

## GROUND LEASE WITH OPTION TO PURCHASE

This lease is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between Virginia Lomanto, Trustee, or her successors of the Lomanto Living Trust dated July 10, 1989 as amended and restated (hereinafter referred to as the "Lessor") and the City of Morgan Hill, a governmental agency (hereinafter collectively referred to as "Lessee").

### ARTICLE I. PREMISES

1.01. Leased Land: Lessor leases to Lessee, and Lessee leases from Lessor approximately 6.6 acres, as approximately identified on Exhibit "A", a copy of which is attached hereto and made a part hereof (hereinafter referred to as the "Leased Land"), regarding that certain piece of real property situated in the unincorporated area in Santa Clara County, identified by APN #817-13-037 with the legal description at Exhibit "B" attached hereto and incorporated herein (hereinafter referred to as the "Property").

1.02 Owner's Residence: Lessee shall have no right to use or access the remaining portion of Lessor's property consisting of approximately 3.4 acres (approximately 300 feet by 500 feet) and Lessor's personal residence and surrounding existing buildings (including a separate residential structure which Lessor rents out to a third party) as identified on Exhibit "A" and said area shall not be included in this Ground Lease ("Owner's Residence"), except for Lessee's option to purchase which is set forth in Article 17 below..

### ARTICLE II. TERM

2.01. Fixed Commencement and Termination Dates: The Leased Land is leased for the term of five (5) years, commencing on the date of execution, and ending on December 31, 2020, subject, however, to earlier termination as provided for herein.

2.02. Options to Extend: If Lessee is not in default under any of the material terms and conditions contained herein; Lessee shall have the option to extend this Lease for two additional five (5) year periods, on based upon the terms described below. Lessee shall exercise each option hereunder by sending written notice to Lessor no less than six months prior to the termination of the Lease period setting forth its election to exercise its option to extend this Lease for an additional option period.

### ARTICLE III. RENT

#### 3.01. Fixed Sum - Annual Installments:

(a) Lessee agrees to pay Lessor as rental for the use and occupancy of the Leased Land under this lease the sum of One Hundred Thousand Dollars (\$100,000) per calendar year, with the first payment due within thirty (30) days of the date that the City is provided with a "no further action" letter from the County of Santa

Clara, prepaying the rent for the remaining period of time through the end of 2016 and continuing each year thereafter through the end of the period set forth in Section 2.01 above, with each subsequent yearly rent due on or before January 5<sup>th</sup> each year. Notwithstanding the above, for the first payment only, if the Lessee has paid any of the bills which Lessor has incurred to remediate the Property, then those amounts shall be deducted from or credited against the first payment amount due hereunder. These payments shall not reduce the 50% credit to the option payment as described below.

(b) If at the end of the period set forth in Section 2.01 above Lessee elects to extend the term of this Lease for an additional five (5) year period of time as provided under Section 2.02 above, then all the rest of the terms and conditions of this Lease shall continue to apply.

3.02. Late Payments: If any payment due under this lease is not made within thirty (30) days of its due date, then Lessee shall pay to Lessor a late fee equal to five percent (5%) of the late payment amount.

3.03. No Offsets Against Rent: Lessee agrees that no deductions or offsets shall be made against the rentals accruing and becoming due in any year during the lease term, aside from those listed for clean-up of the property.

#### ARTICLE IV. TAXES

4.01. Lessee to Pay Taxes Arising Out of Any Improvements to Leased Land by Lessee: In addition to the rent, Lessee shall pay to Lessor all taxes, general and special assessments and other charges of every description which during the term of the lease which may be levied upon or assessed against the Leased Land resulting from any improvements to the Leased Land done by Lessee and all interest therein and all improvements and other property thereon only belonging to Lessee and to which Lessee may become liable. All such taxes shall be pro-rated between the parties for the beginning and ending of this lease. Lessor shall send copies of the original real property tax bills promptly upon receipt to Lessee and identify the additional taxes for which Lessee is liable hereunder and for payment by Lessee.

4.02. Payment of Tax: All payments to be made by Lessee pursuant to this Article, shall not be made later than ten (10) days prior to the due date of the payment of any installment as required by law. Should there be any penalties, interest or costs added because of failure to pay taxes on time, Lessee shall pay such.

4.03. Installment Payment: If, by law, any such tax is payable or may at the option of the taxpayer be paid in installments, Lessee may pay the tax, together with any accrued interest on the unpaid balance of the tax, in installments as they become due.

4.04. Pro-ration for Time: All such taxes and assessments for the first, and, if

the Lessee is not in default under this lease, the last year of this lease shall be prorated between Lessor and: Lessee on the basis of a tax fiscal year commencing July 1 and ending June 30.

