

**CITY OF RIVERSIDE COMMERCIAL LEASE AGREEMENT**  
**4.2 Acres Vacant Land – E Street, South of Orange Show Road, San Bernardino**

This Commercial Lease Agreement (“Agreement” or “Lease”), dated as of the date of the last signature on the execution page (“Effective Date” or “Lease Commencement Date”), is made and entered into by and between the City of Riverside, a California charter city and municipal corporation, as lessor (hereafter referred to as “Landlord”), and WattEV SB1, Inc., a California limited liability company, as lessee (hereafter referred to as “Tenant”). Landlord and Tenant are sometimes referred to in this Agreement individually as a “Party”, and collectively as “Parties.”

**ARTICLE I**  
**PROPERTY; EFFECTIVE DATE; TERM; RENT; DEPOSIT; USE; EXTENSIONS**

1.1 **Property.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, in accordance with the terms and conditions of this Agreement, certain vacant property described as 4.2 Acres Vacant Land – E Street, South of Orange Show Road, San Bernardino, California, San Bernardino County Assessor Parcel Number 0141-252-03 and a portion of 0141-312-02, and as depicted on Exhibit “A,” which is attached hereto and incorporated herein by reference (“Property”).

1.2 **Effective Date.** This Agreement shall be effective as of the Effective Date.

1.3 **Term.** The term of this Lease shall commence as of the Effective Date and expire as of the Lease Expiration Date, as defined below.

A. **Inspection, Review and Approval.** Within three (3) months from the Effective Date (“Inspection Approval Date”), Tenant, at its sole discretion, shall investigate, inspect and review all information and matters relating to the Property including, without limitation, condition of title, physical inspection, location and availability of all utilities, and environmental conditions and concerns. Tenant shall have the right to perform all necessary studies including but not limited to: traffic, environmental investigation including phase 1 and phase 2, if necessary, soil and geological studies, and ALTA survey. Landlord, within five (5) days from the Effective Date, shall provide Tenant with all information, studies reports, investigations relating to the Property that is in Landlord’s control or possession including surveys, environmental studies, and appraisals. If Tenant is unsatisfied with its review, inspection or investigation of the Property, Tenant shall submit a written notice of termination to Landlord and this Lease shall terminate as provided below.

B. **Entitlements.** Within four (4) months from the Effective Date, Tenant shall submit all necessary applications to the appropriate City and County agencies for the construction of Tenant’s intended facilities and improvements. Tenant shall have six (6) months from the Effective Date (“Entitlement Approval Date”) to obtain and secure all permits Tenant deems necessary for its intended use of the Property. If Tenant is unable to secure all necessary permits for Tenant’s intended use at the Property before the expiration of the Entitlement Approval Date, Tenant may at its election, terminate this Lease or extend the Entitlement Approval Date for an additional three (3) months (“Entitlement Approval Extension Date”). If Tenant is unable to secure all necessary

permits for Tenant's intended use at the Property before the expiration of the Entitlement Approval Extension Date, Tenant may at its election, terminate this Lease.

C. **Lease Commencement and Termination.** If the Lease is terminated as a result of Tenant's disapproval, as set forth in Section 1.3A or Tenant's inability to obtain necessary permits, as set forth in Section 1.3B, then upon delivery of the notice from Tenant, this Lease shall terminate and neither party shall have any further obligation under the Lease. If the Lease is not otherwise terminated, then the Base Rent, as defined below, for the Lease shall commence 12 months after the date of the issuance of the building permit by the appropriate governmental agency or fifteen months after the Effective Date, whichever is earlier ("Rent Commencement Date"). The Lease shall expire on the expiration of the one hundred eightieth (180th) full calendar month following the Rent Commencement Date (the "Lease Expiration Date"). The Rent Commencement Date and Lease Expiration Date shall be stated in the Acceptance Memorandum attached hereto as Exhibit "B" (the "Acceptance Memorandum") and, when signed by the parties, the Acceptance Memorandum shall be attached to and incorporated in this Agreement.

1.4 **Base Rent.** Tenant shall pay to Landlord the following sums per month ("Base Rent"), beginning on the Rent Commencement Date, as Base Rent for the Property. Said rental amount shall be due to Landlord on or before the first day of each successive calendar month during the Term. If the Rent Commencement Date falls on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, the Base Rent for the first and last fractional months of the Term of this Lease shall be appropriately pro-rated.

From and after the Rent Commencement Date, Tenant shall pay Base Rent to Landlord as follows:

From Effective Date to Rent Commencement Date	\$0
From Rent Commencement Date (Month 1) through Month 12	\$10,000 per month
Months 13 through 120	\$12,500 per month
Months 121 through 180	\$15,000 per month

Base Rent for each exercised Lease Extension shall be as follows:

1st Lease Extension Period (Months 181-240)	\$17,500 per month
2nd Lease Extension Period (Months 241-300)	\$20,125 per month
3rd Lease Extension Period (Months 301-360)	\$23,143 per month

1.5 **Permitted Use.** Tenant shall use the Property primarily for the lawful purpose of constructing and operating a facility for the leasing and or renting and operating a fleet of electrical tractor rigs and all related and ancillary services including an electrical charging facility, rest area,

convenience store, office and storage. Use of the Property and the exercise of any rights granted herein shall not harm, injure, impede, alter, destroy, damage or threaten any of Landlord's water rights associated with the Premises, any existing or future wells or appurtenances over, under or on the Premises, the quality or quantity of the water associated with the Landlord's water rights, or interfere in any other way with the Landlord's water rights over, under or on the Premises. Property. Should Landlord determine, in its reasonable discretion that Tenant's use of the Property so violates the terms of this Lease, Tenant, upon written notice from Landlord of such violation, shall immediately cease and desist such use.

**1.6 Extension Options.** Tenant shall have three (3) five-year options (individually, "Lease Extension") to extend the term of the Lease. Tenant may exercise each such Lease Extension by providing notice to Landlord at least six (6) months prior to expiration of the then-current term, but no earlier than twelve (12) months prior notice to expiration of the then-current term. Tenant shall have no right to exercise a Lease Extension, notwithstanding any provision in the grant of Lease Extension to the contrary, (i) during the period commencing with the delivery of any notice of Default under Section 12.1 and continuing until the noticed Default is cured, or (ii) during the period of time any monetary obligation due Landlord from Tenant is due but unpaid (without regard to whether notice thereof is given to Tenant), or (iii) during the time Tenant is in breach of this Lease.

## **ARTICLE II**

### **CONDITION OF PROPERTY; DELIVERY OF PROPERTY; COMMON FACILITIES**

**2.1 Condition of Property.** Tenant has examined the Property and agrees to take possession of the Property in an "as is" condition. Tenant acknowledges and agrees that, except for the express representations set forth in this Agreement, Landlord, including its authorized agents, representatives and employees, has not made any representations, guarantees or warranties regarding the Property, nor has Landlord, its agents, representatives, or employees made any representations, guarantees or warranties regarding whether the Property complies with applicable covenants and restrictions of record, building codes, ordinances or statutes in effect at the Lease Commencement Date. Notwithstanding any other provision of this Lease, Landlord covenants to deliver the Property to Tenant vacant and free of any improvements, buildings or structures.

**2.2 Delivery of Property.** Landlord agrees to use its best commercially reasonable efforts to deliver possession of the Property to Tenant within thirty (30) days after the Effective Date of this Agreement. If, despite said efforts, Landlord is unable to deliver possession as agreed, Tenant shall not be subject to any liability therefore, nor shall such failure affect the validity of this Agreement. Tenant shall not, however, be obligated to pay rent or perform its other obligations until it receives possession of the Property. If possession is not delivered within thirty (30) calendar days after the Commencement Date, Tenant may, by notice in writing after the end of such thirty (30) calendar day period, cancel this Agreement and the Parties shall be discharged from all obligations hereunder.

