

AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE

by and between

TC II 888 POST, LLC,  
a Delaware limited liability company  
as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Buyer

For the purchase and sale of

888 Post Street  
San Francisco, California

**May 18, 2021**

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EXHIBIT C – Certificate of Transferor Other Than An Individual (FIRPTA Affidavit)

EXHIBIT D – Assignment of Lease

**AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE**  
(888 Post Street, San Francisco)

THIS AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE (this "**Agreement**") is by and between TC II 888 POST, LLC, a Delaware limited liability company ("**Seller**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**").

**RECITALS**

- A. Seller, as landlord, leases the Property (defined below) to City under the Master Lease dated as of January 13, 2020 (the "**Lease**"). Any initially capitalized term used in this Agreement but not defined has the meaning given to that term in the Lease.
- B. In Section 22 of the Lease, Seller granted to City an option to purchase the Property (the "**Purchase Option**").
- C. City exercised its option to purchase under the Purchase Option on May 18, 2021 (the "**Reference Date**") and Seller and City now desire to enter into this Agreement in accordance with Section 22(a) of the Lease.

IN CONSIDERATION of the foregoing the respective rights, obligations, and agreements contained in the Lease and this Agreement, Seller and City agree as follows:

**1. PURCHASE AND SALE**

**1.1 Property Included in Sale**

Seller agrees to sell and convey to City, and City agrees to purchase from Seller, subject to the terms, covenants and conditions hereinafter set forth, the following:

- (a) the real property located in the City and County of San Francisco, commonly known as 888 Post Street, Assessor's Parcel Number 0300/009 and more particularly described in the attached Exhibit A (the "**Land**");
- (b) all improvements and fixtures located on the Land, including, without limitation, that certain 3-story building containing approximately 33,970 rentable square feet and all other structures located on the Land, all apparatus, equipment, and appliances used in connection with the operation or occupancy of the Land and its improvements (collectively, the "**Improvements**");
- (c) any and all rights, privileges, and easements incidental or appurtenant to the Land or Improvements, including, without limitation, any and all minerals, oil, gas, and other hydrocarbon substances on and under the Land, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Land, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land or Improvements, and any and all of Seller's right, title and interest in and

to all roads and alleys adjoining or servicing the Land or Improvements (collectively, the "Appurtenances");

All of the items referred to in Subsections (a), (b), and (c) above are collectively referred to as the "**Property**."

## **2. PURCHASE PRICE**

### **2.1 Purchase Price**

The total purchase price for the Property is Twenty-Nine Million Dollars (\$29,000,000) (the "**Purchase Price**").

### **2.2 Payment**

**(a)** On the Closing Date (as defined in Section 6.2 [Closing Date]), City will pay the Purchase Price in readily available funds, as may be adjusted under Article 7 [Expenses and Taxes], and may be reduced by any credits due City as provided in this Agreement.

**(b)** City may finance the acquisition of the Property with proceeds from the issuance, sale, and delivery of certificates of participation, a financing mechanism that will require fee simple title to be taken in the name of a nominee of City which, as landlord, will lease the Property to City. The nominee, which will be a bank or other fiduciary, will act as trustee for holders of the Certificates of Participation. Seller consents to the use of a nominee to take title, and further consents to City's assignment to the nominee of City's rights under this Agreement. If City elects to finance the acquisition of the Property using certificates of participation, then City's obligations under this Agreement will be contingent upon, and subject to, the successful issuance, sale, and delivery before the Closing of certificates of participation, the proceeds from which will be used to finance acquisition of the Property. Notwithstanding anything to the contrary in this Agreement, the Closing Date may be extended by the mutual agreement of the parties in writing, provided that neither party will unreasonably withhold its consent to any such extension. City will use reasonable efforts to pursue the sale of the certificates of participation and all other action that is necessary in connection therewith, provided that the terms and conditions of the issuance of such certificates must be acceptable to City, the Board of Supervisors, and the Mayor of the City and County of San Francisco, in their sole discretion. City makes no representation, warranty, or assurance the certificates will be issued, delivered, or sold. Seller agrees to execute and deliver to City upon request any and all certificates, agreements, authorizations, or other documents as City may deem necessary or appropriate in connection with the issuance, delivery, and sale of the certificates of participation in a form reasonably acceptable to Seller. If this Agreement is terminated due to **(i)** failure of any issuance, sale, and delivery of certificates of participation; **(ii)** failure to obtain approvals from the Board of Supervisors and the Mayor of the City and County of San Francisco; or **(iii)** City's default under this Agreement, City will pay Seller within thirty (30) days of demand for all actual out-of-pocket costs, expenses, and fees Seller incurred in connection with City's exercise of the Purchase Option under the Lease and this Agreement, which obligation will survive termination of this Agreement.

(c) Seller acknowledges and agrees that if Seller fails at Closing to deliver to Escrow the documents required under Sections 6.3(c) and 6.3(e) [Seller's Delivery of Documents], City may be required to withhold a portion of the Purchase Price under Section 1445 of the United States Internal Revenue Code of 1986, as amended (the "**Federal Tax Code**"), or Section 18662 of the California Revenue and Taxation Code. Any amount properly withheld will be deemed to have been paid by City as part of the Purchase Price, and Seller's obligation to consummate the transaction contemplated under this Agreement will not be excused or otherwise affected by the withholding.

### **2.3 Funds**

All payments made by either party must be in legal tender of the United States of America, paid in cash or by wire transfer of immediately available funds to Title Company (as defined in Section 3.2 [Title Insurance; Title and Survey Review]), as Escrow agent.