4.05. Contest - Surety Bond: Lessee shall have the right to contest the amount or validity of any such imposition by appropriate legal proceedings, but this right shall not be deemed or construed in any way as eliminating or modifying or extending Lessee's covenant to pay any such imposition at the time and in the manner as in this Article provided. Lessor shall, upon request, join in any such proceedings if Lessee determines that it shall be necessary or convenient for Lessor to do so in order for Lessee to prosecute properly such proceedings, but Lessor shall not be subject to any liability for the payment of any costs or expenses in connection with any such proceeding brought by Lessee; provided that Lessor does not take or fail to take the only action which causes Lessee to have to be responsible for such liability. Lessee hereby covenants to indemnify and save Lessor harmless from any such costs and expenses; provided that Lessor does not take or fails to take the only action which causes Lessee to provide such indemnification. Lessee, upon commencing such contest, shall deliver to Lessor a good and sufficient surety bond guaranteeing payment of any taxes, penalties and interest thereof, found due as a result of such contest. Lessor shall reasonably cooperate with Lessee regarding any action Lessee may take with no cost or expense to Lessor.

4.06. Separate Assessment of Lessee's Personal Property: During the Lease term, Lessee shall cause all taxes, assessment, and other charges levied upon or imposed upon any personal property situated in, on or about the Leased Land to be levied or assessed separately from the Leased Land and not as a lien thereon.

4.07. Indemnification of Lessor: Lessee shall protect and hold harmless Lessor and the Leased Land and all improvements in, on or about the same from all liability for any and all such taxes, assessments, and charges, together with any interest, penalties, or other sums thereby imposed, and from any sale or other proceeding to enforce payment thereof; provided that Lessor does not take or fails to take the only action which causes Lessee to provide such indemnification.

## ARTICLE V. USE

5.01. Description of Use. Preparation of Site: During the term of the Lease, Lessee shall use and occupy the Leased Land for the construction, maintenance and operation of a temporary parking lot or other public use on such property; provided that Lessee may in its sole discretion keep and maintain the Leased Land vacant until such time as Lessee in its sole discretion decides to begin construction. As soon as the lease becomes effective, Lessee shall be responsible for the Leased Land, and shall do

all things necessary to prepare the Leased Land for such construction when Lessee, in its sole discretion decides to improve the Leased Land.

5.02. Limits on Use: During the lease term the Leased Land and all improvements constructed and maintained thereon shall be used by Lessee for the use specified and for no other use or purpose; provided that Lessee may in its sole discretion keep and maintain the Leased Land as vacant. Lessee shall not use or permit any other person to use the premises, or any part thereof for any purposes tending to injure the reputation thereof or for any improper or offensive use or to constitute a nuisance; and Lessee shall at all times during the term conform to, and cause all persons using or occupying any part of said premises to comply with, all public laws, ordinances and regulations from time to time applicable thereto and to all operations therein.

5.03. Indemnity: Lessee covenants and agrees to indemnify, defend and save Lessor harmless from (a) any penalties, damages or charges imposed for any violation of any and all laws, ordinances and regulations applicable to, or arising out of the use and occupancy of the Leased Land by Lessee, or (b) any liabilities, damages, claims or obligations arising out of or in connection the use of the Lease Land by any of its invitees, employees, guests, or contractors, whether occasioned by neglect, omission, or willful act of Lessee or any person upon the Leased Land or any neighboring property; provided that Lessor does not take or fails to take the only action which causes Lessee to provide such indemnification.

5.04 Contest of Validity of Law: Lessee shall have the right to contest by appropriate legal proceedings, without cost or expense to Lessor, the validity of any law, ordinance or regulation of the nature herein referred to, if the terms of such law, ordinance or regulation compliance therewith may be legally held in abeyance without subjecting Lessor to any liability of whatever nature for the failure so to comply therewith, in which event compliance therewith may be postponed until the final determination of any proceeding. Lessee, upon commencing such a contest, shall furnish Lessor a document guaranteeing that Lessor and Lessor's interest in the Leased Land shall be saved harmless from any penalty, damage, charge, or claim resulting from such contest.

#### ARTICLE V. CONSTRUCTION BY LESSEE

##### 6.01. Improvements to be Constructed by Lessee:

(a) Allowable Use: Lessee may either keep the Leased Land vacant, or, at Lessee's sole cost, construct such improvements thereon that are consistent with a parking lot or other public use and allowable for said use on such property. Such improvements are referred to herein as "Building Project" on the Leased Land.

(b) Lessee to Install and Pay for Utilities: Lessee shall determine in its sole discretion what and when any utilities will be installed, and shall, at its sole cost

and expense, install those utilities it decides are necessary in, on and about the Leased Property, and during the lease term, Lessee agrees to pay all charges and expenses in connection therewith and to protect Lessor and the Leased Land there from.

(c) Lessee shall Install and Pay for Off-Site Improvements: Lessee shall in its sole discretion to determine what and when any off-site improvements will be constructed on/or off the Leased Land, and at its sole cost and expense, install such offsite improvements.