**2.3 Landlord Access.** Landlord, and its authorized agents, representatives, and employees, may immediately enter the Property at any time in case of emergency (which means an imminent

threat to life), and otherwise with forty-eight (48) hours' prior notice to Tenant to: (i) inspect the Property; (ii) exhibit the Property to prospective purchasers, lenders, insurer or tenants; (iii) determine whether Tenant is complying with all its obligations hereunder; provided, however, that Landlord shall only exhibit the Property to prospective tenants during the last three (3) months of the Term. There shall be no abatement of any Base Rent by reason of Landlord's reasonable entry of the Property pursuant to this Section 2.3.

There shall be no abatement of any Base Rent by reason of Landlord's reasonable entry of the Premises pursuant to this Section 2.3 and Tenant hereby waives any claim for damages, including but not limited to interference with business, lost profits, and any other incidental or consequential damages of any sort whatsoever, for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such reasonable entry. Landlord shall at all times have and retain a key with which to unlock all of the doors in, or about the Premises (excluding Tenant's vaults, safes and similar areas designated in writing by Tenant in advance); and Landlord shall have the right to use any and all means which Landlord may deem reasonably proper to open said doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises, or any portion thereof. No provision of this Agreement shall be construed as obligating Landlord to perform any repairs, alterations or improvements except as otherwise expressly agreed to be performed by Landlord in this Agreement.

### **ARTICLE III**

#### **PAYMENT OF BASE RENT; LATE CHARGES**

**3.1 Payment of Rent.** Scheduled Base Rent shall be paid in advance on or before the first calendar day of each month during the Term. If the Rent Commencement Date falls on a calendar day other than that first calendar day of the month or the Term ends on a calendar day other than that last calendar day of a calendar month, then Base Rent will be appropriately prorated by Landlord based on the actual number of calendar days in such month. Base Rent shall be paid to Landlord without written notice or demand, and without offset, in lawful money of the United States of America at Landlord's address, or to such other address as Landlord may from time to time designate in writing.

**3.2 Late Charges.** Tenant hereby acknowledges that late payment by Tenant of the Base Rent, additional rent, or any other sums due under this Agreement will cause Landlord to incur costs not contemplated by this Agreement. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by the terms of any mortgage or trust deed covering the Property. Accordingly, if any installment of Base Rent, additional rent, or any other sums due from Tenant under this Agreement, shall not be paid by Tenant and received by Landlord within seven (7) days from the day it becomes due hereunder, Landlord shall provide written notice to Tenant alerting Tenant to the same (provided that Landlord shall only be required to provide one such notice each calendar year, after which point a late charge shall automatically accrue on the tenth day of the month), and if Tenant fails to remit

the same within ten (10) days after its receipt of such notice, Tenant shall thereupon pay to Landlord a late charge equal to ten percent (10%) of the overdue amount. Landlord and Tenant agree that this late charge represents a reasonable sum considering all of the circumstances existing on the date of this Agreement, including the relationship of the sum to the loss to Landlord that could be reasonably anticipated by such nonpayment by Tenant and the anticipation that proof of actual damages sustained by Landlord would be costly or inconvenient to determine. Landlord and Tenant agree that such late charge shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord at law, in equity, or under this Agreement. Landlord, at its option, may deem any such overdue amounts and/or late charges so unpaid to be additional rent, nonpayment of which shall, in addition to any other rights and remedies available to Landlord, give rise to those rights and remedies of Landlord set forth in Section 12.2 of this Agreement.

#### **ARTICLE IV**

##### **USE; COMPLIANCE WITH LAWS; NON-DISCRIMINATION**

4.1 **Use.** The Property shall be used only for the purposes set forth in Section 1.5, and purposes incidental and related to that use. Tenant shall use the Property in a careful, safe and proper manner. Tenant shall not use or permit the Property to be used or occupied for any purpose or in any manner prohibited by any applicable law, ordinance order, rule, regulation or other governmental requirement. Tenant shall not commit waste or suffer or permit waste to be committed in, on or about the Property. Tenant shall conduct its business and control its employees, agents and invitees in such a manner so as not to create a nuisance or a risk of fire or other hazard, or that would violate, suspend, void or increase the rate of fire or liability or any other insurance of any kind at any time carried by Landlord upon the Property.

4.2 **Compliance with Laws.** Tenant shall comply with all applicable laws, ordinances, orders, rules, regulations and other governmental requirements relating to the use, condition or occupancy of the Property. The judgment of any court of competent jurisdiction, or the admission of Tenant in a proceeding brought against it by any governmental entity, that Tenant has violated any such governmental requirement shall be conclusive as between the Landlord and the Tenant and shall constitute grounds for declaration of default, material breach, forfeiture, and termination of this Agreement by Landlord.

4.3 **Compliance with Environmental Laws.** Tenant will not cause or permit the storage, use, generation, or disposition of any Hazardous Materials, as hereinafter defined, in, on, or about the Property by Tenant, its agents, employees, or contractors so as to cause the Property to be contaminated by any Hazardous Materials in violation of any applicable laws, ordinances, orders, rules and regulations regulating, relating to, or imposing liability of standards of conduct concerning any Hazardous Materials or pertaining to occupational health or industrial hygiene, occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") [42 USC Section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 USC Section 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 USC

Section 1251 et seq.]; the Toxic Substances Control Act ("TSCA") [15 USC Section 2601 et seq.]; the Hazardous Materials Transportation Act ("HMTA") [49 USC Section 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 et seq.] the Clean Air Act [42 USC Section 7401 et seq.]; the Safe Drinking Water Act [42 USC Section 300f et seq.]; the Solid Waste Disposal Act [42 USC Section 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USC Section 101 et seq.] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 et seq.]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [H & S C Section 25288 et seq.]; the California Hazardous Substances Account Act [H & S C Section 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C Section 24249.5 et seq.] the Porter-Cologne Water Quality Act [Water Code Section 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state or local law, ordinance, order, rule or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, and only to the extent the occupational health or industrial hygiene laws, ordinances, or regulations relate to hazardous substances on, under or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water or land use ("Environmental Laws").

A. Tenant shall immediately notify Landlord in writing and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Property or compliance with Environmental Laws. Tenant shall promptly cure and have dismissed with prejudice and of those actions and proceedings to the reasonable satisfaction of Landlord. Tenant shall keep the Property free of any lien imposed as a result of its use thereof pursuant to Environmental Laws.

B. For the purpose of this Section 4.3, the term "Hazardous Materials" shall include, without limitation, substances defined as "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," "extremely hazardous wastes," or "restricted hazardous wastes," or stated to be known to cause cancer or reproductive toxicity, under any Environmental Law. Tenant shall not permit to occur any release, generation, manufacture, storage, treatment, transportation or disposal of any Hazardous Materials on the Property during the Term; provided, however, that "Hazardous Materials" shall not include materials commonly used in the ordinary operations of a retail automobile sales, storage, and repair operations, provided that (1) such materials are used and properly stored on the Property in quantities ordinarily used and stored in comparable retail automobile sales, service, storage, and repair operations, and (2) such materials are used and properly stored in compliance with Environmental Laws. Tenant shall promptly notify Landlord in writing if Tenant has or acquires notice or knowledge that any Hazardous Materials have been or are threatened to be released, discharged, disposed of, transported, or stored on, in, under or from the Property; and if any Hazardous Materials are found on the Property that were caused by Tenant or as a result of Tenant's use thereof, Tenant, at its sole cost and expense, shall immediately take such action as is necessary to detain the spread of and remove the Hazardous Material to the complete satisfaction of Landlord and the appropriate governmental authorities.

