amount no less than the Fair Market Rent of the Premises at the date the option becomes exercisable. “Fair Market Rent” for purposes of this Section 1.4 shall be determined pursuant to Section 5 below.

1.5 Base Rent.

(a) **Loan.** Lessor obtained a loan (the “**Loan**”) from the CLI Capital (the “**Lender**”) as evidenced by a Loan Agreement dated as of August __, 2022, by and between the Lender and Lessor (the “**Loan Agreement**,” under which the Lessor is sometimes referred to as “**Borrower**”). So long as the Loan is outstanding, the “**Base Rent**” shall be payable in accordance with the schedule set forth in Exhibit B attached hereto, subject to adjustment to reflect any adjustment to the debt service payable by Lessor in respect of the Loan in the event of any prepayment of all or a portion of the Loan; provided that the Initial Base Rent Payment shall be prepaid pursuant to Section 1.7 below. In the event of the prepayment of the Loan in its entirety prior to the Expiration Date or termination of this Lease such that no Loan remains outstanding, the Base Rent shall be payable based upon the average of the debt service payments during the five (5) years immediately preceding such prepayment.

1.6 **Refinancing of Loan.** Upon any refinancing of the Loan, the term “Loan Agreement” thereafter shall refer to the agreement for the refinancing of the Loan, the term “Loan” thereafter shall refer to the refinancing loan, and the term “Lender” thereafter shall refer

to the lender making the refinancing loan, but otherwise all of the terms, covenants and conditions of this Lease shall remain unmodified and in full force and effect.

1.7 **Initial Base Rent Payment.** In consideration of the execution of this Lease, Lessee shall make an initial non-refundable prepayment of Rent in the amount of \$_____ (the “Initial Base Rent Payment”) on the date of execution of this Lease.

1.8 **Real Estate Brokers.** None.

2. **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the Term, at the Rent (as defined below) and upon and subject to all of the terms, covenants and conditions set forth in this Lease.

2.2 **Condition of Premises.** Lessee acknowledges that Lessor may construct improvements to the Premises (the “Improvements”), including the Buildings as described in Section 2.3 below, pursuant to the terms of the Loan Agreement described in Section 1.5. Lessee hereby acknowledges and agrees that it has reviewed and approved the Loan Agreement and agrees to accept the Improvements in their as-is condition, following completion of construction. All references in this Lease to the “Premises” shall be deemed to include the Improvements. Subject to the terms of Section 6.2(f) of this Lease, Lessee accepts the Premises in their current as-is condition. Lessee hereby acknowledges that the Premises have not undergone an inspection by a certified access specialist.

2.3 **Compliance.** Following completion of the Improvements, if the applicable building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances (the “Applicable Requirements”) require, during the Term, the construction of an addition to or an alteration of the Premises or any portion of the buildings on the Premises (the “Buildings”), the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises and/or the Buildings, Lessee hereby agrees to undertake and complete such construction, alteration, remediation, reinforcement or other modification (each, a “Capital Expenditure”), and the costs therefor shall be incurred solely by Lessee.

2.4 **Parking.** Lessee shall be provided with such number of parking spaces as Lessor and Lessee shall from time to time determine. For the avoidance of doubt, all parking spaces allocated to Lessee hereunder shall be deemed a part of the Premises leased hereunder and shall be subject to the terms hereof and any special rules and regulations promulgated by Lessor which relate specifically to parking.

2.5 **Energy Use Disclosure Program.** Lessee hereby acknowledges that Lessor may be required to disclose certain information concerning the energy performance of the Building (the “Energy Disclosure Information”) pursuant to California Public Resources Code Section 25402.10 and the regulations adopted pursuant thereto (collectively the “Energy Disclosure Requirements”). If and to the extent not prohibited by applicable laws, Lessee hereby waives any right Lessee may have to receive the Energy Disclosure Information, including, without limitation, any right Lessee may have to terminate this Lease as a result of Lessor’s failure to disclose such information. Further, Lessee hereby releases Lessor from any and all losses, costs,

damages, expenses and/or liabilities relating to, arising out of and/or resulting from the Energy Disclosure Requirements, including, without limitation, any liabilities arising as a result of Lessor's failure to disclose the Energy Disclosure Information to Lessee prior to the execution of this Lease. Lessee's acknowledgment of the AS-IS condition of the Premises pursuant to the terms of this Lease shall be deemed to include the energy performance of the Building. Lessee further acknowledges that pursuant to the Energy Disclosure Requirements, Lessor may be required in the future to disclose information concerning Lessee's energy usage to certain third parties, including, without limitation, prospective purchasers, lenders and lessees of the Building (the "Energy Use Disclosure") and Lessee agrees to provide Lessor with all such information as Lessor may require in order to satisfy the Energy Disclosure Requirements. Lessee hereby (A) consents to all such Energy Use Disclosures, and (B) acknowledges that Lessor shall not be required to notify Lessee of any Energy Disclosure Information. Further, Lessee hereby releases Lessor from any and all losses, costs, damages, expenses and liabilities relating to, arising out of and/or resulting from any Energy Use Disclosure. The terms of this Section shall survive the expiration or earlier termination of this Lease.