(d) Lessee shall Install and Pay for Fence between Leased Land and the Owner's Residence: Lessee shall, at Lessee's sole cost, construct a fence to be located between the Leased Land and the Owner's Residence that is adjacent to the Leased Land, as identified in Exhibit "A" attached hereto and made a part hereof. Lessee shall, at its sole cost and expense promptly and continually repair and maintain its fence during the entire term of this lease. The fence shall be constructed in from wood or metal materials, shall be at least 6 feet in height, and shall designed to provide a visual barrier between Leased Property and the Owner's Residence

6.02. Ownership of Improvements: All of Lessee's improvements, and all subsequent additions thereto and alterations therein and replacements thereof, shall remain the property of Lessee. Upon the expiration of the lease term or any earlier termination of this lease, all of the improvements shall be removed by Lessee without cost or expense to Lessor, except as Lessor may request in writing.

#### ARTICLE VII. ENCUMBRANCE OF LEASED LAND

7.01. Estoppel Certificate: Both parties shall from time to time provide the other party or their lender an estoppel certificate in such form as reasonably requested within ten (10) days of the party sending written request to the other party.

#### ARTICLE VIII. REPAIRS AND RESTORATION

8.01. No Responsibility of Lessor:

(a) Lessor shall not be required or obligated to make any changes, alterations, additions, improvements or repairs in, on or about the Leased Land (other than the fence), or any part thereof, during the term of this Lease; unless Lessor's action is the only reason that causes the need for such repairs.

(b) Lessee's Duty to Maintain Premises: At all times during the term Lessee shall, at its sole cost and expense, keep and maintain the Leased Land and all improvements, including the fence thereon and all facilities appurtenant thereto in good order and repair and safe condition, and the whole of the Lease Land, improvements, and landscaping in a clean, sanitary, orderly and attractive condition. Lessee shall make any and all additions to or alterations or repairs in and about the Lease Land and the improvements which may be required by and shall otherwise observe and comply with

all public laws, ordinances and regulations from time to time applicable to the Leased Land; and Lessee shall indemnify, defend and save harmless Lessor against all actions, claims, and damages by reason of Lessee's failure to comply with and perform the provisions of this section; unless Lessor does not take or fail to take the only action which causes Lessee to provide such indemnification.

8.02. Lessee's Duty to Restore Damage or Destruction:

(a) If during the term hereof any building or improvement, including the fence erected by Lessee on the Leased Land, or any part thereof, shall be damaged or destroyed by fire or other casualty, Lessee shall, at its sole cost and expense, repair or restore the same or similar facility thereof or to such modified plans as shall be previously approved in writing by Lessor, which will not be unreasonably withheld, or Lessee may leave the Leased Land vacant in a clean and safe condition.

(b) Commencement and Completion of Restoration: Such work of repair, restoration or clean up shall be commenced within 120 days after the damage or loss occurs and such repair, restoration or clean up shall be continued until completed with due diligence, and such work shall be otherwise done in accordance with the requirements of Article VI.

(c) Failure to Restore: Should Lessee fail or refuse to make the repairs, restoration or clean up as herein above provided, or if the authorized lien holder of Lessee, if any, shall, after 90 days written notice by Lessor fail or refuse to undertake and complete such work on behalf of Lessee, then in either of such events, such failure or refusal shall constitute a default under the covenants and conditions hereof, and Lessor may, at its option, terminate this lease.

ARTICLE IX. MECHANICS' LIENS

9.01. Prohibition Against Mechanics' Liens; Indemnification of Lessor: Lessee shall not suffer or permit to be enforced against the Leased Land, or any part thereof, any mechanics', material men's contractor's or subcontractor's liens arising from or any claim for damage growing out of the work of any construction, repair, restoration, replacement, or improvement, or any other claim or demand howsoever the same may arise, but Lessee shall pay or cause to be paid or post a bond in an amount not less than 110% of the amount in dispute for all of such liens, claims, or demands before any action is brought to enforce the same against the land; and Lessee agrees to indemnify, defend and hold Lessor and said Leased Land free and harmless from all liability for any and all such liens, claims and demands, together with reasonable attorney's fees and all costs and expenses in connection therewith; unless Lessor's action is the only reason that causes Lessee to provide such indemnification ..

9.02. Contest by Lessee-Surety Bond: If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee, at its expense, shall post a bond in an amount not less than 110% of the amount in dispute and thereafter defend

itself and Lessor against the same and shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against Lessor or the Leased Land, upon the condition that if Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to 110% of such contested lien, claim or demand indemnifying Lessor against liability for the same, and holding the Leased Land free from the effect of such lien or claim or if Lessor shall request, Lessee shall procure and record a bond freeing the Leased Land from the effect of such lien or claim or action thereon.

9.03. Lessor's Rights to Remove Lien: If Lessee fails to discharge such lien or furnish a bond against the foreclosure thereof as provided by the statutes of the State of California, Lessor may, but is not obligated to, discharge the same or take such other action as Lessor deems necessary to prevent a judgment of foreclosure upon said lien from being executed against the property, and all costs and expense, including reasonable attorney's fees incurred by Lessor, shall be repaid by Lessee upon demand, and if unpaid, may be treated as additional rent.