C. Landlord shall, at Landlord's sole cost and expense, have the right from time to time with the notice required in this Lease, to conduct environmental audits of the Premises, and

Tenant shall reasonably cooperate (at no cost to Tenant) in the conduct of those audits; provided, however, that Landlord's entry and audits shall not unreasonably interfere with Tenant's occupation of the Premises.

D. If Tenant fails to comply with the forgoing covenants pertaining to Hazardous Materials, Landlord may cause the removal (or other cleanup acceptable to Landlord) of any Hazardous Materials from the Property. The costs of Hazardous Materials removal and any other cleanup (including transportation and storage costs) will be additional rent under this Agreement, and those costs will become due and payable on demand by the Landlord. Tenant shall give Landlord, its agents and employees access to the Property to remove or otherwise cleanup any Hazardous Materials. Landlord, however, has no affirmative obligation to remove or otherwise cleanup any Hazardous Materials, and this Agreement shall not be construed as creating any such obligation.

E. Except to the extent caused by Landlord's gross negligence or willful or criminal misconduct, Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord and at Tenant's sole cost), and hold Landlord and Landlord's elected and appointed officials, officers, employees, agents, successors and assigns free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including attorneys' and experts' fees and expenses and fees and expenses incurred in investigating, defending or prosecuting any litigation, claim or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against Landlord in connection or arising out of: (i) any violation or claim of violation of any Environmental Law by Tenant; or (ii) the imposition of any lien for the recovery of costs for environmental cleanup or other response costs relating to the release or threatened release of Hazardous Materials on, in, under or affecting all or any portion of the Premises caused by Tenant's breach of its obligations under this Section 4.3. Tenant's indemnification shall survive the expiration and termination of this Agreement.

4.5 **Non-Discrimination.** Tenant herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the requirement that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, genetic information, gender, gender identity, gender expression, marital status, age, national origin, or ancestry, in the leasing, use, occupancy, tenure, or enjoyment of the Property, nor shall the Tenant itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of Tenants, Tenants, Sub-tenants, or vendees in the Property herein leased.

## ARTICLE V TAXES AND UTILITIES

**5.1 Possessory Interest Tax/Property Taxes.** Tenant recognizes and understands that this Agreement may create a possessory interest subject to taxation and that Tenant may be subject to the payment of taxes levied on such interest. Tenant shall pay all taxes including without limitation any possessory interest, property tax, real estate and personal property taxes and assessments assessed, levied, confirmed or imposed during the Term of this Agreement, whether or not now customary or within the contemplation of Landlord and Tenant: (i) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Property, or by the cost or value of the leasehold improvements made in or to the Property by or for Tenant, regardless of whether title to the improvements is in Tenant or Landlord; (ii) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Property or any portion of the Property; and (iii) upon the Property and all personal property, furniture, fixtures and equipment, and all replacements, improvements, or additions to them, whether owned by Landlord or Tenant; provided, however, that Tenant shall not be responsible to pay: any taxes assessed on any adjacent property not included in the Property leased to Tenant, or any taxes assessed in connection with Landlord's income from or transfer of any interest in the Property.

**5.2 Utilities.** Tenant shall pay the appropriate suppliers for all water, gas, power, electricity, light, heat, telephone, facsimile, internet, and other utilities and communications services used by Tenant on the Property during the Term, including the taxes thereon, whether or not the services are billed directly to Tenant. Tenant shall procure, or cause to be procured, without cost to Landlord, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Property of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any of the services to and upon the Property. Landlord, upon request of Tenant, shall at the sole expense and liability of Tenant, join with Tenant in any application required for obtaining and continuing any of the services.

## **ARTICLE VI INSURANCE; INDEMNIFICATION; WAIVER AND RELEASE**

**6.1 Minimum Insurance Requirements.** At all times during the Term and during any other time in which Tenant occupies the Property, Tenant, at its sole cost and expense, shall procure, pay for and maintain the following types of insurance with the following coverages:

**A. Commercial General Liability.** Tenant shall, at Tenant's sole expense, obtain and maintain during the Term: (i) a policy of commercial general liability insurance, including contractual liability insurance, for bodily injury, property damage and personal/advertising liabilities arising out of the use or occupancy of the Property and all areas appurtenant thereto, including parking areas. Such insurance shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence and a Two Million Dollars (\$2,000,000) annual aggregate for all claims.

**B. Tenant's Property and Business Interruption Insurance.** Tenant shall, at Tenant's sole expense, obtain and maintain during the Term, insurance coverage for (i) Tenant's personal property, inventory, alterations, fixtures and equipment located on the Property, for the



full replacement value thereof without deduction for depreciation, and with a deductible not to exceed Five Thousand Dollars (\$5,000.00) per occurrence. The proceeds of such insurance, so long as this Agreement remains in effect, shall be used to repair or replace the personal property, inventory, alterations, fixtures and equipment so insured; and for (ii) loss of income and extra expense in such amounts as will reimburse Tenant for direct and indirect loss of earnings attributable to all perils commonly insured against by prudent Tenants.

**6.2 Delivery of Evidence of Tenant's Insurance.** Each such insurance policy or certificate thereof shall be delivered to Landlord by Tenant on or before the effective date of such policy and thereafter Tenant shall deliver to Landlord renewal policies or certificates at least thirty (30) calendar days prior to the expiration dates of the expiring policies. In the event that Tenant shall fail to insure or shall fail to furnish Landlord the evidence of such insurance as required by this Section 6.2, Landlord may from time to time acquire (without any obligation to do so) such insurance for the benefit of Tenant or Landlord or both of them for a period not exceeding one (1) year, and any premium paid by Landlord shall be recoverable from Tenant as additional rent on demand. Tenant's compliance with the provisions of Article VI shall in no way limit Tenant's liability under any of the other provisions of this Agreement. Landlord may at any time, and from time to time, inspect and/or copy any and all insurance policies required by this Agreement.

**6.3 Other Insurance Requirements.** The insurance to be acquired and maintained by Tenant shall be with companies admitted to do business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher. Tenant shall deliver to Landlord, prior to taking possession of the Property, a certificate of insurance evidencing the existence of the policies required hereunder, and such certificate shall certify that the policy:

A. Names Landlord and any other entities designated by Landlord as additional insureds under the Commercial General Liability policy;

B. Shall not be canceled or altered without thirty (30) calendar days' prior written notice to Landlord;

C. Insures performance of Tenant's indemnity set forth in this Agreement;

D. Provide that no act or omissions of Tenant shall affect or limit the obligations of the insurer with respect to other insureds or including Landlord;

E. Include all waiver of subrogation rights endorsements necessary to effect the provisions below; and

F. Provide that the commercial general liability policy and the coverage provided shall be primary, that Landlord although an additional insured, shall nevertheless be entitled to recovery under such policy for any damage to Landlord by reasons of acts or omissions of Tenant, and that coverage carried by Landlord shall be noncontributory with respect to policies carried by Tenant.

**6.4 Mutual Waiver of Subrogation.** The Parties hereto release each other and their respective authorized employees, agents and representatives, from any and all claims, demands, loss, expense

or injury to any person, or to the Property or to personal property, including, but not limited to, furnishings, fixtures or equipment located therein, caused by or resulting from perils, events or happenings which are the subject of insurance in force at the time of such loss. Each Party shall cause each insurance policy obtained by it to provide that the insurer waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy. Neither Party shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy in effect as required by this Agreement.