## **3. TITLE TO THE PROPERTY; TITLE INSURANCE**

### **3.1 Conveyance of the Property**

At the Closing Seller will convey to City, or its nominee, marketable and insurable fee simple title to the Land, the Improvements and the Appurtenances, by duly executed and acknowledged grant deed in the form attached as Exhibit C (the "**Deed**"), subject to the Permitted Exceptions (as defined in Section 3.2 [Title Insurance; Title and Survey Review]).

### **3.2 Title Insurance; Title and Survey Review**

(a) Delivery of title in accordance with the preceding Section will be evidenced by the commitment of Chicago Title Insurance Company (the "**Title Company**") to issue to City, or its nominee, an ALTA extended coverage owner's policy of title insurance (Form ALTA 2006) (the "**Title Policy**") in the amount of the Purchase Price, insuring fee simple title to the Property in City, or its nominee, free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, rights of tenants or other occupants (except for City's rights under the Lease and of any subtenants under City subleases), and subject to Permitted Exceptions. The Title Policy must provide full coverage against mechanics' and materialmen's liens arising out of the construction, repair, or alteration of any of the Property not caused by City or its subtenants, and contain an affirmative endorsement that there are no violations of restrictive covenants, if any, affecting the Property, and any endorsements as City may reasonably request. The Title Policy will also provide for reinsurance with direct access with such companies and in such amounts as City may reasonably request. Seller will cooperate with City in connection with a mechanics' lien certification to allow City to obtain the Title Policy, but, if, despite Seller's cooperation, Title Company does not deliver the Title Policy, then Seller will not be in default under this Agreement.

(i) Within five (5) business days after the date City and Seller execute this Agreement, Seller will cause the Title Company to deliver to City a current extended coverage preliminary report on the Real Property, issued by Title Company, accompanied by copies of all documents referred to in the report (collectively, the "**Preliminary Report**");

(ii) Within the period referred to in clause (i) above, Seller will deliver to City copies of any existing or proposed easements, covenants, restrictions, agreements or other documents that affect the Property, and are not disclosed by the Preliminary Report, or, if Seller knows of no such documents, a written certification of Seller to that effect; and

(iii) City may at its option arrange for an "as-built" survey of the Real Property and Improvements prepared by a licensed surveyor (the "**Survey**"). The survey must be acceptable to, and certified to, City and Title Company and in sufficient detail to provide the basis for and the Title Policy without boundary, encroachment, or survey exceptions.

(b) Within forty-five (45) days after City's receipt of the Preliminary Report, City will advise Seller what exceptions to title, if any, City is willing to accept (the "**Permitted Exceptions**"). City's failure to so advise Seller within that period will be deemed disapproval of title, and this Agreement will terminate. Seller will have ten (10) business days after receipt of City's notice of any objections to title to give City notice that: (i) Seller will remove the objectionable exceptions from title on or before the Closing; or (ii) Seller will not to cause any exceptions to be removed; or (iii) which of the objectionable exceptions that Seller will remove on or before the Closing. If Seller does not provide City notice, then Seller will be deemed to have elected not to remove any objectionable exceptions. If Seller gives notice under clauses (ii) or (iii), City will have five (5) business days to elect to proceed with the purchase notwithstanding such objectionable exceptions that Seller will not cause to be removed (in which case such exceptions will be deemed to be Permitted Exceptions) or and terminate this Agreement. If City fails to give Seller notice of its election within five (5) business days, City will be deemed to have elected to proceed with the purchase of the Property. If Seller gives notice pursuant to clauses (i) or (iii) and fails to remove any such objectionable exceptions from title before the Closing Date that Seller agreed to remove, and City is unwilling to take title subject to the unremoved exception(s), Seller will be in default under this Agreement and City will have the rights and remedies provided in this Agreement or at law or in equity. If Seller requires additional time to remove a title exception identified by City, the Closing Date may be postponed for up to thirty (30) days upon request by Seller to allow Seller to remove such title exception.

#### **4. BUYER'S DUE DILIGENCE INVESTIGATIONS**

##### **4.1 Due Diligence and Time for Satisfaction of Conditions**

(a) During the Due Diligence Period (defined below) City will have a full opportunity to investigate the Property at its sole cost and expense, either independently or through agents of City's own choosing, including, without limitation, the opportunity to conduct such appraisals, inspections, tests, audits, verifications, inventories, investigations and other due diligence regarding the economic, physical, environmental, title and legal conditions of the Property as City deems fit, as well as the suitability of the Property for City's intended uses. City may perform invasive or destructive testing, each of which will be considered an "Alteration" under the Lease requiring Seller's prior written consent. If the transaction contemplated under this Agreement is not consummated for any reason, City will promptly repair any damage caused by invasive or destructive testing at City's expense. City and its Agents may commence due diligence investigations on the Property on or after the Reference Date. The period for



completion of all City's investigations will expire on the date that is sixty (60) days after the Reference Date (the "**Due Diligence Period**"), subject to the terms and conditions provided in this Agreement. City may terminate this Agreement by written notice to Seller at any time before the expiration of the Due Diligence Period. Except as provided in Article 3 [Title to the Property; Title Insurance], unless City terminates this Agreement by written notice to Seller on or before the expiration of the Due Diligence Period, City will be obligated to purchase from Seller and Seller will be obligated to sell and convey to City the Property for the Purchase Price and on the terms and conditions set forth in this Agreement.