9.04. Notices of Non-responsibility: Nothing in this lease shall be deemed or construed in any way as instituting the consent or request of lessor, expressed, or implied, by inference, or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Leased Land, any buildings or improvements thereof, or any part thereof. Lessor shall have the right at all reasonable times to post and keep posted on the Leased Land such notices of non-responsibility as Lessor may deem necessary for the protection of Lessor and the fee of the Leased Land from mechanics' and material men's liens.

#### ARTICLE X. INSURANCE AND INDEMNIFICATION

10.01. Lessee's Fire Insurance: During the period of construction of any building or other improvement on the Leased Land and at all times thereafter during the lease term, Lessee shall keep the improvements insured against loss or damage by fire, with extended coverage endorsement or its equivalent in such responsible insurance companies as Lessee shall select and Lessor shall approve, and in amounts not less than 90% of the insurable value of the building and other improvements insured, with loss payable to Lessor and Lessee and to any authorized lien holder of Lessee in accordance with their respective interests therein as provided in this lease and in any written consent to such encumbrance by Lessor; provided, however, that any such policy may provide a loss of less than \$1,000.00 may be paid directly to Lessee and any authorized lien holder without the prior consent of Lessor. Lessee shall pay all premiums and other charges in connection with such insurance and from time to time shall deposit with Lessor the certificate of the insurance carrier as to each policy of such insurance and satisfactory evidence of the payment of premiums and other charges. Such insurance policies shall contain an express waiver of any right of subrogation against Lessor.

10.02. Lessee's Liability Insurance: Lessee shall, at its cost and expense, at all times during the term of this lease, maintain in force, for the joint benefit of Lessor and Lessee, a broad form comprehensive coverage policy of public liability insurance by the terms of which Lessor and Lessee are named as insured and are indemnified against liability for damage or injury to the property or person (including death) of any Lessee or invitee of Lessee or any other person entering upon or using the Leased Land, or any structure thereon, or any part thereof, and arising from the use and occupancy thereof. Such insurance policy or policies shall be maintained on the minimum basis of \$250,000.00 for damage to property and \$5,000,000.00 for bodily injury or death in any one accident. Such insurance policy or policies shall be stated to be primary and noncontributing with any insurance that may be carried by Lessor, and Lessee shall deliver to Lessor the certificate of each insurance carrier as to each such insurance policy. Such a minimum basis of the insurance policy from both damage and property injury shall be updated every 5 years.

10.03. Indemnification of Lessor: Lessor shall not be liable for any loss, damage or injury of any kind or character to any person or property arising from the use of the Leased Land, or any part thereof, or caused by any defect in or the failure to properly repair or maintain any building, structure or other improvement thereon or in any equipment or other facility therein, or caused by or arising from any act or omission of Lessee, or of any of its agents, employees, licensees or invitees, or by or from any accident on the land or any fire or other casualty thereon, or occasioned by the failure of Lessee to maintain the premises in safe condition, or arising from any other cause whatsoever; and Lessee, as a material part of the consideration of this lease, hereby waives on its behalf all claims and demands against Lessor for any such loss, damage or injury of Lessee, and hereby agrees to indemnify, defend and hold Lessor entirely free and harmless from all liability for any such loss, damage or injury of other persons, and from all costs and expenses (including attorneys' fees) arising therefrom; provided that Lessor does not take or fail to take the action which primarily causes Lessee to provide such indemnification.

#### ARTICLE XI. ASSIGNMENTS AND SUBLETTING

11.01. Assignment, Transfer or Subletting: Lessee may assign or otherwise transfer this Lease, or any right or interest hereunder, in or to any of the improvements that hereafter may be constructed or installed on the Leased Land, and Lessee may sublet the land in whole or in part without the prior written consent and approval of Lessor; provided that Lessee shall only assign, transfer or sublet its interest hereunder to financially responsible persons and/or entities and in any event, Lessee and the City of Morgan Hill's responsibility hereunder shall not under any circumstances be limited, released, discharged or relieved of any responsibility hereunder and they shall remain fully and completely responsible for all the terms and conditions hereunder notwithstanding such assignment, transfer or subletting and provided, further that any such person or entity that is being assigned, transferred or subletted such interest shall acknowledge and agree in writing to be bound and subject to all of the terms and conditions contained herein and shall not be assigned, transferred or subletted any

right, title or interest greater than what Lessee has hereunder. Lessor may hold Lessee and the City of Morgan Hill or any assignee, transferee or successor-in-interest, sublessee, it determines in its sole discretion, primarily liable for any breach or default hereunder and proceed solely against such parties notwithstanding the existence of any other assignees, transferees, successor-in-interest, or sublessees. Lessee shall further provide written notice to Lessor of any such assignment, transfer or subletting of the interest herein.

11.02. Written Assumption Agreement: In the event that Lessor gives consent and approval to any transfer or assignment, then before such transfer or assignment becomes effective for any purpose, the transferees and assignees must, in writing, assume all the obligations of this lease and agree to be bound by all terms of the lease without in any way limiting, releasing or discharging the original Lessee from any liability under any provision of this lease on account of such transfer or assignment.