**6.5 No Ownership.** Nothing contained in Article VI shall be construed as creating or implying the existence of: (i) any ownership by Tenant of any fixtures, additions, alterations, or improvements in or to the Property existing prior to the Effective Date, or (ii) subject to other terms and conditions contained in this Lease, any right on Tenant's part to make any addition, alteration or improvement in or to the Property.

**6.6 Indemnity.** Except to the extent caused by the negligence or willful or criminal misconduct of Landlord, Tenant agrees to fully indemnify, defend, and hold Landlord, its elected and appointed officials, officers, employees, agents, successors and assigns, free and harmless from any and all claims, liability, loss, damage, costs, or expenses, including attorney fees, resulting from Tenant's occupation or use of the Property, specifically including, without limitation, any claim of liability, loss or damage arising by reason of:

A. The death or injury of any person or persons, including Tenant or any person who is an employee, agent, guest, or customer of Tenant, or by reason of the damage or destruction of any property, including property owned by Tenant or any person who is an employee, agent, guest, or customer of Tenant, and caused by either the condition of the Property as a result of Tenant's occupation of the same, or some act or omission of Tenant or of some agent, contractor, employee, servant, guest, or customer of Tenant on the Property;

B. Any work performed on the Property or materials furnished to the Property at the instruction or request of Tenant; and

C. Tenant's failure to perform any provision of this Agreement, or comply with any requirement of local, state or federal law or any requirement imposed on Tenant or the Property by any duly authorized governmental agency or political subdivision.

**6.7 Waiver and Release.** Tenant waives and releases all claims against Landlord, its employees, and agents with respect to all matters for which Landlord has disclaimed liability pursuant to the provisions of this Agreement. In addition, except to the extent caused by the negligence or willful or criminal misconduct of Landlord, Tenant agrees that Landlord, its elected and appointed officials, employees, agents, successors and assigns shall not be liable for any loss, injury, death or damage (including consequential damages) to persons, property, or Tenant's business occasioned by theft; act of God; public enemy; injunction; riot; strike; insurrection; war; terrorism; court order; order of governmental body or authority; earthquake; fire; explosion; falling objects; water; rain; snow; leak or flow of water, or by dampness or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning,

or light fixtures; or from construction, repair, or alteration of the Property; or from any acts or omissions of any visitor of the Property; or from any cause beyond Landlord's control.

## **ARTICLE VII REPAIRS AND MAINTENANCE; ALTERATIONS**

**7.1 Repairs and Maintenance Tenant Obligations.** Tenant shall, at its sole cost and expense, maintain the Property in good order, condition and repair (normal wear and tear excepted), and make repairs, restorations and replacements to the Property, including without limitation the heating, ventilation, air conditioning, mechanical, electrical, lighting, plumbing systems, structural roof, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, and the fixtures and appurtenances to the Property as and when needed to preserve them in good working order and condition, normal wear and tear excepted. All repairs, restorations, and replacements shall be in quality and class equal to the original work or installations. If Tenant fails to make repairs, restorations or replacements within thirty (30) days of written notice thereof from Landlord (or such longer period as may be required if Tenant is not reasonably able to complete such repair in that time period), Landlord may make them at the expense of Tenant and the expense shall be collected as additional rent to be paid by Tenant within fifteen (15) calendar days after delivery of a statement for the expense.

**7.2 Alterations.** Tenant shall not make any alterations, improvements or additions in, on or about any of the Property, without first obtaining Landlord's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. However, Landlord's prior written consent will not be necessary for any alteration, improvement, or addition which is either (i) non-structural in nature (*i.e.*, alterations which do not require governmental permits); or (ii) costs less than One Hundred Thousand Dollars (\$100,000) including labor and material. All alterations, improvements or additions in, on or about the Property, whether temporary or permanent in character, shall immediately become Landlord's property and at the expiration of the Term of this Agreement shall remain on the Property without compensation to Tenant; provided, however, that Tenant shall remain the owner of any and all furniture, trade fixtures, equipment, signs and all other items of Tenant's movable personal property located in, on, or about the Property.

**7.3 Mechanic's Liens.** Tenant shall pay or cause to be paid all costs and charges for: (i) work done by Tenant or caused to be done by Tenant, in or to the Property, and (ii) all materials furnished for or in connection with such work. Tenant shall indemnify the Landlord against and hold the Landlord and the Property, free, clear and harmless of and from any liens or claims of liens arising out of any work performed, materials furnished or obligations incurred by the Tenant, and Tenant shall be responsible for the removal of any such liens and all costs to remove same. Failure to remove any such liens within thirty (30) calendar days of written request by Landlord shall constitute a default of this Agreement. At its election, but without having any obligation to do so, the Landlord may pay such liens not so removed by the Tenant and the any amount expended by Landlord shall be collected as additional rent to be paid by Tenant within fifteen (15) calendar days after delivery of a statement for the expense.

## **ARTICLE VIII DAMAGE AND DESTRUCTION; CONDEMNATION**

**8.1. Damage or Destruction of Property.** Unless as the result of negligence or intentional unlawful act of Tenant, if during the term of this Agreement, any portion of the Property shall be damaged by fire or other catastrophic cause, so as to render such portion of the Property untenable, the obligations under this Agreement may be suspended while such portion of the Property remains untenable. In the event of such damage, Tenant shall give Landlord notice of such untenable conditions and within sixty (60) days thereafter, the Tenant shall elect, in its sole discretion, whether to repair the Property at Tenant's sole cost or to cancel this Agreement with respect thereto. Tenant shall notify Landlord in writing of its election. In the event that Tenant elects not to repair the Property or portion thereof, this Agreement shall be deemed canceled as of the date the damage occurred with respect to the applicable portion(s).

**8.2 Condemnation.** If all or any part of the Property shall be condemned or taken as a result of the exercise of the power of eminent domain, including any conveyance or assignment in lieu of any condemnation or taking, this Agreement shall terminate as to the part so taken as of the date of taking, and, in the case of a partial taking, Tenant shall have the right to terminate this Agreement as to the balance of the Property by notice to the Landlord within thirty (30) calendar days after the date of such taking; provided, however, that a condition to the exercise by Tenant of such right to terminate shall be that the portion of the Property taken shall be of such extent and nature as to materially handicap, impede or impair Tenant's use of the balance of the Property. In any event, Tenant shall be entitled to an award from the taking entity, for Tenant's relocation expenses and for the taking of any personal property or trade fixtures belonging to Tenant. In the event of a partial taking of the Property which does not result in a termination of this Agreement, the monthly rent thereafter to be paid shall be reduced in proportion to the portion of the Property taken. Landlord shall be entitled to an award from the taking entity, for compensation, damages, income, rent which may be paid without diminishing the award otherwise due to Tenant.

A. For the purposes of Section 8.2, the date of taking shall be the date upon which the condemning authority takes possession of any part of the Property or the date upon which Tenant is required by the condemning authority to commence vacating the Property, whichever is earlier.

B. Notwithstanding anything to the contrary contained in Section 8.2, if the Property or any part thereof shall be taken under power of eminent domain on a temporary basis, this Agreement shall be and remain unaffected by such taking and Tenant shall continue to pay in full all monthly rent payable hereunder, provided that Tenant shall be entitled to receive that portion of any award which represents compensation for the use of or occupancy of the Property during the Term of this Agreement, and Landlord shall be entitled to receive that portion of any award which represents the cost restoration of the Property and the use and occupancy of the Property after the end of the Term of this Agreement.