(b) Seller has delivered or will deliver to City the following documents, all to the extent such documents exist, have not previously been delivered to City under the Lease, and are either in the possession or reasonable control of Seller, or any affiliate of Seller, or may be obtained by Seller, through the exercise of commercially reasonable efforts: (i) within ten (10) business days after the Reference Date, structural calculations for the Improvements; site plans; certified copies of the as-built plans and specifications for the Improvements; recent inspection reports by Seller's engineers; service contracts; utility contracts; maintenance contracts; employment contracts, management contracts; certificates of occupancy; presently effective warranties or guaranties received by Seller from any contractors, subcontractors, suppliers, or materialmen in connection with any construction, repair, or alteration of the Improvements or any tenant improvements; insurance policies, insurance certificates of tenants, and reports of insurance carriers insuring the Property and each portion thereof respecting the claims history of the Property; environmental reports, studies, surveys, tests, and assessments; and soils and geotechnical reports (collectively, the "**Documents**"); and (ii) within ten (10) business days after written request by City, any other reasonable information relating to the Property that is specifically requested by City of Seller in writing during the Due Diligence Period (collectively, the "**Other Information**"). If Seller fails to deliver all of the Documents and Other Information within the 10-business day delivery period, then provided City provides Seller with a written list of the missing Documents and Other Information within three (3) business days following expiration of the 10-day period, the expiration of the Due Diligence Period will be extended by the number of days after the end of the ten (10)-business day delivery period until Seller delivers the items in the written list to City.

(c) Seller discloses to City that natural hazards described in the following California code sections (the "**Natural Hazard Laws**") may affect the Property: (A) Govt. Code Section 8589.3 (Special Flood Hazard Area); (B) Govt. Code Section 8589.4 (Inundation Area); (C) Govt. Code Section 51183.5 (Fire Hazard Severity Zone); (D) Public Resource Code Section 2621.9 (Earthquake Fault Zone); (E) Public Resource Code Section 2694 (Seismic Hazard Zone); and (F) Public Resource Code Section 4136 (Wildland Area). Seller may execute and deliver to City a separate Natural Hazards Disclosure Statement with respect to the foregoing matters (the "**Natural Hazards Disclosure Statement**").

(d) Notwithstanding anything to the contrary herein, Seller will not be required to provide, copy or make available to City any internal memoranda, appraisals and valuation reports, and similar information or information covered by the attorney-client privilege. Seller makes no representation or warranty in respect of any Documents or Other Information (including the accuracy or completeness thereof) provided by Seller, and City acknowledges that no representations or warranties, either express or implied, were made by

Seller with respect to any Documents or Other Information. To the extent any person or entity, other than Seller, including any surveyors, appraisers, title agents, tenants, escrow agent, attorneys, engineering consultants or environmental consultants, made any representations or warranties or any other statements (verbal or written) to City, or provided any documents, reports, studies, information or other materials, City acknowledges it will have no claim or right of action against Seller arising therefrom, nor any right to rescind, revoke, or terminate this Agreement on account thereof.

(e) Seller will cooperate with City, at no out-of-pocket cost to Seller, and do all acts as may be reasonably requested by City with regard to its due diligence including, without limitation, execution of any documents, applications, or permits. Seller irrevocably authorizes City and its Agents to make all inquiries with and applications to any person or entity, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations. Notwithstanding anything in this subsection (e) to the contrary, in no event will City do any acts, without limitation, filing any documents, applications, or permits, or make any applications that will be binding on Seller or the Property in the event that Closing does not occur, but City will have no liability or obligation to Seller due to the acts of any regulatory authority regarding any existing conditions at the Property.

(f) During the Due Diligence Period, City will advise Seller of the contracts or agreements that it will require to be assigned to, and assumed by, City at Closing (the "**Assumed Contracts**"). At or before the Closing, Seller will terminate any contracts or agreements not to be assumed by City, without liability to City.

(g) For the avoidance of doubt, the City's indemnity obligations under Section 16.1 of the Lease remain in full force and effect and apply to City's activities under this Agreement to the extent and for the period stated in that Section 16.1.

(h) If this Agreement is terminated for any reason other than Seller's default and Seller requests copies of any reports relating to the Property provided to City by third parties that are not subject to privilege ("**City Reports**"), then City will deliver copies via email of the City Reports (without any warranty of any kind) to Seller within ten (10) business days after receipt of Seller's request. If Seller requests printed copies or electronic copies on portable media of any City Reports, then City will provide the copies at Seller's cost. City's obligation to deliver the City Reports will survive any termination of this Agreements.

(i) Before the expiration of the Due Diligence Period, City will advise Seller whether or not City has received the Resolution and Approvals. If City does not so advise Seller, then after the expiration of the Due Diligence Period and continuing until City receives the Resolution and Approvals, Seller may terminate this Agreement on written notice to City.

#### **4.2 As Is Sale; Waiver and Release**

(a) The Property is being sold, and City is accepting possession of the Property on the Closing Date, "AS IS, WHERE IS, WITH ALL FAULTS," with no right of setoff or reduction in the Purchase Price except for Seller's representations and warranties set forth in this Agreement that expressly survive the Closing and instruments executed by Seller at

Closing (the “**Seller’s Warranties**”). Except for Seller’s Warranties, neither Seller nor any Seller Agent will have or shall be deemed to have made any verbal or written representations, warranties, promises, or guarantees (whether express, implied, statutory or otherwise) to City with respect to the Property, any matter set forth, contained or addressed in the Documents or Other Information (including, but not limited to, the accuracy and completeness thereof) or the results of the investigations.

