

PARKING AREA LICENSE AGREEMENT

THIS PARKING AREA LICENSE (this “License”), dated as of October __, 2018, is made by and between the City of Sunnyvale, a California municipal corporation (“Licensor”), and TP SPE LLC, a Delaware limited liability company (“Licensee”).

W I T N E S S E T H:

WHEREAS, Licensor is the landlord of a certain parcel of real estate located at 605 Macara Avenue in Sunnyvale, CA (the “Property”) which includes, among other things, a surface parking area containing those certain eighty-four (84) parking spaces as shown on Exhibit A hereto (the “Parking Area”);

WHEREAS, Licensor wishes to grant to Licensee, and Licensee wishes to accept an exclusive license to use the Parking Area on the terms and conditions hereinafter set forth;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee hereby agree as follows:

1. **Grant of License and Use of Parking Area.**

(a) Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, an exclusive license (the “License”) to use the Parking Area in its “as is” condition. Licensee shall use the Parking Area for the parking of automobiles, vans, sport utility vehicles and passenger trucks owned or operated by the employees or invitees of Licensee’s tenants, and for no other purpose.

2. **Term.**

(a) This License hereby granted shall commence on January 1, 2019, and shall continue until August 31, 2021; provided, however, that Licensee shall have the right to extend the term of this License for three (3) periods of two (2) additional months each by delivering written notice thereof to Licensor at least thirty (30) days in advance in each instance. Notwithstanding the foregoing, each party hereto shall have the option to terminate this Agreement by giving one hundred twenty (120) days prior written notice to the other unless a shorter period is mutually agreed upon by the parties, for any reason or no reason, provided that if Licensee shall be in default under any provision of this License, then Licensor may terminate this License upon ten (10) days’ written notice to Licensee.

(b) Upon the expiration or earlier termination date of the License (the “Termination Date”), Licensee shall, at its sole cost and expense (i) remove or cause to remove, all automobiles or other vehicles from the Parking Area and remove any signage with respect thereto from the Parking Area in accordance with the terms hereof, and pay all amounts due and owing under this License for the period up to and including the Termination Date.

3. **License Fee.**

(a) **Fee.** Licensee agrees to pay to Licensor a license fee (the “License Fee”) for the use of the Parking Area in the amount of \$8,400 monthly without deduction, set off, demand or notice.

(b) **Time of Payment.** The License Fee shall be paid in monthly installments in advance on the first (1st) day of each month, provided that the License Fee due for the first month of the term shall be paid by Licensee to Licensor upon execution and delivery of this License.

4. Insurance to Be Procured and Maintained by Licensee.

(a) General and Automobile Liability Insurance. Licensee shall procure and maintain general liability and automobile insurance against claims for personal and bodily injury, death and property damage occurring on or as a result of the use of the Parking Area in the amount of \$2,000,000.00 per occurrence and \$4,000,000.00 annual aggregate ("Licensee's Insurance") on a claims occurrence basis in full force and effect during the term of this License, including any extensions.

(b) The costs of procuring and maintaining Licensee's Insurance shall be borne by Licensee.

(c) The policies identified in Section 4(a) shall name Licensor as additional insured, and shall require thirty (30) days' prior written notice to Licensor prior to any modification or expiration of any such policies or coverages.

(d) Certificates evidencing the placing of and full payment for all insurance coverage required by this Section 4 shall be furnished by Licensee to Licensor at the time of commencement of the term of this License and at least ten (10) days prior to the renewal of the policy.

5. Licensee's Use of the Parking Area:

(a) Licensee may use the Parking Area on Mondays through Fridays from 6:00 a.m. to 8:00 p.m. only. Licensee acknowledging and agreeing that after 5 pm members of the public needing to use any of the Parking Area spaces shall have the right to use any such parking spaces that are then available for use.

(b) Licensee shall suffer no waste or injury to the Parking Area.

(c) Licensee shall comply with all applicable rules, laws and regulations of any governmental or quasi-governmental authority applicable to the manner of use of the Parking Area, including, without limitation, building and/or zoning codes, and shall comply with all reasonable rules and regulations (the "Rules and Regulations") Licensor may, at any time or from time to time, establish regarding the Parking Area therein.