## ARTICLE IX ASSIGNMENT; SUBLETTING; PROCESSING

**9.1 Assignment and Subletting.** Other than a transfer to an affiliate or successor of Tenant (which shall only require a notice to the Landlord), Tenant shall not assign, mortgage, pledge, encumber, or hypothecate this Lease or any interest herein (directly, indirectly, voluntarily or involuntarily, by operation of law, or otherwise) or sublet the Property (except as provided below) or any part thereof without the prior written consent of Landlord first being obtained, which consent shall not be unreasonably withheld, conditioned, or delayed.

A. In the event that Tenant should desire to sublet the Property or any part thereof, or assign this Agreement, Tenant shall provide Landlord with written notice of such desire at least thirty (30) calendar days in advance of the proposed effective date of such subletting or assignment. Such notice shall include: (i) the name of the proposed subtenant or assignee; (ii) the nature of business to be conducted by the proposed subtenant or assignee in the Property; (iii) the terms and conditions of the proposed assignment or sublease including but not limited to a detailed description of all compensation in cash or otherwise which Tenant would be entitled to receive in connection with such assignment or sublease; and (iv) the most recent financial statements or other financial information concerning the proposed subtenant or assignee as Landlord may reasonably require. At any time within thirty (30) calendar days following receipt of Tenant's notice, Landlord may by written notice to Tenant elect to: (i) consent to the proposed subletting of the Property or assignment of this Agreement; or (ii) disapprove of the proposed subletting or assignment. Landlord shall not unreasonably withhold its consent to a proposed subletting or assignment. Notwithstanding the foregoing, a sublet for less than 10% of the total square footage of the land where the Property is located shall not require notice to or approval from the Landlord nor shall it be subject of this Article IX.

B. Subject to obtaining Landlord's consent in accordance with the requirements of Section 9.1, in order for any assignment or sublease to be binding on Landlord, Tenant must deliver to Landlord, promptly after execution thereof, an executed copy of such sublease or assignment whereby the subtenant or assignee shall expressly assume all obligations of Tenant under this Agreement as to the portion of the Property subject to such assignment or sublease. Any purported sublease or assignment will be of no legal force or effect unless and until the proposed sublease has been consented to, in writing, by Landlord and a fully executed copy thereof has been received by Landlord.

C. Regardless of Landlord's consent, no subletting or assignment shall release Tenant of its obligations, or alter the primary liability of Tenant to pay rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of payments by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent or further assignment, subletting, hypothecation or third party use or occupancy.

D. Subject to Tenant's right of first refusal contained elsewhere in this Lease, Landlord shall have the unconditional right to sell, encumber, pledge, convey, transfer, and/or assign any and all of its rights and obligations under the Agreement without the consent of or notice to Tenant or any guarantor(s) of Tenant's obligations hereunder; provided that the Landlord assignee is solvent and assumes all obligations of Landlord hereunder accruing after the date of the transfer.

9.2 **Processing Fee.** Tenant agrees to pay Landlord an administrative fee of \$500.00 in conjunction with the processing and document review of any requested transfer, assignment, subletting, mortgage or hypothecation of the Lease or Tenant's interest in and to the Property. Notwithstanding the foregoing, Landlord shall without any additional cost review, approve and execute a "Landlord's Waiver" as maybe requested by Tenant's lenders, from time to time, relating to the mortgage, hypothecation or other financing of Tenant's property including fixtures and equipment.

## **ARTICLE X HOLDING OVER; SALE OF PROPERTY**

10.1 **No Right to Holdover.** Tenant has no right to retain possession of the Property or any part thereof beyond the expiration or termination of this Agreement. If, without objection by Landlord, Tenant holds possession of the Property after expiration of the Term, Tenant shall become a Tenant from month-to-month upon the terms herein specified, except that the monthly rent shall be equal to one hundred and twenty five percent (125%) of the monthly rent payable by Tenant at the expiration of the Term. In addition, Tenant shall continue to pay all other amounts due to Landlord hereunder. Each Party shall give the other notice at least one (1) month prior to the date of termination of such monthly tenancy of its intention to terminate such tenancy. If, after objection by Landlord thereto, Tenant holds possession of the Property after expiration of the Term, Tenant shall constitute a Tenant at sufferance and without in any way waiving the wrongful holding over of the Property by Tenant, Landlord shall be entitled to receive for each month or portion thereof during which Tenant wrongfully holds over at the Property monthly rent equal to one hundred fifty percent (150%) of the monthly rent payable by Tenant at the expiration of the Term together with all other amounts otherwise due to Landlord hereunder. Landlord's receipt of increased monthly rent under this Section 10.1 shall not constitute an extension of the Term nor shall it constitute a waiver of Tenant's wrongful holding over and shall not prejudice any other rights or remedies available to Landlord under this Agreement or by law.

10.2 **Sale of Property.** In the event Landlord, or any successor owner of the Property, shall sell or convey the Property, all liabilities and obligations on the part of the Landlord, or such successor owner, under this Agreement, accruing thereafter shall terminate, and thereupon all such liabilities and obligations shall be binding upon the new owner. Tenant agrees to attorn to such new owner subject to such new owner's obligation to assume all obligations of Landlord under this Lease.

10.3 **Right of First Refusal.** Landlord hereby grants Tenant a limited right of first refusal to purchase the Property, as further defined herein. The right of first refusal to Tenant shall not accrue to Tenant until the Landlord has determined that the Property is surplus to the needs of the Landlord, and has complied with the disposition procedures set forth in Government Code section 54220 et seq. and Assembly Bill 1486 by contacting the appropriate governmental agencies (local, county, state and regional) and affordable housing developers as to their interest in acquiring the Property. If no interest is shown from a governmental agency or affordable housing developer pursuant to applicable law, the Landlord shall not sell or agree to sell the Property without first offering the Property to Tenant. The word "sell" shall include any transfer, conveyance,

assignment, lease, hypothecation, or pledge of all or any portion of the Property or Landlord's interest in the Property.

A. After the Landlord has complied with in Government Code section 54220 et seq. and Assembly Bill 1486 and before the Landlord sells, seeks to sell, or enters into an agreement to sell the Property, Landlord shall offer ("First Offer") to sell the Property to Tenant. The First Offer shall be in writing and, at a minimum, include the following proposed conditions for sale:

- (i) the purchase price proposed for sale;
- (ii) the method of purchase price payment;
- (iii) the amount of any earnest money deposit;
- (iv) the time and location for the close of escrow; and
- (v) the other material terms and conditions of the proposed sale of the Property.

In addition to the foregoing, if Landlord has complied with Government Code section 54220 et seq. and Assembly Bill 1486, and receives a bona fide purchase offer from an independent third party, the First Offer shall include a summary of all information in the bona fide purchase offer, but not including the name of the independent third party given to Landlord in connection with such offer from the relevant third party.

B. Tenant shall have thirty (30) business days from the date of its receipt of the First Offer to accept the First Offer ("Acceptance Period") by delivering to Landlord the notice of acceptance on or before 5:00 p.m. on the last day of the Acceptance Period. If Tenant fails to accept the First Offer on or before the last day of the Acceptance Period, the First Offer shall be deemed to be rejected.

C. If Tenant responds to the First Offer with anything other than an unequivocal acceptance or rejection, the right of first refusal shall terminate and the response shall be deemed an offer to purchase the Property on the terms and conditions in the response ("Counter Offer"). Landlord shall be entitled to accept or reject the Counter Offer at Landlord's sole discretion. If the Counter Offer is rejected, Landlord may sell the Property to any prospective third party purchaser for no less ninety-five percent (95%) of the purchase price as was set forth in the First Offer without re-notifying Tenant of such revised economic terms. In the event that Landlord fails to sell the Property to the prospective third party for no less than ninety-five percent (95%) of the purchase price than as was set forth in the First Offer, or the terms and conditions of the sale change from those set forth in the First Offer, then the First Offer and Tenant's right of first refusal shall remain and continue until Landlord again provides written notice to Tenant of Landlord's desire to sell the Property (whether to an independent third party or otherwise), including a copy of the First Offer.