## ARTICLE XII. DEFAULT AND REMEDIES

12.01. Termination by Lessor on Specified Defaults: Should Lessee (a) fail to pay or cause to be paid any tax, assessment, insurance premium, lien, claim, charge, or demand herein provided to be paid or caused to be paid by Lessee at the times and in the manner herein provided; or (b) default in the payment of any installment or rent or other sum when due as herein provided; or (c) fail to commence or to complete the construction, repair, restoration, or replacement of the building and other improvements in and about the Leased Land within the times and in the manner herein provided; or (d) default in the performance of any of its obligations under this lease herein provided, and if any such default or breach shall continue uncured (or if not possible to be cured within said period, then Lessee shall have commenced and shall continue such action to cure until completed with due diligence) for a period of thirty (30) days from and after service upon Lessee of written notice by Lessor, then and in such event, Lessor may, at her option, terminate this lease by giving Lessee written notice and thereupon the rights of Lessee in and to the Leased Land and all improvements thereon shall cease and end, and Lessor may, without further notice or demand or legal process, re-enter and take possession of said land and all improvements thereon and oust Lessee and all persons claiming under Lessee therefrom, and Lessee and all persons shall quit and surrender possession of said land and all improvements thereon to Lessor, or at the option of Lessor, Lessee may be required to remove any and all improvements upon the Leased Land.

12.02. Termination on Default: Should Lessee default in the performance of any covenant, condition or agreement in this lease, and such default is not corrected within thirty (30) days (or if not possible to be corrected within said period, then Lessee shall have commenced and shall continue such action to cure until completed with due diligence) after receipt of written notice to Lessee by Lessor, Lessor may declare this lease and all rights and interest created by it, to be terminated.

12.03. Other Remedies: All rights, options and remedies of Lessor contained in this lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this lease. No waiver by Lessor of a breach of any of the covenants, conditions or restrictions of this lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction herein contained.

12.04. Continuation of Lease During Breach: At Lessor's option, if Lessee has breached this lease and abandoned the property, no notice of termination will be given and this lease will continue in effect for so long as Lessor does not terminate Lessee's right to possession. Lessor may, in that case, enforce all its rights and remedies under this lease, including the right to recover rent as it becomes due.

12.05. Termination by Lessee on Default by Lessor: Should Lessor default in the performance of any of its obligations under this lease herein provided, and if any such default or breach shall continue uncured (or if not possible to be cured within said period, then Lessor shall have commenced and shall continue such action to cure until completed with due diligence) for a period of thirty (30) days from and after service upon Lessor of written notice by Lessee, then and in such event, Lessee may, at its option, terminate this lease by giving Lessor written notice and thereupon the rights of Lessee in and to the Leased Land and all improvements thereon shall cease and end, and Lessee may, without further notice or demand or legal process, abandon said land and all improvements thereon and shall no longer have any further obligation or liability hereunder.

### ARTICLE XIII. DUE DILIGENCE AND HAZARDOUS WASTE.

13.01. Due Diligence Period: Prior to the execution of the lease, Lessee may perform such investigations of the Leased Land as Lessee deems appropriate or necessary; provided, that any such actions or investigations conducted by Lessee shall be at Lessee's sole cost and expense and Lessee shall further indemnify, defend and hold Lessor harmless from any injury or damage that arises out of or in connection with Lessee's conducting its investigation of the Leased Land by its employees, agents or contractors; unless Lessor's actions are the primary cause for Lessee providing such indemnification. Lessee shall immediately provide Lessor with a copy without charge of any reports or similar documents prepared as part of Lessee's investigation. Lessee shall provide Lessor with at least 48 hour prior notification of any action to be taken regarding the Leased Land that requires Lessee or their agents, employees or contractors to enter onto the Leased Land.

13.02. Option to Terminate Lease During Due Diligence Period: Lessee may at any time during the due diligence period terminate this lease by sending written notice to Lessor

13.03. Payment of Annual Rent: "AS IS": If Lessee does not elect to terminate this lease before the end of the due diligence period, then Lessee shall pay Lessor the first annual rental payment as provided under paragraph 3.01 above. Payment of said amount shall indicate that Lessee is taking possession of the Leased Land in its "AS IS" condition without any representations or warranties from Lessor.

13.04. Compliance With Environmental Laws: During the term of this lease, Lessee, its employees, agents, contractors and invitees shall comply with all applicable laws and governmental regulations, including without limitation, all applicable federal, state, and local laws pertaining to air and water quality, hazardous waste, waste disposal, and other environmental matters, including, but not limited to, the Clean Water, Clear Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery and Comprehensive Environmental Response Compensation and Liability Acts, and the California Environment Quality Act, and the rules, regulations, and ordinances of the city within which the subject property is located, the California Department of Health Services, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection Agency and all applicable federal, state and local agencies and bureaus. Lessee shall indemnify, defend and hold Lessor, its successors and assigns harmless from any and all claims, liabilities, expenses, costs (including, but not limited to attorneys' fees) and obligations that arise out of or in connection with any breach or claimed violation by Lessee of its duties hereunder unless Lessor does not take or fails to take the only action which causes Lessee to provide such indemnification.