(d) Licensee shall not interfere in any with any of Landlord's tenant(s) or other permittees' use of those portions of the parking lot not included in the Parking Area.

(e) Licensee shall not create or permit to be created any lien, encumbrance or charge on the Parking Area.

(f) Licensee shall not wash, polish and/or clean, or permit others to wash, polish, and/or clean automobiles and other vehicles in the Parking Area.

(g) Licensee shall not store any items in, on, or about the Parking Area, nor shall Licensee dispose of any flammable, explosive, radioactive, hazardous, toxic, contaminating, polluting matter, waste, or substance or related injurious materials in, under, about, or on any part of the Parking Area whatsoever.

(h) Licensee acknowledges and agrees that Licensee shall be solely responsible for any theft, vandalism, or other damage or destruction to any automobiles or other vehicles parked in the Parking Area. Licensor shall suffer no liability for any purported lack of security to the Parking Area, nor shall Licensor be responsible for any damages or expenses arising from such acts.

(i) Licensee acknowledges and agrees that Licensee shall have the right to implement a valet service at the Parking Area at Licensee's sole expense, which valet service shall include the use of shuttle buses to and from the Parking Area in order to bring the employees and invitees of Licensee's tenants to and from the Parking Area.

(j) Licensee shall be responsible, at Licensee's expense, for the installation of any legally-required signage necessary for the use of the Parking Area.

(k) Licenser and Licensee may relocate the parking spaces within the Parking Area upon prior written approval of both parties.

6. Obligations of Licenser. Licensee acknowledges that Licenser has not made any representations, warranties, promises or agreements to improve or alter the Parking Area. During the term of this License, Licenser shall, at Licenser's expense:

(a) perform all maintenance and repairs necessary in order for the Parking Area to be in a condition necessary for Licensee's use of the Parking Area for the purposes described I this Agreement;

(b) ensure that utility services and other similar services are available to the Parking Area as Licenser deems reasonably necessary.

(c) Licenser shall have no responsibility or liability to Licensee for failure to perform any of the foregoing obligations for reasons outside its reasonable control, and such failure shall never be deemed to constitute an eviction or disturbance of the Licensee's use and possession of the Parking Area or relieve Licensee from paying the License Fee or performing any of its obligations under this License.

7. Alterations: Licensee shall not make or perform any alterations, installations, additions or other physical changes to the Parking Area.

8. Indemnification and Hold Harmless: Licensee agrees to indemnify, defend and hold Licenser harmless from and against any and all loss, liability, damage, cost and expense, including, without limitation, reasonable attorneys' fees and disbursements, arising from or claimed to arise as a result of any act, omission, neglect or failure to act of Licensee or any persons entering the Parking Area with Licensee's permission.

9. Destruction or Damage. If the Parking Area or the access thereto shall be partially damaged at no fault of Licensee, the same shall be repaired and the Parking Area restored at Licenser's option to its condition prior to the damage, as nearly as may be, by and at the expense of Licenser with reasonable diligence. Until such repairs shall be made, the License Fee shall be apportioned according to the part of the Parking Area which is usable by Licensee for the normal operation of its business. Licenser shall not be liable to Licensee for reasonable delay which may arise by reason of strikes or other labor troubles, weather or physical conditions or any other cause beyond Licenser's control. If, in Licenser's determination made within thirty (30) days after the date of the damage, the repairs cannot be performed within sixty (60) days after the date of the date of the casualty, either Licenser or Licensee shall have the right to terminate this License upon twenty (20) days' prior written notice to the other. Any destruction or damage to the Parking Area or surrounding area caused by the Licensee shall be repaired to its condition immediately prior to such destruction or damage.