**(b)** AS OF CLOSING, CITY WILL HAVE HAD THE OPPORTUNITY TO CONDUCT TESTING AND INSPECTIONS TO CONFIRM INDEPENDENTLY ALL INFORMATION THAT CITY CONSIDERS MATERIAL TO ITS PURCHASE OF THE PROPERTY OR THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT. EXCEPT FOR SELLER’S WARRANTIES, CITY IS NOT RELYING ON (AND SELLER AND EACH OF THE SELLER’S AGENTS) PARTIES DOES HEREBY DISCLAIM AND RENOUNCE) ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, FROM SELLER OR THE SELLER’S AGENTS, AS TO: (I) THE OPERATION OF THE PROPERTY OR THE INCOME POTENTIAL, USES, OR MERCHANTABILITY OR FITNESS OF ANY PORTION OF THE PROPERTY FOR A PARTICULAR PURPOSE; (II) THE PHYSICAL CONDITION WHETHER VISIBLE OR NOT, OF THE PROPERTY OR THE CONDITION OR SAFETY OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, INCLUDING, BUT NOT LIMITED TO, PLUMBING, SEWER, HEATING, VENTILATING, AND AIR CONDITIONING, LIFE SAFETY, BUILDING MANAGEMENT, VERTICAL TRANSPORTATION, AND ELECTRICAL SYSTEMS, ROOFING, FOUNDATIONS, SOILS AND GEOLOGY, INCLUDING HAZARDOUS MATERIALS, LOT SIZE, OR SUITABILITY OF THE PROPERTY OR ANY IMPROVEMENTS THEREON FOR A PARTICULAR PURPOSE; (III) THE PRESENCE OR ABSENCE, LOCATION OR SCOPE OF ANY HAZARDOUS MATERIALS IN, AT, OR UNDER THE PROPERTY; (IV) WHETHER THE APPLIANCES, IF ANY, PLUMBING OR UTILITIES ARE IN WORKING ORDER; (V) THE HABITABILITY OR SUITABILITY FOR OCCUPANCY OF ANY STRUCTURE AND THE QUALITY OF ITS CONSTRUCTION; (VI) WHETHER THE IMPROVEMENTS ARE STRUCTURALLY SOUND, IN GOOD CONDITION, OR IN COMPLIANCE WITH APPLICABLE MUNICIPAL, COUNTY, STATE OR FEDERAL STATUTES, CODES OR ORDINANCES; (VII) THE ACCURACY OF ANY STATEMENTS, CALCULATIONS, OR CONDITIONS STATED OR SET FORTH IN SELLER’S BOOKS AND RECORDS CONCERNING THE PROPERTY OR SET FORTH IN THE DILIGENCE DOCUMENTS OR ANY OF SELLER’S OFFERING MATERIALS WITH RESPECT TO THE PROPERTY; (VIII) THE DIMENSIONS OF THE PROPERTY OR THE ACCURACY OF ANY FLOOR PLANS, SQUARE FOOTAGE, LEASE ABSTRACTS, SKETCHES, REVENUE OR EXPENSE PROJECTIONS RELATED TO THE PROPERTY; (IX) THE OPERATING PERFORMANCE, THE INCOME AND EXPENSES OF THE PROPERTY OR THE ECONOMIC STATUS OF THE PROPERTY; (X) THE ABILITY OF CITY TO OBTAIN ANY AND ALL NECESSARY GOVERNMENTAL APPROVALS OR PERMITS FOR CITY’S INTENDED USE AND DEVELOPMENT OF THE PROPERTY; (XI) THE LEASING STATUS OF THE PROPERTY OR THE INTENTIONS OF ANY PARTIES WITH RESPECT TO THE NEGOTIATION AND/OR EXECUTION OF ANY LEASE FOR ANY PORTION OF THE PROPERTY; AND (XII) SELLER’S OWNERSHIP OF ANY PORTION OF THE PROPERTY.

**(c)** AS OF CLOSING, CITY, FOR CITY AND CITY’S SUCCESSORS AND ASSIGNS, RELEASES SELLER AND SELLER’S AGENTS, AND THEIR SUCCESSORS AND ASSIGNS FROM, AND WAIVES ALL CLAIMS AND LIABILITY, INCLUDING ENVIRONMENTAL LIABILITY (DEFINED BELOW), AGAINST SELLER AND SELLER’S AGENTS, AND THEIR SUCCESSORS AND ASSIGNS FOR OR ATTRIBUTABLE TO THE FOLLOWING:

(i) ANY AND ALL STATEMENTS OR OPINIONS MADE BEFORE OR AFTER THE DATE OF THIS AGREEMENT, OR INFORMATION FURNISHED, BY THEM TO CITY OR ITS AGENTS OR REPRESENTATIVES RELATING TO THE PROPERTY, EXCEPT FOR SELLER'S WARRANTIES; AND

(ii) ANY STRUCTURAL, PHYSICAL, OR ENVIRONMENTAL CONDITION AT THE PROPERTY, INCLUDING, CLAIMS OR LIABILITIES RELATING TO THE PRESENCE, DISCOVERY OR REMOVAL OF ANY HAZARDOUS MATERIALS IN, AT, ABOUT OR UNDER THE PROPERTY, OR FOR, CONNECTED WITH, OR ARISING OUT OF ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED UPON ENVIRONMENTAL LAW (DEFINED BELOW).