13.05. Hazardous Waste: Lessee, its employees, agents, contractors and invitees shall not during the term of this lease permit, cause, use, generate, release, discharge, store, or dispose of any hazardous waste, toxic substances, or related materials ("Hazardous Materials") on, under, in, or about the Leased Land, or transport any Hazardous Materials to or from the Leased Land. The term "Hazardous Material" shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyl, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act,

(33 U.S.C. §1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903) or (xi) defined as a "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, as amended by Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601 ). If any Hazardous Materials are found or determined to be located on the Leased Property, then Lessor may terminate this lease without any further obligation, duty or liability to Lessee.

#### ARTICLE XIV. LESSOR'S GENERAL PROTECTIVE PROVISIONS

14.01. Lessor's Right of Entry and Inspection: Upon reasonable notice, Lessee shall permit Lessor or Lessor's agents, representatives or employees to enter upon the Leased Land for the purpose of inspection, determining whether agreements in this lease are being complied with, for the purpose of showing the land to prospective mortgagees or beneficiaries under Trust deeds.

14.02. Lessor's Right to Cure Default: In the event Lessee shall fail to pay and discharge or cause to be paid and discharged, when due and payable, any tax, assessment, or other charge upon or in connection with the Leased Land, or any lien or claim for labor or materials employed or used in or any claim for damages arising out of the construction, repair, restoration, replacement, maintenance and use of the land and improvements, or any judgment on any contested lien or claim or any insurance premium, or expense in connection with the land and improvements, or any other claim, charge, or demand which Lessee has agreed to pay or cause to be paid under the covenants and conditions of this lease, and if Lessee, after ten (10) days' written notice from Lessor so to do, shall fail to pay and discharge the same, then Lessor may, at its option, pay any such tax, assessment, insurance expense, lien, claim, charge or demand, or settle or discharge any action therefor, or judgment thereon and all costs, expenses and other sums incurred or paid by Lessee to Lessor upon demand, together with interest thereon at the rate of Ten Percent (10%) per annum from the date incurred or paid, and any default in such repayment shall constitute a breach of the covenants and conditions of this lease.

14.03. Accord and Satisfaction: No payment by Lessee or receipt by Lessor of a lesser amount than the rental shall be deemed to be other than on account of the rental, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of the rental or pursue any other remedy provided for in this Lease. Lessor acknowledges that a reduction will be made in the first lease payment in order to repay City for sums paid for clean-up of the Property.

#### ARTICLE XV. GENERAL PROVISIONS

15.01. Conditions and Covenants: All of the provisions of this lease shall be deemed as running with the land, and construed to be "conditions" as well as

"covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

15.02. No Waiver of Breach: No failure by either Lessor or Lessee to insist upon the strict performance by the other of any covenant, agreement, term, or condition of this lease or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of any such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this lease, but each and every covenant, condition, agreement, and term of this lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

15.03. Time of Essence: Time is of the essence of this Lease, and of each Provision hereunder.

15.04. Computation of Time: The time in which any act provided by this lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or holiday, and then it is also excluded. The term "holiday" shall mean holidays specified in §6700 and §6701 of the Government Code.

15.05. Unavoidable Delay - Force Majeure: If either party shall be delayed or prevented from the performance of any act required by this lease (other than the payment of rent, or taxes) by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws, or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this section shall excuse Lessee from the prompt payment of any rental or other charge required of Lessee, except as may be expressly provided elsewhere in this lease.

15.06. Successors in Interest: Each and all of the covenants, conditions and restrictions in this lease shall inure to the benefit of and shall be binding upon the successors in interest of Lessor, and subject to the restrictions of Article XII, the authorized encumbrances, assignees, transferees, subtenants, licensees, and other successors in interest of Lessee.

15.07. Entire Agreement: This Lease and such other agreements executed concurrently with this lease contain the entire agreement of the parties with respect to the matters covered by this lease, and no other agreement, statement or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this lease shall be binding or valid.

15.08. Partial Liability: If any term, covenant, condition, or provision of this lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

15.09. Relationship of Parties: Nothing contained in this lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or any association between Lessor and Lessee, and neither the method of computation of rent nor any other provisions contained in this lease nor any acts of the parties shall be deemed to create any relationship between Lessor and Lessee, other than the relationship of Lessor and Lessee.

15.10. Interpretation and Definitions:

(a) Language: The language in all parts of this lease shall in all cases be simply construed according to its fair meaning and not strictly for or against Lessor or Lessee. Unless otherwise provided in this lease, or unless the context otherwise requires, the following definitions and rules of construction shall apply to this lease.

(b) Number and Gender: In this lease the neuter gender includes 'the feminine and masculine, and the singular number includes the plural and the word "person" includes corporation, partnership, firm or association wherever the context so requires.