D. If Tenant accepts the First Offer, Tenant shall have the greater of (i) ninety (90) days following acceptance of the First Offer, or (ii) the time period set forth in the First Offer

("Closing Period") to consummate the purchase of the Property pursuant to the terms and conditions of the First Offer. Consummation shall constitute execution by the Tenant of a Purchase and Sale Agreement reasonably acceptable to the Landlord and Tenant. On the closing date, Landlord shall convey indefeasible fee title to the Property free of all liens, judgments and adverse claims and free of any lease other than this Lease to Tenant.

E. Either Landlord or Tenant may record at its expense a short form Memorandum of Lease similar to the Exhibit "C" attached hereto and the party from whom such document is requested agrees to cooperate in executing the document in a timely fashion and in providing any other reasonable assistance which may be necessary for recordation of the Memorandum of Lease, at no expense to the non-requesting party.

## **ARTICLE XI**

### **SUBORDINATION; ESTOPPEL CERTIFICATES**

**11.1 Subordination.** This Agreement and the rights of Tenant hereunder are subject and subordinate to any ground or underlying lease and the lien of the holder of or beneficiary under a mortgage or deed of trust which now or in the future encumbers the Premises and to any and all advances made thereunder, and interest thereon, and all modifications, renewals, supplements, consolidations and replacements thereof. Tenant agrees that any ground or underlying Landlord or lender may at its option, unilaterally elect to subordinate in whole or in part, such ground or underlying lease or the lien of such mortgage or deed or trust to this Agreement. Such subordination or priority of this Agreement, as the case may be, shall be effective without the necessity of executing any further instrument or agreement to effect such subordination or priority; provided, however, that Tenant agrees to execute, acknowledge and deliver to Landlord upon demand any and all instruments reasonably required by Landlord or any such ground or underlying Landlord or lender evidencing the subordination or priority of this Agreement, as the case may be. Notwithstanding any other provision of this Lease, any such subordination by Tenant is and shall be with the understanding that so long as Tenant is not in default of its obligations under this Lease, the tenancy provided for herein shall continue in full force and effect and Tenant shall be permitted to occupy the Premises under the terms hereof notwithstanding any default by Landlord under such mortgage or security instruments, or any transfer of title to the Premises by foreclosure, deed-in-lieu of foreclosure or otherwise. If there is a mortgage encumbering the Property, Landlord shall use commercially reasonable efforts, within a reasonable amount of time after the execution of this Lease, to deliver a Subordination, Attornment and Non-Disturbance Agreement ("SNDA") executed by Landlord and mortgage lienholder in a form as described below and otherwise acceptable to Tenant. This Lease and Tenant's interest and rights hereunder are and shall be subject and subordinate at all times to the lien of any first mortgage, now or hereafter created on or against the Property, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, provided that the holder of such mortgage has executed, acknowledged and delivered to Tenant a commercially reasonable SNDA that provides that: (a) Tenant's possession of the Property and other rights hereunder shall not be disturbed in any proceeding to foreclose the mortgage or in any other action instituted in connection with such mortgage so long as Tenant is not in default beyond applicable notice and cure periods under this Lease; (b) Tenant shall not be named as a defendant in any foreclosure action or proceeding which may be instituted by the holder of such mortgage; (c) in the event of casualty or condemnation, the



holder of the mortgage agrees to make available the insurance and condemnation proceeds for the repair and restoration of the Property by Landlord in accordance with this Lease; (d) Tenant shall have the right to prepay any portion or all of any allowances provided herein in accordance with the terms and conditions set forth in this Lease; and (e) if the holder of the mortgage or any other person acquires title to the Property through foreclosure or otherwise, the Lease shall continue in full force and effect (including all provisions relating to the options to extend the term and rights of first refusal) as a direct lease between Tenant and the new owner, and the new owner shall assume and perform all of the terms, covenants and conditions of the Lease, in each case subject to commercially reasonable modifications customarily agreed to by similar tenants and institutional lenders. Tenant agrees within twenty (20) days after receipt of a written request therefor from Landlord, to execute, acknowledge and deliver any such SNDA. Notwithstanding the foregoing, any such holder may at any time subordinate its mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such mortgage without regard to their respective dates of execution, delivery or recording and in that event such holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such mortgage and had been assigned to such holder. The term "mortgage" whenever used in this Lease shall be deemed to include deeds of trust, security assignments, ground leases and any other encumbrances, and any reference to the "holder" of a mortgage shall be deemed to include the beneficiary under a deed of trust.

**11.2 Estoppel Certificates.** At any time and from time to time, Tenant shall execute, acknowledge and deliver to Landlord, within ten (10) business days after request by Landlord, a certificate certifying, among other things: (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the date and nature of each modification); (ii) the date, if any, to which monthly rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Tenant of any default which has not been cured except as to defaults specified in said certificate; and (iv) such other matters as reasonably may be requested by Landlord. If Tenant fails to respond to a request from Landlord for Tenant to execute and deliver an estoppel certificate to Landlord within the aforementioned ten (10) business day period, Landlord shall have the right to deliver a second notice (the "Estoppel Certificate Failsafe Notice") to Tenant, which Estoppel Certificate Failsafe Notice must be sent by a nationally recognized overnight courier for next business day delivery, requesting Tenant to execute and deliver the estoppel certificate to Landlord (and/or to such other addressee or addresses as Landlord may designate), provided that such Estoppel Certificate Failsafe Notice shall also include in bold, capitalized letters near the top margin of the first page of same, the following statement: **"TENANT'S FAILURE TO RESPOND TO THIS REQUEST WITHIN FIVE (5) BUSINESS DAYS FOLLOWING TENANT'S RECEIPT OF SAME SHALL CONSTITUTE AN EVENT OF DEFAULT UNDER THE LEASE AGREEMENT"**. If Tenant fails to deliver the estoppel certificate as instructed within five (5) business days following Tenant's receipt of the Estoppel Certificate Failsafe Notice, such failure shall constitute an Event of Default hereunder.

## **ARTICLE XII**

### **DEFAULT; REMEDIES; DISPUTE RESOLUTION**

**12.1 Event of Default.** The occurrence of any one or more of the following events (“Events of Default”) shall constitute a breach of this Agreement by Tenant, with the matter described in subsection A constituting a “Monetary Event of Default” and each of the matters described in subsections B, C, D, E, F, G, H, I and J, each constituting a “Non-Monetary Event of Default”:

A. If Tenant shall default in its obligation to pay any installment of Base Rent when due and shall not cure such failure within ten (10) days following Tenant’s receipt of written notice thereof by Landlord to Tenant (a “Monetary Event of Default”); or

B. If Tenant shall vacate or abandon the Property, which shall be deemed to occur if Tenant fails to continuously occupy the Property for a period of thirty (30) days during the initial Term and fails to re-occupy the Property following ten (10) days’ written notice from Landlord; provided, however, that nothing herein shall be construed as an express or implied covenant of continuous operation on the part of Tenant, and Landlord acknowledges that there is no covenant of continuous operation with respect to the Property, arising hereunder or otherwise on the part of Tenant; or

C. If Tenant shall fail to perform or observe any other term hereof to be performed or observed by Tenant hereunder, and such failure shall not have been cured by Tenant within thirty (30) calendar days after notice thereof from Landlord, or, if such failure shall be of a nature so as reasonably to require more than thirty (30) calendar days to effect the cure thereof, Tenant shall not within said thirty (30) calendar day period commence with due diligence and dispatch the curing of such failure; or