(d) THE ABOVE RELEASE BY CITY INCLUDES CLAIMS OF WHICH CITY IS PRESENTLY UNAWARE OR THAT CITY DOES NOT PRESENTLY SUSPECT TO EXIST WHICH, IF KNOWN BY CITY, WOULD MATERIALLY AFFECT CITY'S RELEASE OF SELLER AND THE SELLER'S AGENTS. CITY SPECIFICALLY WAIVES ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542 AND ANY STATE OR FEDERAL LAW OF SIMILAR EFFECT. CIVIL CODE SECTION 1542 PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

(e) THE FOREGOING PROVISIONS OF THIS SECTION WILL NOT SERVE TO RELEASE SELLER FROM, AND NO RELEASE IN THIS SECTION APPLIES TO, AND CITY EXPRESSLY DOES NOT WAIVE (A) SELLER'S FRAUD, (B) ANY MATERIAL BREACH OF ANY SELLER'S WARRANTIES, OR (C) WITH RESPECT TO ANY CLAIM MADE BY ANY THIRD PARTY AGAINST CITY WITH RESPECT TO THE PROPERTY ARISING DURING SELLER'S OWNERSHIP OF THE PROPERTY, AND PROVIDED THAT SUCH CLAIM IS NOT WITHIN THE SCOPE OF CITY'S INDEMNIFICATION OF SELLER AS LANDLORD UNDER THE LEASE.

(f) CITY ACKNOWLEDGES AND AGREES THAT IT HAS BEEN REPRESENTED BY LEGAL COUNSEL OF ITS CHOICE IN CONNECTION WITH THIS AGREEMENT, AND THAT SUCH COUNSEL HAS EXPLAINED TO CITY THE PROVISIONS OF THIS SECTION 4.2.

(g) THIS SECTION 4.2 WILL SURVIVE THE CLOSING.

(h) "**Environmental Law**" means any international, federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, consent decree or judgment, in each case in existence as of the Closing Date, relating to or regulating human health or safety, or industrial hygiene or environmental conditions or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, the Toxic Substances Control Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Hazardous Materials Transportation Act, the Oil Pollution Act of 1990 and any state laws implementing the foregoing federal laws. "**Environmental Liability**" means any claim, demand, order, suit, obligation, liability, cost

(including, the cost of any investigation, testing, compliance or remedial action), consequential damages, loss or expense (including attorneys' and consultants' fees and expenses) arising out of, relating to or resulting from any Environmental Law or environmental, health or safety matter or condition, including natural resources, and related in any way to the Property or to this Agreement or its subject matter, in each case, whether arising or incurred before, on or after the Closing Date. "**Hazardous Materials**" means (i) any petroleum, petroleum products, by-products or breakdown products, radioactive materials, asbestos-containing materials or polychlorinated biphenyls, (ii) any chemical, material or substance defined or regulated as toxic or hazardous or as a pollutant, contaminant or waste under any Environmental Law or any Mold or Mold Condition. "**Release**" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including continuing migration, of Hazardous Materials into or through soil, surface water or groundwater. "**Mold**" means mold, mildew, fungus or other potentially dangerous organisms. "**Mold Condition**" means the presence of Mold or any condition(s) that reasonably can be expected to indicate the presence of Mold, including observed discoloration of walls, ceilings or floors, complaints received within the last six (6) months of respiratory ailment or eye irritation by tenants, employees or any other occupants or invitees in the Property or any notice from a governmental agency of complaints regarding the indoor air quality at the Property.

## 5. CONDITIONS TO CLOSING

### 5.1 City's Conditions to Closing

The following are conditions precedent to City's obligation to purchase the Property (collectively, "**City Conditions Precedent**"):

(a) Title to the Property is in the same condition as approved by City under Article 3 [Title to the Property; Title Insurance] (subject to any change in the condition of title to the Property caused by City or its subtenants, and anyone acting by or through them).

(b) Seller is not in material default in the performance of any covenant or agreement to be performed by Seller under this Agreement or the Lease.

(c) All of Seller's representations and warranties contained in or made pursuant to Section 8.1 of this Agreement were true and correct when made and are true and correct as of the Closing. At the Closing, Seller will deliver to City a certificate certifying that each of Seller's representations and warranties contained in Section 8.1 [Representations and Warranties of Seller] below are true and correct as of the Closing Date.

(d) As of the Closing Date, there is no litigation or administrative agency or other governmental proceeding, pending or threatened that, after the Closing, would materially adversely affect the value of the Property or the ability of City to operate the Property for its intended use.

(e) Title Company is committed at the Closing to issue to City, or its nominee, the Title Policy as provided in Section 3.2 [Title Insurance; Title and Survey Review].

(f) City has received the Resolution and Approvals.

(g) Seller has delivered the items described in Section 6.3 [Seller's Delivery of Documents] below on or before the Closing.

(h) Title Company has agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements (as defined in Section 6.6 [Title Company as Real Estate Reporting Person] below).

## **5.2 Satisfaction or Waiver of City Conditions**

The City Conditions Precedent contained in the foregoing Sections 5.1(a) through 5.1(h) are solely for the benefit of City. If any Condition Precedent is not satisfied, City will have the right in its sole discretion either to waive in writing the Condition Precedent in question and proceed with the purchase or, in the alternative, terminate this Agreement, provided that the City Conditions Precedent described in items Sections 5.1(e) and 5.1(g) above may not be waived. The Closing Date may be extended, at City's option, for a reasonable period of time specified by City (but not beyond the Outside Closing Date), to allow the City Conditions Precedent to be satisfied, subject to City's further right to terminate this Agreement upon the expiration of the period of any such extension if all such City Conditions Precedent have not been satisfied.

## **5.3 Seller's Conditions to Closing**

The following are conditions precedent to Seller's obligation to purchase the Property (collectively, "**Seller Conditions Precedent**"):

(a) City is not in default in the performance of any covenant or agreement to be performed by City this Agreement.

(b) City has delivered the items and funds described in Section 6.4 below [City's Delivery of Documents and Funds] on or before the Closing and Title Company has agreed to release the full Purchase Price, as adjusted pursuant to this Agreement, to Seller at Closing.