(c) Mandatory and Permissive: "Shall", "will" and "agrees" are mandatory; "may" is permissive.

(d) Captions: Captions of the Articles, Sections and Paragraphs of this lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this lease.

(e) Term Includes Extensions: All references to the term of this lease or the lease term shall include any extensions of such term.

(f) Leased Land and Property: Leased Land and the Property, as described in "Exhibits "A" and "B", shall include the improvements to the Leased Land and Property.

(g) Parties: Parties shall include the Lessor and Lessee named in this lease.

(h) Sublessee: As used herein, the word "sublessee" shall mean and include, in addition to a sublessee and subtenant, a licensee, concessionaire, or other occupant or user of any portion of the Leased Premises or buildings or improvements thereon.

15.11. Attorney's Fees: in the event either Lessor or Lessee shall bring any action or proceeding for damages for an alleged breach of any provision of this lease, to

recover rents, or to enforce, protect or establish any right or remedy of either party, the prevailing party shall be entitled to recover as part of such action or proceedings reasonable attorney's fees and court costs.

15.12. Interest: Any sum accruing to Lessor under the provisions of this lease which shall not be paid when due shall bear interest at the rate of 10% per annum from the date written notice specifying such nonpayment is served on the defaulting party, until paid. Rent shall be paid as listed in paragraph 3.02.

15.13. Delivery of Rent and Notices:

(a) Method and Time: All rents or other sums, notices, demands, or requests from one party to another may be personally delivered or sent by mail, certified or registered, postage prepaid, to the addresses stated in this section, and shall be deemed to have been given at the time of personal delivery or at the time of mailing.

(b) Payment of Rent: All rents and other sums payable by Lessee to Lessor shall be in lawful money or by check payable to Lessor or her successors, delivered in person or mailed to Lessor as she shall direct.

(c) Notices to Lessor: All notices, demands, requests from Lessee to Lessor shall be given Lessor at:

Virginia Lomanto,  
1250 Barrett Avenue  
Morgan Hill, CA 95037

With a copy to  
Lydia Pine, Trustee of the  
Lomanto Living Trust dated July 10, 1989  
as amended and restated  
7794 Oak Springs Circle  
Gilroy, CA 95020

(d) Notices to Lessee: All notices, demands, requests from Lessor to Lessee shall be given to Lessee at:

Community Services Department  
City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, CA 95037.

(e) Change of Address: Each party shall have the right from time to time to designate a different address by notice given in conformity with this section.

(f) Multiple Parties: If more than one Lessor or Lessees named in this lease, service of any notice on any of the Lessees or Lessors shall be deemed service on all of the Lessees or Lessors, respectively.

15.14. Holding Over: This lease shall terminate and become null and void without further notice upon the expiration of the term specified and any holding over by Lessee after the expiration of said term shall not constitute a renewal hereof or give Lessee any rights hereunder in or to the Leased Land; provided, however, that the rent that Lessee shall be charged during Lessee's occupancy or possession of the Leased Land after termination shall be 200% of the then current rental amount.

15.15. Broker's Commissions: Each of the parties represents and warrants that there are no claims for broker's commissions or finder's fees in connection with the execution of this lease, and each of the parties agrees to indemnify the other against all liabilities arising from any such claim.

15.16. Amendments: This lease shall not be modified, changed or amended, except in writing signed by both the parties.

15.17. Authority: The person executing this Agreement represents and warrants to the other party that it has the authority and power to bind its party to all the terms and conditions contained herein.

15.18. Limitation of Liability: Lessor's liability to Lessee on any claim of any kind (excluding bodily injury or death) based on contract, warranty, tort (including negligence), strict liability or otherwise, for any loss or damage arising out of, connected with, or resulting from this lease or from the performance or breach thereof, or arising out of the condition of the Lease Land, will in no case exceed the any rental payments and option fee paid by Lessee to Lessor. Excluding claims for bodily injury or death, in no event, whether on contract, warranty, tort (including negligence), strict liability or otherwise, will Lessor be liable for special, incidental, exemplary or consequential damages including but not limited to loss of profits or revenue, loss of use of the Lease Land or the costs of any and all improvements built by Lessee on the Leased Land. Lessor shall add Lessee as an additional insured to Lessor's homeowner's policy, if Lessor's insurance company is agreeable to do so and if Lessee reimburses Lessor for the additional cost associated with adding Lessee as an additional insured.

#### ARTICLE XVI. EXECUTION, RECORDING, AND INCORPORATION BY REFERENCE

16.01. Recording: Neither party shall record this lease without the written consent of the other party; however, upon the request of either party, the other party shall join in the execution of a memorandum or "short form" of this lease' for the purpose of recordation. The memorandum or short form shall describe the parties, the leased premises, and the term of this lease, and shall incorporate this lease by reference.