2.6 CASp Inspection for Accessibility. Lessor hereby notifies Lessee that the Premises have not undergone an inspection by a Certified Access Specialist ("CASp"). A CASp can inspect the Premises and determine whether the Premises comply with all of the applicable construction related accessibility standards under California state law. Although California state law does not require a CASp inspection of the Premises, the Lessor may not prohibit Lessee from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Lessee, if requested by Lessee. 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.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Term of this Lease are as specified in Section 1.3, provided that the commencement of rent shall commence on the later of (the "Rent Commencement Date"): (a) the Commencement Date and (b) following Lessor's completion of any Improvements in accordance with the Loan Agreement, the issuance of a temporary Certificate of Occupancy for the Premises.

4. Rent and Expenses.

4.1 Rent Defined. Subject to the terms of this Lease, the Initial Base Rent Payment, Base Rent, Expenses (as defined below), Additional Rent (as defined below) and all other monetary obligations of Lessee to Lessor or to third parties arising under the terms of this Lease are deemed to be rent ("Rent").

4.2 Expenses. Lessee shall be responsible for all Expenses (as defined below) which Lessee shall pay to Lessor within thirty (30) days after receiving a statement from Lessor itemizing (with reasonable description) all charges included thereon.

“Expenses” shall mean all costs and expenses of the ownership, operation, maintenance, repair or replacement, and insurance of the Premises, as determined by standard accounting practices, including, by way of illustration only, and not by way of limitation, to the extent they apply to the Premises:

- (i) Gross receipts taxes, whether assessed against Lessor or assessed against Lessee and collected by Lessor;
- (ii) Water, sewage, and waste or refuse removal charges;
- (iii) Gas, electricity, telephone and other utilities;
- (iv) Reasonable costs incurred in the day-to-day management (if any), including the cost of management personnel;
- (v) Air conditioning and heating;
- (vi) Elevator maintenance (if any);
- (vii) Supplies, materials, labor, equipment, and utilities used in or related to the operation and maintenance of the Premises;
- (viii) All maintenance, replacement and repair costs including, without limitation, janitorial, cleaning and repair services relating to the Premises and all improvements thereon, including, without limitation, air conditioning systems, landscaping, service areas, building exteriors (including painting), signs and directories, repairing and replacing roofs, walls, janitorial (if any is supplied) and upgrades, and cost of compliance with applicable laws;
- (ix) Capital improvements made to the Premises (whether funded in full or amortized with reasonable financing charges) which may be required by any government authority or which will improve the operating efficiency of the Premises;
- (x) Real Property Taxes (as defined in Section 10.1 below) and personal property taxes (as described in Section 10.3 below), if any; and
- (xi) Any other costs or expenses incurred by Lessor under this Lease and not otherwise reimbursed by Lessee or any other lessee of the Premises. Expenses shall not include depreciation on the Buildings of which the Premises are a part.

4.3 Additional Rent. In addition to Base Rent and Expenses, Lessee shall be responsible for the payment of Additional Rent. Additional Rent shall be paid to Lessor on demand or, if such Additional Rent is ongoing and can be calculated on a periodic basis, on a monthly basis pursuant to a written schedule from time to time delivered by Lessor.

“Additional Rent” shall include but not be limited to the following:

(i) All amounts required to reimburse Lessor, or satisfy Lessor’s obligations, for any fees, expenses, taxes, indemnities, assessments or other payments that it pays under the terms of the Loan Agreement to or on behalf of the Lender;

(ii) Amounts necessary to reimburse Lessor, or satisfy Lessor’s obligations, for any payments, other than debt service, that Lessor makes as may be required under the Loan Agreement or this Lease; and

(iii) Amounts necessary to reimburse Lessor for payments it makes with respect to Lessor’s reasonable general operating expenses, including Lessor’s payment of Lessor’s share of the reasonable general operating expenses of Lessor’s sole member.

4.4 Payment. Lessee’s obligation to pay Rent shall commence on the Rent Commencement Date. Lessee shall cause all Rent payable to Lessor under this Lease to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction. 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 due to Lessor 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.