(c) Title Company has agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements.

## **5.4 Satisfaction or Waiver of Seller Conditions**

The Seller Conditions Precedent contained in the foregoing Sections 5.3(a) through 5.3(c) are solely for the benefit of Seller. If any Seller Condition Precedent is not satisfied, Seller will have the right in its sole discretion either to waive in writing the Seller Condition Precedent in question and proceed with the purchase or, in the alternative, terminate this Agreement. The Closing Date may be extended, at Seller's option, for a reasonable period of time specified by Seller (but not beyond the Outside Closing Date), to allow the Seller Conditions Precedent to be satisfied, subject to Seller's further right to terminate this Agreement upon the expiration of the period of any such extension if all such Seller Conditions Precedent have not been satisfied.

## 5.5 Seller Default

If the sale of the Property is not consummated because of a material default under this Agreement on the part of Seller or if a Condition Precedent cannot be fulfilled because Seller frustrated such fulfillment by some affirmative act or negligent omission, City may, at its sole election, either **(1)** terminate this Agreement by delivery of notice of termination to Seller, whereupon Seller will pay to City any out-of-pocket title, escrow, legal, and inspection fees incurred by City and any other reasonable and actual out-of-pocket expenses incurred by City in connection with the performance of its due diligence review of the Property, and neither party will have any further rights or obligations under this Agreement, or **(2)** continue this Agreement pending City's action for specific performance and/or damages under this Agreement, including, without limitation, City's reasonably incurred actual out-of-pocket costs and expenses incurred under this Agreement up to an aggregate amount of One Hundred Thousand Dollars (\$100,000). Seller will not be liable for consequential, incidental, special, or punitive damages, whether in contract, tort or under any other legal or equitable principle. City shall be deemed to have elected to terminate this Agreement if City fails to file suit for specific performance against Seller in a court of competent jurisdiction, on or before the date that is sixty (60) days following the date upon which Closing was to have occurred. City waives any right to record a *lis pendens* on the Property unless City sues for specific performance, as permitted under this Section. If City sues for specific performance and prevails, then City will be entitled to offset the Purchase Price in the amount of Base Rent and any other Additional Charges in excess of the actual amounts necessary to reimburse Seller for the costs of Real Estate Taxes, Seller's Insurance, and Additional Services paid by City between the date that the Closing Date would have occurred but for Seller's default and the actual Closing Date.

## 5.6 City Default

If the purchase and sale of the Property is not completed in accordance with this Agreement because City defaults under or materially breaches this Agreement, Seller shall be entitled to terminate this Agreement and upon termination, City shall reimburse Seller for its reasonably incurred, actual out-of-pocket costs and expenses incurred under this Agreement.

## 6. ESCROW AND CLOSING

### 6.1 Opening of Escrow

On or about the Reference Date, City will open escrow ("**Escrow**") by depositing this Agreement with Title Company, and this Agreement will serve as instructions to Title Company as the Escrow holder for consummation of the purchase and sale of the Property. Seller and City will execute any additional or supplementary instructions as may be appropriate to enable the Escrow holder to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional or supplementary instructions, the terms of this Agreement will control.

### 6.2 Closing Date

The consummation of the purchase and sale of the Property contemplated by this Agreement (the "**Closing**", and the date on which Closing occurs, the "**Closing Date**") will

occur on a date that is thirty (30) days following expiration of the Due Diligence Period, and must occur on or before August 1, 2022 (the “**Outside Closing Date**”), time being of the essence; provided that Seller may elect to close on a date that is later than thirty (30) days following expiration of the Due Diligence Period and earlier than the Outside Closing Date upon written notice to City. If Seller elects to so extend the Closing, the Rent under the Lease will be prorated under Section 7.1(a) as of the date the Closing would have occurred if Seller had not extended. Before the Closing Date, Seller and City will each deposit in Escrow all documents and funds necessary to close the purchase and sale, together with escrow instructions consistent with this Section.

The Closing will be held and delivery of all items to be made at the Closing under the terms of this Agreement will be made at the offices of Title Company located at One Embarcadero Center, Suite 250, San Francisco, CA 94111, San Francisco, California, subject to the provisions of Article 5 [Conditions to Closing]. The Closing Date may not be extended without the prior written approval of both Seller and City, except as otherwise expressly provided in this Agreement.

If Closing does not occur by the Outside Closing Date, the parties have not agreed to extend the Closing Date, and the delay is not caused by the wrongful action or default of Seller or Seller’s lender or Agents, Seller at its option, in its sole discretion, may elect to terminate this Agreement or extend the Outside Closing Date upon written notice to City and the Title Company, in which case this Agreement will terminate, except for provisions that by their terms survive such termination, and the parties will instruct the Title Company to return to the depositor items deposited into Escrow. Any such return will not, however, limit the provisions hereof or otherwise relieve either party of any liability it may have for its wrongful failure to close.

### **6.3 Seller's Delivery of Documents**

At or before the Closing, Seller will deliver to City, or the nominee, through Escrow, the following:

- (a) a duly executed and acknowledged Deed;
- (b) any available originals of the Documents, Assumed Contracts, and any other items relating to the ownership or operation of the Property not previously delivered to City;
- (c) an executed assignment of Lease with respect to the Lease in the form attached hereto as Exhibit D;
- (d) a properly executed affidavit pursuant to Section 1445(b)(2) of the Federal Tax Code in the form attached hereto as Exhibit C, and on which City is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code;
- (e) a properly executed California Franchise Tax Board Form 590 or 593, as appropriate;



(f) such resolutions, authorizations, or other entity documents or agreements relating to Seller and its members as the Title Company may reasonably require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller;

(g) closing statement prepared by Title Company in form and content satisfactory to Seller; and

(h) the duly executed certificate regarding the continued accuracy of Seller's representations and warranties as required by Section 5.1(c) above.