D. If Tenant shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or shall fail timely to contest the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or any material part of its property; or

E. If within ninety (90) calendar days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within ninety (90) calendar days after the appointment without the consent or acquiescence of Tenant, of any trustee, receiver or liquidator of Tenant or of any material part of its properties, such appointment shall not have been vacated; or

F. If this Agreement or any estate of Tenant hereunder shall be levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) calendar days; or

G. If Tenant fails to timely deliver to Landlord an estoppel certificate executed and acknowledged, or otherwise respond within five (5) business days following receipt of an Estoppel Certificate Failsafe Notice pursuant to Section 11.2; or

H. If Tenant assigns or attempts to assign this Agreement or subleases or attempts to sublease any portion of the Property in violation of Section 9.1; or

I. If voluntary waste is committed on the Property by Tenant and such voluntary waste shall not have been cured by Tenant within thirty (30) calendar days after notice thereof from Landlord; or

J. The occurrence of any event which pursuant to the terms hereof constitutes an Event of Default hereunder.

**12.2 Remedies.** On the occurrence of an Event of Default by Tenant hereunder, Landlord shall have the right to pursue any one of the following remedies (provided that Landlord may only repossess the Property following a Monetary Event of Default): (i) repossess the Property; or (ii) allow Tenant to remain in full possession and control of the Property.

A. If Landlord chooses to repossess the Property, then this Agreement will automatically terminate in accordance with the provisions of California Civil Code Section 1951.2. In the event of such termination of the Agreement, Landlord may recover from Tenant:

(i) The worth at the time of award of the unpaid rent which had been earned at the time of termination, including interest at the maximum rate allowed under California law;

(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 the award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided, including interest at the maximum rate allowed by law;

(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 Tenant proves could be reasonably avoided; and

(iv) Any other amount reasonably necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Agreement or which, in the ordinary course of things, would be likely to result therefrom.

B. "The worth at the time of the award," as used in Section 12.2A(i) and (ii) shall be computed by allowing interest at the maximum rate allowed under California law per annum. "The worth at the time of the award," as referred to in Section 12.2A(iii) shall be computed by discounting the amount at maximum rate allowed under California law.

C. Tenant shall be liable immediately to Landlord for all third party costs Landlord actually incurs in re-letting the Property, including lost rents, eviction costs, attorney's fees, and

brokers' commissions. Upon any Event of Default by Tenant, Landlord shall use reasonable efforts to mitigate its damages, including, without limitation, re-letting the Property; provided that any such re-letting can be for a period shorter or longer than the remaining Term. Tenant shall pay to Landlord the rent due under this Agreement on the dates the rent is due, unless Landlord notifies Tenant that Landlord elects to terminate this Agreement or Landlord has relet the Property. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the Property, if Tenant obtains Landlord's consent, Tenant shall have the right to assign its interest in this Agreement, or sublet all or a portion of the Property, but Tenant shall not be released from liability or its obligations under this Agreement. Landlord's consent to a proposed assignment or subletting shall be as required in Section 9.1.

D. If Landlord elects to re-let the Property, then any rent that Landlord receives from re-letting shall be applied to the payment of: (i) first, any indebtedness from Tenant to Landlord other than rent due from Tenant; (ii) second, all costs incurred by Landlord in re-letting, including costs for maintenance; and (iii) third, Rent due and unpaid under this Agreement.

E. After deducting the payments referred to in Section 12.2D, any sum remaining from any rent that Landlord receives from re-letting shall be held by Landlord and applied in payment of future rent as rent becomes due under this Agreement. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date rent is due under this Agreement, the rent received from any re-letting is less than the rent due on that date, then Tenant shall pay to Landlord, in addition to the remaining rent due, all costs which Landlord incurred in re-letting, including without limitation maintenance, that remain after applying the rent received from the re-letting, as provided in Section 12.2D.

**12.3 Continuation After Default.** Even though Tenant has breached this Agreement and/or abandoned the Property, this Agreement shall continue in full force and effect for so long as Landlord does not terminate Tenant's right to possession as provided in Section 12.2 above, and Landlord may enforce all its rights and remedies under this Agreement, including the right to recover rent as it becomes due under this Agreement. In such event, Landlord may exercise all of the rights and remedies of a Landlord under California Civil Code Section 1951.4, or any successor statute. Acts of maintenance or preservation or efforts to re-let the Property or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Agreement shall not constitute a termination of Tenant's right to possession.

**12.4 Landlord's Right to Cure Default.** All agreements and provisions to be performed by Tenant under any of the terms of this Agreement shall be at its sole cost and expense and without abatement of rent, except as set forth herein. If Tenant shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder and such failure shall not be cured within the applicable cure period provided for herein, if any, Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such other act on Tenant's part to be made or performed as provided in this Agreement. All sums so paid by Landlord and all necessary incidental costs shall be on Tenant's account and shall be deemed additional rent hereunder and shall be payable to Landlord on demand.

12.5 **Dispute Resolution.** Any dispute arising out of or relating to this Agreement, or breach thereof, shall be first submitted to the senior management of each Party for resolution during a thirty (30) calendar day dispute resolution period. Notice must be in writing and served pursuant to Section 13.2 herein. The foregoing dispute resolution period shall run concurrently with any notice and cure periods provided for herein.

### **ARTICLE XIII GENERAL PROVISIONS**

13.1 **Attorneys' Fees.** Should any action or proceeding be commenced by Landlord to enforce the provisions provided in this Agreement, or should any litigation be commenced between the parties to this Agreement concerning said Property, this Agreement, or the rights and duties of either in relation thereto, all parties shall bear their own attorneys' fees.

13.2 **Notice.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, return receipt requested, telegraphed, delivered or sent by telex, telecopy or cable and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, three (3) business days after the date of posting by the United States post office, (iii) if given by telegraph or cable, one (1) business day after the date delivered to the telegraph company with charges prepaid.

To Landlord:	The City of Riverside Attn: Community & Economic Development Director 3900 Main Street Riverside, CA 92522 Phone: (951) 826-5556
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To Tenant:	WattEV SB1, Inc. Attention: Lease Administration 222 N. Pacific Coast Highway Unit 1785 El Segundo, CA 90245
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With a copy to:	WattEV SB1, Inc. Attention: Legal Department P.O. Box 98099 Las Vegas, NV 89193
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A. Notice of change of address shall be given by written notice in the manner detailed in this Section. Rejection or other refusal to accept, or the inability to deliver because of changed address of which no notice was given, shall be deemed to constitute receipt of the notice, demand, request or communication sent.

B. Tenant hereby agrees that service of notice in accordance with the terms of this Agreement shall be in lieu of the methods of service specified in Section 1161 of the California Code of Civil Procedure Section 1161. The provisions of California Code of Civil Procedure Section 1013(a), extending the time within which a right may be exercised or an act may be done, shall not apply to a notice given pursuant to this Agreement.

13.3 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

13.4 **Captions.** Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

13.5 **Amendment of Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

13.6 **Waiver.** The waiver by Landlord or Tenant of any agreement, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition or provision herein contained, nor shall any custom or practice which may grow up between the Parties in the administration of the terms hereof be construed to waive or to lessen the right of Landlord or Tenant to insist upon the performance by Tenant or Landlord in strict accordance with said terms. The subsequent acceptance of any payment hereunder by Landlord shall not be deemed to be a waiver of any breach by Tenant of any agreement, condition or provision of this Agreement, other than the failure of Tenant to pay the particular amount so accepted. Specifically, Landlord may accept any payment from Tenant and apply same to any amount owing hereunder notwithstanding any stated intent or instruction on the part of Tenant to the contrary and without waiving or compromising any claim that such payment was less than the payment actually due from Tenant.