4.5 Budgeting Rent. Lessee covenants to take such action as may be necessary to include all such payments of Rent due hereunder in its annual budgets, to make, as necessary, annual appropriations for all such payments and to take such action annually as shall be required to provide funds in such year for such payments of Rent.

4.6 Accounting. If Lessor so requests in writing, Lessee agrees to provide Lessor with an annual, or more frequent, accounting of the Expenses paid for the just-completed calendar year.

4.7 Limitation of Recourse. Notwithstanding any other terms or provisions of this Lease to the contrary, Lessee’s liability under this Lease will be limited to the Gross Revenues of the School, and under no circumstances shall Lender have recourse to any revenues or assets attributable to, or designated by any third party for, any other school operated by Lessee or pledged by Lessee to secure loans to or financings or leases for such other school. Such other school’s moneys, assets and revenues would include income and revenues directly or indirectly derived by Lessee’s operation of the other school, including without limitation per pupil revenues and other funding received from the State of California or by virtue of the charter granted to Lessee for the other school and all gifts, grants, bequests and contributions (including income and profits therefrom) to the extent specifically restricted by the donor or Lessee thereof to the other school and such moneys would also include net insurance or condemnation proceeds received or payable to Lessee on account of damage or destruction of the other school or its property or other loss incurred by Lessee with respect to its operation of the other school or its property.

As used herein, “**Gross Revenues of the School**” means all income and revenues directly or indirectly derived by Lessee’s operation of the School described in Section 1.1 of this Lease, including without limitation, per-pupil revenues and other funding received from the State of California or by virtue of the charter granted to Lessee for the School and all gifts, grants, bequests and contributions (including income and profits therefrom) specifically restricted by the donor or maker thereof to the School or the Premises, to the extent not specifically restricted by the donor or maker thereof to a particular purpose inconsistent with their use for the payments required under this Lease. Gross Revenues of the School also includes net insurance or condemnation proceeds received or payable to Lessee on account of damage or destruction of the Premises or other loss incurred by Lessee with respect to its operation of the School or the Premises.

5. **Option to Extend.** Lessor hereby grants to Lessee two (2) options to extend the Initial Term of this Lease, each for a period of five (5) years (each, an “Extension Option”). Each respective Extension Option shall be deemed exercised unless Lessee provides Lessor with written notice, on or before one year prior to the then scheduled Expiration Date, of Lessee’s election not to exercise the respective Extension Option, provided that so long as Lessor has any obligations under the Loan Agreement, Lessee will exercise each Extension Option. In the event the Term of this Lease shall be extended under this Section, then all of the terms, covenants and conditions of this Lease shall remain unmodified and in full force and effect, except that:

(i) Each Extension Term shall commence immediately upon the expiration of the Initial Term or prior Extension Term, as applicable.

(ii) The Base Rent for the Extension Term shall be determined as follows. Within thirty (30) days after the exercise or deemed exercise of the Extension Option, Lessor shall notify Lessee in writing as to Lessor’s determination, in Lessor’s good faith judgment, of the fair market rent of comparable space (including square footage, location and quality of the Premises) to the Premises (the “**Fair Market Rent**”) together with reasonable back-up material supporting Lessor’s determination. Lessee shall have twenty (20) days from receipt of Lessor’s determination of the Fair Market Rent accept or reject Lessor’s determination.

(iii) Notwithstanding any terms herein to the contrary, so long as the Loan is outstanding, in no event shall the Base Rent payable during any Extension Term be less than the debt service of the Loan, plus Issuer and Trustee Fees, or the Base Rent payable during the month preceding the commencement of the applicable Extension Term. Until the Fair Market Rent has been agreed upon, the initial Base Rent for the Extension Term shall be the Base Rent payable during the month preceding the commencement of the applicable Extension Term. In the event the Fair Market Rent is determined to be greater than such amount, then Lessee shall promptly pay Lessor any balance due.

(iv) If Lessee timely objects to Lessor’s determination of Fair Market Rent, Lessor and Lessee shall diligently attempt in good faith to agree on the Fair Market Rent within ten (10) days of Lessee’s notice of objection (“**Outside Agreement Date**”). If Lessor and Lessee fail to reach agreement by the Outside Agreement Date, each shall

make a separate determination of the Fair Market Rent within five (5) days of the Outside Agreement Date. Such determination shall then be submitted to arbitration in accordance with (v) below.