#### **6.4 City's Delivery of Documents and Funds**

At or before the Closing, City, or the nominee, will deliver to Seller through Escrow the following:

(a) an acceptance of the Deed executed by City's Director of Property;

(b) a signed assignment of Lease with respect to the Lease in the form attached hereto as Exhibit D;

(c) a closing statement prepared by Title Company in form and content satisfactory to City; and

(d) the Purchase Price, as provided in Article 2 above; provided, however, that if Seller has a payment obligation to City as landlord under the Lease, then City may elect for such amounts to be applied as a credit to City against the Purchase Price.

#### **6.5 Other Documents**

Seller and City will each deposit such other instruments as are reasonably required by Title Company as Escrow holder or otherwise required to close the Escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

#### **6.6 Title Company as Real Estate Reporting Person**

Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the "**Reporting Requirements**") require that certain information be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Closing. Seller and City agree that if the Closing occurs, Title Company will be the party responsible for closing the transaction contemplated in this Agreement and is hereby designated as the real estate reporting person (as defined in the Reporting Requirements) for such transaction. Title Company will perform all duties required of the real estate reporting person for the Closing under the Reporting Requirements, and Seller and City will each timely furnish Title Company with any information reasonably requested by Title Company and necessary for the performance of its duties under the Reporting Requirements with respect to the Closing.

## **7. EXPENSES AND TAXES**

### **7.1 Rent and Other Apportionments**

The following are to be apportioned through Escrow as of the Closing Date:

**(a) Rent**

Rent under the Lease will be prorated as of the Closing Date.

**(b) Assumed Contracts**

**(c)** To the extent charges under the Assumed Contracts are not already paid for by City as tenant under the Lease, amounts payable under any Assumed Contracts will be apportioned as of the Closing Date.

**(d) Seller's Insurance & Additional Services**

Seller's Insurance and any Additional Services that are not Assumed Contracts will be apportioned as of the Closing Date.

**(e)** At least five (5) days before the Closing, Seller will provide to City for verification a draft proration schedule and reasonably necessary supporting information. Seller and City will use best efforts to finalize as many items on such proration schedule as possible before the Closing. Seller will provide the Title Company with the Closing prorations for the Property to include in the closing statements. If any of the costs or expenses to be prorated cannot be finally determined as of the Closing, then Seller and City will include reasonable estimates of those costs and expenses and reconcile the prorations as soon as possible after the Closing Date, but in no event later than sixty (60) days after the Closing Date. If no reconciliation of the estimated proration occurs within sixty (60) days after the Closing Date, then the estimated prorations will be deemed final.

### **7.2 Real Estate Taxes and Special Assessments**

General real estate taxes and special assessments payable for the tax year of Closing shall be adjusted with Seller paying for the period prior to Closing and City paying for the period after the Closing and with Seller paying for all prior years, including without limitation, interest and penalties payable thereon.

### **7.3 Closing Costs**

City will pay the cost of the Survey, the premium for the Title Policy and the cost of any endorsements, and any transfer taxes applicable to the sale. Seller and City will share equally Escrow and recording fees. Seller will be responsible for all costs incurred in connection with the prepayment or satisfaction of any loan, bond, or other indebtedness secured by the Property including, without limitation, any prepayment fees, penalties, or charges. Any other costs and charges of the Escrow for the sale not otherwise provided for in this Section or elsewhere in this

Agreement will be allocated in accordance with the closing customs for San Francisco County, as determined by Title Company.

#### **7.4 Survival**

The provisions of this Section will survive the Closing.

### **8. REPRESENTATIONS AND WARRANTIES**

#### **8.1 Representations and Warranties of Seller**

Seller represents and warrants to, and covenants with, City as follows:

(a) The Assumed Contracts and Lease furnished to City are true, correct and complete copies of such documents. To Seller's actual knowledge, Seller has not received any written notice from any service provider alleging that the Seller is in material default under the Assumed Contracts, and to Seller's actual knowledge, Seller is not in default under the Lease.

(b) Seller does not have actual knowledge of any condemnation, either instituted or planned to be instituted by any governmental or quasi-governmental agency other than City, which could detrimentally affect the use, operation or value of the Property.

(c) To Seller's actual knowledge, there are no easements or rights of way that are not of record with respect to the Property, and to Seller's actual knowledge no easements, rights of way, permits, licenses or other forms of agreement that afford third parties the right to traverse any portion of the Property to gain access to other real property. To Seller's knowledge, there are no ongoing claims or disputes with regard to the location of any fence or other monument of the Property's boundary.

(d) To Seller's actual knowledge, there is no litigation pending or threatened, against Seller or any basis therefor that arises out of the ownership of the Property or that might detrimentally affect the use or operation of the Property for its intended purpose or the value of the Property or the ability of Seller to perform its obligations under this Agreement.

(e) Seller has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Property other than to City pursuant to the Lease.

(f) Seller is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of California. Seller has the full power and authority to enter into this Agreement and perform its obligations under this Agreement.

(g) This Agreement is a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally, or general principles of equity.

(h) Seller (i) is not in receivership or dissolution; (ii) has not made any assignment for the benefit of creditors; (iii) has not admitted in writing its inability to pay its debts as they mature; (iv) has not been adjudicated a bankrupt; (v) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the Federal Bankruptcy Law or any other similar law or statute of the United States or any state, or (vi) does not have any such petition described in clause (v) above filed against Seller.