## ARTICLE XVII. OPTION TO PURCHASE OPTION PROPERTY

17.01. Option to Purchase, Option Fee: Lessor hereby grants to Lessee and Lessee hereby accepts the right to purchase that certain piece of real property, consisting of approximately 10 acres, situated in the unincorporated area in Santa Clara County, identified by APN #817-13-037, as specifically described in Exhibit "B" pursuant to the terms and conditions set forth in this Article (hereinafter referred to as the "Option"). Lessee has paid an option fee equal to 50% of the initial annual rent payment described above. Lessee shall only have the right to exercise its Option hereunder if Lessee is not in default under any term or provision under this lease during the period set forth in paragraph 17.02 below through the closing date of the purchase.

17.02. Period During Which to Exercise Option to Purchase: Closing: Lessee may exercise its Option at any time during the later to occur of (a) one hundred twenty (120) days after the death of Virginia Lomanto, or (b) sixty (60) days after the Property is vacant and no persons reside on the Property. If Lessee does not exercise its Option within this time period, Lessee's Option shall lapse and the terms and provisions under Section 17.06 shall apply.

17.03. Notice of Exercise: If Lessee elects to exercise its Option, then Lessee shall either personally deliver or mail by first class or certified, postage prepaid, addressed to: Lydia Pine, 7794 Oak Springs Circle, Gilroy, CA 95020 and a copy to Virginia Lomanto, 1250 Barrett Avenue, Morgan Hill, CA 95037 a notice (the "Notice of Exercise") and such Notice of Exercise shall be deemed received on the date of receipt if personally delivered or if mailed shall be deemed received two (2) days after depositing the same in the U.S. Mail. The Notice of Exercise shall be in writing and contain a statement that Lessee desires to exercise its right to purchase the Option to Purchase Land under the terms and conditions of this agreement.

17.04. Purchase Price: If Lessee purchases the Property during the initial three (3) years of the term of this Lease, the purchase price of the Property (hereinafter referred to as the "Initial Purchase Price") shall be Two Million Dollars (\$2,000,000.00). If the Property is not purchased during the initial three (3) years of the Lease term, then on May 1, 2020, and on May 1<sup>st</sup> of each year thereafter, the Initial Purchase Price shall increase by Two percent (2%) per year (hereinafter referred to as the "Adjusted Purchase Price". The Initial Purchase and the Adjusted Purchase shall both be referred to as the "Purchase "Price".

17.05. Payment of Purchase Price: Lessee shall pay Lessor the Purchase Price within ninety (90) days after the exercise of Lessee's Option under Section 17.02 above. The payment of the Purchase Price shall be reduced by 50% of the annual rent payment made by Lessee to Lessor hereunder.

17.06. Failure to Purchase: If Lessee fails to exercise its option herein or to timely pay the full amount of the Purchase Price, then (i) the rental payment under paragraph 3.01 shall immediately increase by 200% and thereafter increase by ten percent (10%)

each year thereafter until this lease terminates, and (ii) Lessee shall at the termination of this lease remove all improvements on the Leased Land if requested by Lessor.

17.07. Condition of Option Property: Lessor shall maintain and keep the title of the Option Property in the same condition as it was in as of the date of this Lease. Lessor shall deliver to Lessee the Option Property free and clear of all liens and encumbrances other than those in existence at the time of this lease, except for any mortgages or debts of Lessor that shall be removed from title. Lessee shall be purchasing the Option Property in its "AS IS" condition and will fully and completely release Lessor from any liability or responsibility regarding the condition of the Option Property at the time of the purchase. Lessor shall make no representations or warranties of the condition of the Option Property (other than title) at the time of purchase. All risk of loss shall pass to Lessee as of the time of its exercise of its Option.

17.08. Escrow, Pro-ration of Rent: Allocation of Expenses and Costs: Upon exercise of Lessee's option, the parties shall open an escrow at such title company as mutually agreeable to the parties. Any rent paid by Lessee shall be pro-rated for the period of time covered by the rent payment and the date when title transfers from Lessor to Lessee hereunder under the escrow. All costs of the escrow and regarding the transfer of title shall be paid by Lessee. Lessor and Lessee shall enter into a purchase agreement, the form of which is attached hereto and made a part hereof as Exhibit "C" and execute escrow instructions consistent with the terms and conditions set forth in this Article.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first set forth above.

Lessor:

Lessee:

Lessor: Virginia Lomanto, Trustee of the Lomanto Living Trust dated July 10, 1989, as amended and restated

City of Morgan Hill, a governmental entity

By Virginia Lomanto, Trustee of the Virginia Lomanto Living Trust dated July 10, 1989 by Lydia Pine SA  
*9 Attorney in fact*

By \_\_\_\_\_  
City Manager

Attest:

Also:

\_\_\_\_\_  
City Clerk/Deputy City Clerk

By Lydia Pine  
Lydia Pine, Successor Trustee

Approved as to form:

By \_\_\_\_\_  
City Attorney

Exhibit "A"

[Attach Copy of Map of Premises Showing Leased Land and Fence]

Exhibit "B"

[Attach Legal description of the Property]

Exhibit "C"  
[Copy of Purchase Agreement to be Attached]