(v) Within fifteen (15) days of the Outside Agreement Date, the Parties shall agree upon an arbitrator who shall decide whether the Parties will use Lessor's or Lessee's submitted Fair Market Rent and shall promptly notify Lessor and Lessee of its decision. If the Parties are unable to agree upon the arbitrator within fifteen (15) days of the Outside Agreement Date, within five (5) days thereafter, Lessor and Lessee shall each appoint an arbitrator and give notice to the other Party of such arbitrator's name and business address. The arbitrator must be a licensed real estate broker or appraiser who has been active in the leasing or appraising of commercial properties in the Central Los Angeles area for at least five years. If each Party appoints an arbitrator, the two appointed arbitrators shall, within ten (10) days after the appointment of the second arbitrator, agree on and appoint a third similarly qualified arbitrator and promptly provide notice to Lessor and Lessee of such arbitrator's name and business address. Within thirty (30) days after the appointment of the third arbitrator, the three (3) arbitrators shall decide whether the Parties will use Lessor's or Lessee's submitted Fair Market Rent and shall promptly notify Lessor and Lessee of their decision. The decision of the majority of the three (3) arbitrators shall be binding on Lessor and Lessee.

(vi) Such Base Rent as so determined shall be paid during the Extension Term in installments at the times and in the manner specified in this Lease.

6. Use.

6.1 **Use.** Lessee shall use and occupy the Premises in order to operate a charter school and for related purposes.. 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 other tenants on the Premises or causes damage to neighboring premises or properties. Subject to the foregoing, Lessee may, without Lessor's prior written consent, operate the School with such grade levels as Lessee may from time to time determine in its reasonable judgment and, if so requested by Lessee, Lessor will cooperate with Lessee, and execute any applications or other documentation reasonably required, for the purpose of obtaining a change in any zoning or other use restriction, including any conditional use permit currently or thereafter applicable to the Premises, to permit Lessee to use or operate the Premises for additional or different grades, provided, that Lessee shall reimburse Lessor for any reasonable expenses incurred in connection therewith.

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "**Hazardous Substance**" as used in this Lease shall mean (i) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (A) pose a hazard to the Premises or to persons on or about the Premises or (B) cause the Premises to be in material violation of any Environmental Regulation

(as defined herein); (ii) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (iii) any chemical, material or substance defined as or included in the definition of “waste,” “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” or “toxic substances” or words of similar import under any Environmental Regulation including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 U.S.C. § 9601 *et seq.*; the Resource Conservation and Recovery Act (“**RCRA**”), 42 U.S.C. § 6901 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; the California Hazardous Waste Control Law (“**HWCL**”), Cal. Health & Safety Code § 25100 *et seq.*; the Hazardous Substance Account Act (“**HSAA**”), Cal. Health & Safety Code § 25300 *et seq.*; the Underground Storage of Hazardous Substances Act, Cal. Health & Safety Code § 25280 *et seq.*; the Porter-Cologne Water Quality Control Act (the “**Porter-Cologne Act**”), Cal. Water Code § 13000 *et seq.*; the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); and Title 22 of the California Code of Regulations, Division 4, Chapter 30; (iv) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or agency or may or could pose a hazard to the health and safety of the occupants of the Premises or the owners and/or occupants of property adjacent to or surrounding the Premises, or any other person coming upon the Premises or adjacent property; or (v) any other chemical, materials or substance which may or could pose a hazard to the environment. The term “**Environmental Regulations**” shall mean any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating to dangerous, toxic or hazardous pollutants, Hazardous Substances or chemical waste, materials or substances. 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 (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 or anything herein to the contrary, 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, Lender or Lessee to any liability therefor. In addition, Lessor may condition their consent to any Reportable Use upon receiving such additional assurances as Lessor may reasonably deem 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).

(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 and its sole member, Lender and the agents, employees, officers, and directors of such Parties, 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 (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). 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. The provisions of this subdivision (d) of Section 6.2 shall survive the termination of this Lease.

(e) **Lessor Indemnification.** Lessor shall indemnify, defend and hold Lessee, Lender, and their agents, employees, officers, and directors, 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 a party other than Lessee) prior to the Commencement Date (provided, however, that Lessor shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessor). No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessor 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.

(f) **Hazardous Substance Condition Remediation.** If Lessee becomes aware of a Hazardous Substance Condition occurring during the Term of this Lease, then Lessee shall notify Lessor and Lessor shall make the investigation and remediation thereof required by the Applicable Requirements, the costs relating thereto constituting an Expense for which Lessee is responsible and this Lease shall continue in full force and effect, but subject to Lessor's rights under Section 6.2(d); provided, however, that if a Hazardous Substance Condition occurs as a result of Hazardous Materials that are brought on the Premises (by a party other than Lessee) prior to the Commencement Date, then Lessor shall be solely responsible for making the investigation and remediation thereof at its sole cost and expense, and this Lease shall continue in full force and effect. "**Hazardous Substance Condition**" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous

Substance as defined in Section 6.2(a), in, on, or under the Premises which requires repair, remediation, or restoration.