10. No Personal Liability of Licenser. Any liability of Licenser under this License shall be limited to its interest in the Parking Area, and in no event shall any personal liability be asserted against Licenser, its employees, officers, agents, shareholders, parties, directors, advisors, representatives, successors or assigns in connection with this License. Licenser shall not be liable to Licensee for any injury or damage to Licensee or to any other person or for any damage to, or loss (by theft or otherwise) of, any property of Licensee or of any other person, irrespective of the cause of such injury, damage or loss.

11. Notice of Accidents, Fire, Damage and Defects. Licensee shall give prompt notice to Licenser of any of the following of which Licensee shall have knowledge:

(a) any accident in or about the Parking Area;

- (b) all fires or other casualties in the Parking Area; and
- (c) all damage to or defects in the Parking Area;
- (d) any theft or vandalism occurring in or about the Parking Area or any vehicle parked therein.

12. Notices. Any notice, consent, demand, or other communication required or permitted to be given under this License shall be in writing, shall be sent by (i) overnight courier for next-business-morning delivery; (ii) by registered or certified mail, return receipt requested, or (iii) by personal delivery, to the parties at the following addresses (or to such other or further addresses as the parties may designate by like notices similarly sent), and shall be deemed given and received for all purposes three (3) business days after the date deposited in the United States mail if sent by registered or certified mail, or the date of delivery if sent by courier or personal delivery, except that a notice of a change in address shall be effective only upon receipt:

To Licensors: City of Sunnyvale
456 West Olive Avenue
P.O. Box _____
Sunnyvale, California 94088-3707
Attn: _____

To Licensee: TP SPE LLC
c/o Jay Paul Company
Four Embarcadero Center, suite 3620
San Francisco, California 94111
Attn: Ms. Janette D'Elia

13. No Lease: This Agreement does not and shall not be deemed to constitute a lease or a conveyance of the Parking Area by Licensors to Licensee or to confer upon Licensee any right, title, estate or interest in or to the Parking Area other than the license described herein. This Agreement grants to Licensee only a personal privilege to use and occupy the Parking Area for the term hereof on the terms and conditions set forth herein.

14. Brokerage: Each of Licensors and Licensee agrees to indemnify and hold the other party harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with such indemnifying party with regard to the License. The provisions of this Paragraph 14 shall survive the termination of this License.

15. Assignment: Licensee shall not assign, transfer or otherwise encumber this Agreement, or the License hereby granted.

16. Modifications, etc. and Entire Agreement: No modification, waiver or amendment of this License or any provision herein shall be valid unless the same is in writing, and signed by the party against which the enforcement of such modification, waiver or amendment is sought. This License contains the entire agreement between the parties hereto relating to the transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.

17. Enforceability. This License shall not be binding upon Licensors unless and until Licensors delivers a fully executed counterpart hereof to Licensee.

18. Liens. Licensee shall not permit any liens to be filed or recorded against the Parking Area or the Property.

19. Miscellaneous.

(a) The unenforceability, invalidity, or illegality of any provision of this License shall not render the other provisions unenforceable, invalid or illegal.

(b) This License shall be construed and interpreted in accordance with the laws of the state of California, without giving effect to conflict-of-law rules and principles of said State, and proper venue shall be in the Superior Court of Santa Clara County.

(c) All of the terms and provisions of this License shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, and permitted successors, transferees and assigns.

(d) Section headings are included solely for convenience, are not to be considered part of this License and are not intended to modify, explain or to be a full or accurate description of the content thereof.

(e) This License may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Such counterparts shall be construed together and shall constitute a single license.

(f) The failure of Licensor to insist in any one or more instances upon the strict performance or observance of any one or more of the obligations of this License, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of performance of such obligations or of the right to exercise such election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

(g) Neither this License nor any memorandum thereof may be recorded or filed in the Santa Clara County Recorder without the prior written consent of Licensor.

IN WITNESS WHEREOF, this License has been duly executed by the parties hereto as of the day and year first above written.

LICENSOR:

CITY OF SUNNYVALE, a California municipal corporation

APPROVED AS TO FORM:

Robert L. Boco
Senior Assistant City Attorney

By: _____

Name: _____

Title: _____

LICENSEE:

TP SPE LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A
(Designated Spaces)