13.7 **No Merger.** The voluntary or other surrender of this Agreement by Tenant, or a mutual cancellation thereof, shall not work as a merger, and shall, at the option of Landlord, terminate all or any existing subleases or sub-tenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or sub-tenancies.

13.8 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13.9 **Fees and Other Expenses.** Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement, including any permit or license fees which Tenant may be required to obtain pursuant to its occupancy.

13.10 **Authority to Execute Agreement.** Landlord and Tenant represent and warrant that the individuals who have signed this Agreement have the legal power, right and authority to enter into this Agreement so as to bind each Party for whom they sign to perform as provided herein.

13.11 **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto. Tenant shall be responsible for the acts or omissions of its sub-Tenant(s), if any.

13.12 **Incorporation of Exhibits.** Each of the Exhibits to this Agreement are incorporated by reference as though fully set forth herein.

13.13 **Entire Agreement.** This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Tenant and Landlord as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to any employees or agents of either Party shall be of any effect unless it is in writing and executed by the party to be bound thereby.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the calendar day and year written below.

**LANDLORD:**

**CITY OF RIVERSIDE**

By: \_\_\_\_\_  
Landlord Manager

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

ATTEST:

By: \_\_\_\_\_  
City Clerk

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

APPROVED AS TO FORM:

By: Susan Wilson  
Assistant City Attorney

**TENANT:**

**WattEV SB1, Inc., a California corporation**

By: Salim Youssefzadeh  
Title: CEO  
Printed Name: Salim Youssefzadeh

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Printed Name: \_\_\_\_\_



**EXHIBIT "A"**

**Property**

**(Inserted behind this page)**



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

APN's: 0141-252-03 & Por. APN 0141-312-02  
Address: 1388 South E Street

That certain real property located in the City of San Bernardino, County of San Bernardino, State of California, described as follows:

Parcel 1 of Parcel Map No. 773, as shown by map on file in Book 7, Page 65 of Parcel Maps, Records of San Bernardino County, California

**TOGETHER WITH** the North 120.00 feet of Parcel 2 of said Parcel Map No. 773.

Said legal description is pursuant to Certificate of Compliance – Land Division No. 568 recorded April 4, 1980 as Instrument No. 80-083354 of Official Records of San Bernardino County, California.

Area – 178,257 S.F. (4.09 Ac.) more or less

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.

Curtis C. Stephens 8/18/21 Prep. (Signature)  
Curtis C. Stephens, L.S. 7519 Date



215/SAN BERNARDINO FREEWAY

N01°11'36"E  
23.78'  
N01°11'36"E  
120.03'

N03°56'21"W 575.25'

N89°55'27"E  
269.79'

PARCEL 1

178,257 S.F. (4.09 AC.)

PARCEL MAP NO. 773  
P.M.B. 7/65 S.B. CO.

N89°55'27"W  
234.17'

PARCEL 2

237.35'  
S89°55'27"W

597.73'

S00°19'33"E 717.73'

50'

STREET

"E"

50'



CENTURY  
AVENUE

• CITY OF RIVERSIDE, CALIFORNIA •

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE  
ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.

SHEET 1 OF 1

SCALE: 1"=100'

DRAWN BY: CURT

DATE: 8/17/21

SUBJECT: APN 0141-252-03 & POR. OF 0141-312-02

## EXHIBIT "B"

### Acceptance Memorandum

**E Street, South of Orange Show Road, San Bernardino, California,  
San Bernardino County Assessor Parcel Number 0141-252-03 and a portion of 0141-312-02  
(the "Property")**

Pursuant to Section 1.2 of the Lease Agreement dated on or about \_\_\_\_\_, 2021 (the "Lease") between City of Riverside, a California charter city and municipal corporation ("Landlord") and WattEV SB1, Inc. a California corporation ("Tenant"), and all defined terms stated therein, with respect to the Property, Landlord and Tenant acknowledge and agree that for all purposes in the Lease:

1. The Lease Effective Date is the date of the last signature on the execution page of the Lease, which is \_\_\_\_\_, 2021, and Tenant has accepted possession of the Property as of the Lease Effective Date.
2. The Rent Commencement Date is the earlier of the following two dates: (i) 12 months after the date of the issuance of the building permit by the appropriate governmental agency or (ii) fifteen months after the Lease Effective Date, which is \_\_\_\_\_.
2. The Expiration Date of the initial Term is \_\_\_\_\_, 20\_\_ (180 full calendar months after Rent Commencement Date). Tenant has three options to extend the Lease Term and Expiration Date by five years for each extension. If Tenant exercises all Extension Options then the Expiration Date will be \_\_\_\_\_, 20\_\_ (30 years after Lease Commencement Date).

When signed by Landlord and Tenant, this Acceptance Memorandum is attached to and incorporated in the Lease as Exhibit B, shall replace the form of Exhibit B attached to the Lease as of the Lease Date and the Lease is amended to be consistent with this Acceptance Memorandum.

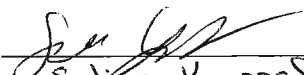
Dated: \_\_\_\_\_, 20

Landlord:

City of Riverside,  
a California charter city and municipal corporation  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Tenant:

WattEV SB1, Inc. a California corporation

By:   
Name: Sakim Youssefzadeh  
Title: CEO

**EXHIBIT "C"**

**Memorandum of Lease**

WHEN RECORDED, RETURN TO:

WATTEV SB1, Inc.  
222 North Pacific Coast Highway  
Unit 1785  
El Segundo, CA

**MEMORANDUM OF LEASE**

Landlord:	The City of Riverside 3900 Main Street Riverside, CA 92522 Phone: 826-2135
Tenant:	WattEV SB1, Inc. 222 North Pacific Coast Highway Unit 1785 El Segundo, CA 90245
Property:	E Street, South of Orange Show Road, San Bernardino, California, San Bernardino County Assessor Parcel Number 0141-252-03 and a portion of 0141-312-02, Described in Exhibit A

This Memorandum of Lease is recorded in the San Bernadino County Public Records to give notice of that certain Lease Agreement dated \_\_\_\_\_, 2021 (the "Lease") made by and between Landlord and Tenant. The Lease term commences on \_\_\_\_\_ (the "Effective Date," as defined in the Lease and expires on \_\_\_\_\_ (defined in the Lease as the one hundred eightieth (180th) full calendar month following the Rent Commencement Date), subject to extension under the terms stated in the Lease. The Lease grants Tenant certain rights to purchase the Property. All of the other terms, conditions, and agreements contained within the Lease are fully incorporated herein by reference as if set forth in full herein. This Memorandum of Lease does not amend the Lease and is subject to all terms of the Lease.

[Signatures on the next page]

Landlord:

City of Riverside,  
a California charter city and municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

Tenant:

WattEV SB1, Inc. a California corporation

By: 

Name: Salim Youssefzadeh

Title: CEO

**{Notarization}**

**EXHIBIT A**  
**To Memorandum of Lease**  
**(Legal Description)**

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

APN's: 0141-252-03 & Por. APN 0141-312-02  
Address: 1388 South E Street

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**TOGETHER WITH** the North 120.00 feet of Parcel 2 of said Parcel Map No. 773.

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*Curtis C. Stephens* 8/18/21 Prep. *(Signature)*  
Curtis C. Stephens, L.S. 7519 Date





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N01°11'36"E

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SHEET 1 OF 1

SCALE: 1"=100'

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