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 such Applicable Requirements, without regard to whether such Applicable Requirements are now in effect or become effective after the Commencement Date. Lessee shall, within ten (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.

7. Maintenance; Repairs.

7.1 Lessee's Obligations. Subject to the provisions of Sections 7.2 (Lessor's Obligations), 9 (Damage or Destruction) and 13 (Condemnation), Lessee shall, at Lessee's sole expense, keep the interior, exterior and structural elements of the Premises in good order, condition and repair; and keep the exterior, structural and major utility components of the Premises and other portions of the Premises in good order, condition and repair, including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. 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. Subject to the provisions of Sections 9 (Damage or Destruction) and 13 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of Lessee. It is the intention of the Parties that the terms of this Lease shall govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.2 Lessor's Obligations. Subject to the provisions of Section 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 13 (Condemnation), Lessor shall keep the other portions of the Premises not covered in Section 7.1 above in good order, condition and repair. All costs and expenses incurred by Lessor in connection with the aforesaid maintenance and repair shall be deemed "Expenses" hereunder. Lessor'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, and the costs relating thereto shall be deemed an "Expense" hereunder.

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 Section 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor’s prior written consent, except as provided herein. Lessee may make non-structural Alterations or Utility Installations and may make 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, and will not affect the electrical, plumbing, HVAC, and/or life safety systems. 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. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of 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.

(c) **Liens.** 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 ten (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.

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

(a) **Ownership.** All Alterations and Utility Installations made by Lessee shall be the property of Lessee. All Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, at the option of Lessor, (i) be removed by Lessee or (ii) become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Surrender and 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. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises), even if such removal would require Lessee to perform or pay for work that exceeds statutory 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 Section 7.4(b) without the express written consent of Lessor shall constitute a holdover under the provisions of Section 23 below.

8. Insurance; Indemnity.

8.1 **Liability.** Lessee shall keep in force such liability insurance policies in such amounts as set forth in Exhibit C attached hereto. The premium for such insurance shall be deemed an “Expense” hereunder.

8.2 **Premises.** Lessee shall obtain and keep in force a policy or policies of property insurance in the name, and for the benefit, of Lessor, with loss payable to Lessor and to Lender insuring loss or damage to the Premises. The amount of such insurance shall be as set forth in Exhibit C attached hereto. The premium for such insurance shall be deemed an “Expense” hereunder.

8.3 **Rental Interruption.** Lessee shall also obtain and keep in force, for the benefit of Lessor, rental interruption insurance insuring Lessor for the amounts of Base Rent arising from an interruption of the payment of the Base Rent, Expenses and Additional Rent otherwise payable by Lessee hereunder, as set forth in Exhibit B attached hereto. The premium for such insurance shall be deemed an “Expense” hereunder.

8.4 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby releases and relieves the other, and waives 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 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.

8.5 **Indemnity.** Except for Lessor’s negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor, Lender and their agents,

partners, members, directors, and officers, 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, and/or Lender 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/or Lender, as applicable, and Lessor and/or Lender, as applicable, shall cooperate with Lessee in such defense. Lessor and/or Lender, as applicable, need not have first paid any such claim in order to be defended or indemnified. The provisions of this Section 8.5 shall survive the termination of this Lease.

8.6 Exemption of Lessor from Liability. Lessor shall not be liable for 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, 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 from other sources or places.

8.7 Loan Agreement. The foregoing notwithstanding, for so long as the Loan is outstanding, Lessee shall be deemed to meet its insurance obligations as set forth in this Section 8 if it carries, and it hereby agrees to carry, the insurance required under the terms of the Loan Agreement, as such requirements may change from time to time as provided in the Loan Agreement. For so long as the Loan is outstanding, Lessee shall cause the Lender and Lessor to be named as additional insureds on Lessee's liability and property insurance policies.

9. Damage or Destruction.

Definitions.

(a) **"Damage"** shall mean damage or destruction to the improvements on the Premises.

(b) **"Insured Loss"** shall mean Damage which was caused by an event required to be covered by the insurance described in Section 8.2, irrespective of any deductible amounts or coverage limits involved.

(c) **"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.

9.2 Damage—Insured Loss. Subject to the terms of the Loan Agreement, Lessor shall be entitled to any and all insurance proceeds that are available as a result of the Damage. If Damage that is an Insured Loss occurs, then Lessee shall be entitled to use the insurance proceeds that are actually collected as a result of the Damage to repair the Damage as soon as reasonably possible and this Lease shall continue in full force and effect. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient

to affect such repair, Lessee shall promptly contribute the shortage in proceeds as and when required to complete said repairs.

9.3 Damage—Uninsured Loss. If Damage that is not an Insured Loss occurs, Lessee shall repair such damage as soon as reasonably possible at Lessee's expense, and this Lease shall continue in full force and effect.

9.4 Waive Statutes. Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

10. Real Property Taxes.

10.1 Definition. 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 Premises, 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 address of the Premises and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises is located. 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 Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 Payment of Taxes. Lessee shall timely file for exemption against any Real Property Taxes and shall maintain such exemption during the Term. In any event, Lessee shall pay, before the same become past due, the Real Property Taxes applicable to the Premises during the Term to the extent any such Real Property Taxes are charged, levied, assessed or imposed.

10.3 Personal Property Taxes. Lessee shall timely file for exemption against any taxes on Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee and shall maintain such exemption during the Term. Lessee shall pay, prior to delinquency, all such taxes to the extent they are charged, levied, assessed or imposed after an exemption for such taxes is filed as required hereunder.

11. Assignment and Subletting.

11.1 By Lessee. Lessee shall not sublease, assign, mortgage, pledge, hypothecate or encumber this Lease or any of Lessee's interest hereunder without the prior written consent of Lessor (which shall not be unreasonably withheld). Lessee acknowledges that, pursuant to the Loan Agreement, Lessor is required to obtain Lender's approval to a sublease, assignment or other transfer of Lessee's interest in the Lease and that Lessor's disapproval shall be deemed reasonable if based on Lender's disapproval. Lessee acknowledges that the financing of the Premises through the Loan may restrict the assignees which could be approved by Lessor.

11.2 **By Lessor.** Lessee acknowledges that the Premises are subject to a deed of trust and assignment of rents in favor of the Lender and that this Lease is assigned to the Lender as security for the Loan.

12. **Default; Breach; Remedies.**

12.1 **Default; Breach.** A “Default” is defined as a failure by Lessee to comply with or perform any of the terms, covenants or conditions 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.

(b) The failure of Lessee to make any payment of Rent 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 (in the case of failure to make any payment of Rent) or such failure continues for a period of 3 business days following written notice to Lessee (in the case of any other failure), provided that a payment of Rent scheduled to be paid pursuant to an Intercept Notice shall be deemed timely paid if paid by the last business day of the month in which such payment is due.

(c) Any representation or warranty made in this Lease, or in any report, certificate, financial statement, or instrument furnished in connection with this Lease, proves to have been false or misleading when made, in any material respect.

(d) Lessee violates or fails to observe or perform any covenant contained in Section 3 of Exhibit D attached hereto.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, other than those described in subparagraphs 12.1(a) through (d) above, where such Default continues for a period of thirty (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 thirty (30) day period and thereafter diligently prosecutes such cure to completion, not to exceed ninety (90) days.

(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 90 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 sixty (60) 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 sixty (60) days; provided, however, in the event that any provision of this subparagraph (f) 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 given to Lessor was materially false.

12.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations (other than paying Rent), within fifteen (15) days after written notice (or, in the case of those duties and obligations that cannot reasonably be performed within fifteen (15) days after notice, to commence and diligently prosecute such duties and obligations to completion within 90 days), 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 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:

(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 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 Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by 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 of Lessor 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 damages under Section 12. 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 Section 12.1 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 Section 12.1. In such case, the applicable grace period required by Section 12.1 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. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect Lessor's interests, shall not constitute a termination of 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 this Lease, including 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.

12.3 Interest. Any monetary payment due Lessor hereunder not received by Lessor when due as to scheduled payments (such as Base Rent) or within thirty (30) days following the date on which it was due for non-scheduled payments, shall bear interest from the date when due as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. 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 any late charges and default rate interest under the Loan Agreement.

13. 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, and Expenses thereafter shall be limited to those applying to the remaining Premises subject to this Lease. Subject to the terms of the Loan Agreement, in the event that there is a Condemnation of less than all of the Premises, and such portion so taken is material to Lessee's use and quiet enjoyment of the Premises as a whole, then all available Condemnation awards and/or payments shall be used first, to restore the remaining portion of the Premises to a usable whole, and second, to reduce the balance of any loan made to Lessor and secured by the Premises in proportion to the portion taken or sold. Any portion of the award and/or payment that remains after the foregoing purposes have been satisfied shall be the property of Lessor. Subject to the terms of the Loan Agreement, if the entirety of the Premises is taken, then the Condemnation awards and/or payments shall be the property of Lessor.

14. Estoppel Certificates. Each Party (a "Responding Party") shall within ten (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.

15. 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. Upon any transfer of fee title to the Premises, 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 Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by Lessor shall be binding only upon Lessor as hereinabove defined.

16. 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.

17. **Days.** Unless otherwise specifically indicated to the contrary, the word “days” as used in this Lease shall mean and refer to calendar days.

18. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, 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.

19. **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.

20. **No Prior or Other Agreements.** Subject to the terms of the Loan Agreement, 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. Each Party represents and warrants that the execution of this Lease will not, to the best of the Party’s knowledge, constitute a violation under any material agreements to which such Party is a party.

21. **Notices.**

21.1 **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, and shall be deemed sufficiently given if served in a manner specified in this Section 21. The addresses for the Parties are set forth below and shall constitute the respective addresses for delivery or mailing of notices. Either Party may, by written notice to the others, specify a different address for notice. Upon Lessee’s taking possession of the Premises, the Premises shall constitute Lessee’s address for notice unless Lessee notifies Lessor otherwise. A copy of all notices to Lessor or Lessee shall be concurrently transmitted to such party or parties at such addresses as Lessor or Lessee, respectively, may from time to time hereafter designate in writing.

21.2 **Addresses.**

Lessor: MPM Sherman Winnetka LLC
c/o Magnolia Properties Management, Inc.
250 E. First Street, Suite 1500
Los Angeles, California 90012
Attention: General Counsel

Lessee: Magnolia Educational & Research Foundation
250 E. First Street, Suite 1500
Los Angeles, California 90012
Attention: General Counsel

Lender (during the time the Loan is outstanding):

CLI Capital
905 Polk St., Ste 300
Amarillo, TX 79101

21.3 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 48 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 guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

22. Waivers. 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.

23. No Right To Hold Over. 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 110% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

24. 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.

25. 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.

26. 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 of California. Any litigation between the Parties hereto concerning this Lease shall be initiated in the County of Los Angeles.

27. Lessor's Access; Showing Premises; Repairs. Lessor shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times after twenty-four hours' prior notice for the purpose of inspecting the Premises, verifying compliance

by Lessee with this Lease, showing the Premises 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 as long as there is no material adverse effect to Lessee's use of the Premises.

28. **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.

29. **Counterparts.** 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.

30. **Amendments.** Subject to the terms of the Loan Agreement, 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.

31. **Limitation of Rights to Parties.** Except as otherwise provided herein, nothing in this Lease is intended or shall be construed to give to any person other than Lessor and Lessee any legal or equitable right, remedy or claim under or in respect of this Lease or any covenant, condition or provision herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of Lessor and Lessee.

(Signatures on next page)

(Signature page of Lease Agreement)

The Parties hereto have executed this Lease as of the day and year first above written.

Lessor:

MPM SHERMAN WINNETKA LLC,
a California limited liability company

By: Magnolia Properties Management, Inc.,
a California nonprofit public benefit
corporation,
its sole member

By: _____
Name:
Title:

Lessee:

**MAGNOLIA EDUCATIONAL & RESEARCH
FOUNDATION,**
a California nonprofit public benefit corporation

By: _____
Name:
Title:

EXHIBIT A

Description of Premises

Real property in the City of Los Angeles (Reseda area), County of Los Angeles, State of California, described as follows:

THE WESTERLY 62.00 FEET OF LOT TWO AND THE WESTERLY 62.00 FEET OF LOT 5, OF TRACT 17596, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 530, PAGE 37 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APNs 2125-036-096 and 2125-036-099

EXHIBIT B

Schedule of Base Rent Payments

In addition to the Initial Base Rent Payment due on execution of this Lease, Lessee shall make monthly payments of Base Rent as follows:

Date Due	Monthly Rent
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(Remainder of page intentionally left blank)

EXHIBIT C

Insurance Coverage

Lessee shall obtain and maintain the following insurance coverages:

(a) Property insurance (including builder's all-risk insurance) against loss or damage to any structure constituting any part of the Premises by fire and lightning, with extended coverage and vandalism and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. All insurance provided pursuant to this paragraph shall be in an amount equal to the lesser of (i) 100% of the replacement cost (without depreciation) of all improvements constituting any part of the Premises or (ii) the principal amount of the Loan then outstanding, and shall be subject to a deductible not to exceed \$5,000.

(b) Rental interruption insurance to cover loss, total or partial, of rental income to Lessor for any reason whatsoever, in an amount sufficient to pay the maximum Rent under the Lease for a period of at least 12 months.

(c) Liability insurance in amounts which are customarily carried and against such risks as are customarily insured against by other corporations in connection with the ownership and operation of facilities of similar character and size to the Premises.

(d) Workers' compensation insurance necessary to comply with California state law.



Exhibit B

First Amendment to Amended and Restated Sublease Agreement

made by and between MPM Sherman Way LLC as Lessor,

and

Magnolia Educational & Research Foundation as Lessee

FIRST AMENDMENT TO AMENDED AND RESTATED LEASE AGREEMENT

This FIRST AMENDMENT TO AMENDED AND RESTATED SUBLEASE AGREEMENT (“*Amendment*”), dated for reference purposes as of July 21, 2022, is made by and between MPM SHERMAN WAY LLC, a California limited liability company (“*Lessor*”), and MAGNOLIA EDUCATIONAL & RESEARCH FOUNDATION, a California nonprofit public benefit corporation (“*Lessee*” and, together with Lessor, the “*Parties*,” or individually a “*Party*”), and amends that certain Amended and Restated Lease Agreement dated as of August 1, 2017, (“*Lease*”) by and between Lessor and Lessee. Unless the context of its use clearly requires otherwise, each capitalized term that is defined in the Lease and that is used but not defined in this Amendment has the meaning given to such term in the Lease.

A. The City of Los Angeles, a municipal corporation, acting by and through its Board of Recreation and Parks Commissioners (the “*City*”) proposes to purchase a portion of the Premises, generally described as the easterly 25 feet of the property (the “*Strip*”) from Lessor for the purchase price of \$1,266,000 pursuant to the terms and conditions of that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of June __, 2022, (the “*PSA*”) by and between the City and Lessor. Lessor desires to sell the Strip pursuant to the terms and conditions of the PSA.

B. To allow Lessor to sell the Strip free and clear of the Lease, the Parties desire to amend the Lease.

In consideration of the promises and agreements made herein, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

1. Amendment to Exhibit A to Lease. Effective as of the date of the sale of the Strip, Exhibit A of the Lease is amended to read as set forth in Exhibit A attached hereto.

2. Rent Rebate. In consideration of the foregoing, on the closing of the sale of the Strip, Lessor shall pay to Lessee \$1,266,000 as a rebate of rent otherwise payable under the Lease.

3. Lease Remains Effective. Except as set forth herein, the Lease shall remain in full force and effect.

4. Successors and Assigns. This Amendment shall be binding on the parties hereto and their respective successors and assigns, provided that no party may assign its rights or obligations under this Amendment without the prior written consent of the other parties.

5. Further Assurances. Each party shall execute and deliver such other documents or instruments as may be necessary or desirable to carry out the purposes of this Amendment.

6. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which together shall constitute but one and the same instrument. This Amendment may be executed by the delivery of separately signed counterpart signature pages. A party’s delivery by electronic transmission of the party’s manually or electronically signed counterpart signature page to this Amendment shall be

deemed as effective as the party's physical delivery of a manually signed counterpart signature page.

7. Effectiveness. This Amendment shall be effective only when it has been executed by all parties hereto.

8. Governing Law. This Amendment shall be construed in accordance with and governed by the constitution and the laws of the State of California (the "***State***") applicable to contracts made and to be performed in the State.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment to Amended and Restated Lease Agreement as of the date first written above.

Lessor:

MPM SHERMAN WAY LLC,
a California limited liability company

By: Magnolia Properties Management, Inc.,
a California nonprofit public benefit
corporation,
its sole member

By: _____
Name:
Title:

Lessee:

**MAGNOLIA EDUCATIONAL & RESEARCH
FOUNDATION,**
a California nonprofit public benefit corporation

By: _____
Name:
Title:

EXHIBIT A

Description of Premises

Real property in the City of Los Angeles (Reseda area), County of Los Angeles, State of California, described as follows:

PARCEL 1

LOT 1 AND ALL OF LOT 2, EXCEPT THE WESTERLY 62 FEET THEREOF AND ALL OF LOT 5, EXCEPT THE WESTERLY 62 FEET THEREOF, TRACT NO. 17598, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 530 PAGES 37 AND 38 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 2125-036-095 and 2125-036-100

PARCEL 2

LOT(S) 1 AND 10 OF TRACT NO. 21799, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 617 PAGES 42-44 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY,

EXCEPTING THEREFROM THE EASTERLY 25.00 FEET OF SAID LOT 10 OF TRACT NO. 21799 AS GRANTED TO THE CITY OF LOS ANGELES BY GRANT DEED RECORDED JULY 21, 2022 AS RECORDING NO. 20220745639, OF OFFICIAL RECORDS.

APN: 2125-036-021, 2125-036-105, 2125-036-106