(i) Seller represents and warrants to City that it has not been suspended, disciplined, or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. If Seller has been so suspended, disbarred, disciplined, or prohibited from contracting with any governmental agency, it will immediately notify the City together the reasons therefor and with any relevant facts or information requested by City. Any such suspension, debarment, discipline, or prohibition may result in the termination or suspension of this Agreement.

(j) At the time of Closing there will be no outstanding written or oral contracts made by Seller for any of the Improvements that have not been fully paid for and Seller will cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Property at Seller's request prior to the time of Closing.

(k) Seller has not dealt with any real estate broker or finder in connection with the sale of the Property to City or this Agreement.

(l) Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

As used in this Agreement, "to Seller's knowledge," "to Seller's actual knowledge," "to the knowledge of Seller," and similar phrases mean to the current actual knowledge of Craig Young and Ross Stackhouse, without any duty of independent investigation or inquiry. Seller represents and warrants the forgoing named individual is the persons most likely to have actual knowledge of the Property. Actual knowledge will not be deemed to exist merely by assertion by City of a claim that any of the foregoing persons should have known of such facts or circumstances, if such person did not have actual knowledge thereof. City acknowledges that the individuals named above are named solely for the purpose of defining and narrowing the scope of Seller's knowledge and not for the purpose of imposing any liability on or creating any duties running from such individuals to City. City covenants that it will bring no action of any kind against such individuals, related to or arising out of these representations and warranties.

## **8.2 Limitation of Liability**

If the Closing occurs, (a) the aggregate liability of Seller arising pursuant to or in connection with the Seller's Warranties may not exceed Five Hundred Thousand Dollars (\$500,000) ("**Liability Limitation**"), absent fraud or intentional misrepresentation by Seller, and (b) no claim by City alleging a breach by Seller of any of Seller's Warranties may be made, and Seller will not be liable for any judgment in any action based upon any such claim, (i) unless the City tenders the claim to Seller in writing during the Survival Period, and (ii) unless and until

such claim, either alone or together with any other claims by City alleging a breach by Seller of any of Seller's Warranties, is for an aggregate amount in excess of Fifty Thousand Dollars (\$50,000) ("**Floor Amount**"), in which event Seller's liability for such claim or claims shall be for the entire amount thereof, subject to the Liability Limitation; provided, however, that if any final judgment is for an amount that is less than or equal to the applicable Floor Amount, then Seller will have no liability with respect thereto. In addition, to the extent that City or its affiliates obtain knowledge before the Closing that any representation or warranty of Seller was untrue when made in any material respect, and City elects to close the transaction contemplated by this Agreement, City will be deemed to have waived its rights to recover damages from Seller following the Closing, unless the parties agree otherwise in a written agreement.

### **8.3 Representations and Warranties of City**

City represents and warrants that City has not dealt with any real estate broker or finder in connection with the purchase of the Property from Seller or this Agreement.

## **9. RISK OF LOSS AND POSSESSION**

### **9.1 Risk of Loss**

(a) If before the Closing Date any portion of the Property is damaged or destroyed or if condemnation proceedings are commenced against any portion of the Property by any entity other than City, then the rights and obligations of City and Seller under this Agreement are as follows:

(i) If the damage or destruction is fully covered by Seller's insurance (except for the deductible amount, which Seller will be responsible for), and the insurer agrees to timely pay for the entire cost of the repair, then City will proceed with the Closing. In that case, City will receive a credit against the Purchase Price equal to the deductible amount, and Seller will assign to City at the Closing all of Seller's right, title, and interest in and to all proceeds of insurance on account of the damage or destruction under an instrument satisfactory to City.

(ii) If the damage or destruction is not fully covered by Seller's insurance (other than the deductible amount), then City in its discretion may elect to terminate this Agreement or proceed with the Closing and, if it elects to proceed with Closing, will receive a credit against the Purchase Price at the Closing in an amount reasonably determined by Seller and City (after consultation with unaffiliated experts) to be the cost of repairing the damage or destruction, not to exceed Two Million Nine Hundred Thousand Dollars (\$2,900,000). City will have thirty (30) days after damage or destruction to make its election by delivering written notice to Seller. City's failure to deliver its notice within the thirty (30) day period will be deemed City's election to terminate this Agreement. If this Agreement is terminated, then City and Seller will each be released from all obligations under this Agreement (except those that expressly survive termination of this Agreement) and the Lease will continue in full force and effect, except that Section 22.1 [Option to Purchase] will be of no further force or effect.

(iii) If condemnation proceedings are commenced against any portion of the Property by any entity other than City, then City will have the right, at its election, to (1) terminate this Agreement, or (2) exclude that portion of the Property subject to condemnation

proceedings (in which case there will be an equitable adjustment to the Purchase Price), or (3) to Close on the Property. City will have thirty (30) days after notice of condemnation proceedings to make its election by delivering written notice to Seller. City's failure to deliver its notice within the thirty (30) day period will be deemed City's election to terminate this Agreement. If the portion of the Property subject to condemnation proceedings is excluded under this subsection, then City and Seller will each be released from all obligations under this Agreement pertaining to that portion of the Property affected by the condemnation.

## **9.2 Insurance**

Through the Closing Date, Seller will maintain the insurance required under the Lease.

## **9.3 Possession**

Possession of the Property will be delivered to City on the Closing Date, subject to the Lease and any sublease(s).

# **10. MAINTENANCE; CONSENT TO NEW CONTRACTS**

## **10.1 Maintenance of the Property by Seller**

Until the Closing, Seller and City will maintain the Property as provided in the Lease.

## **10.2 City's Consent to New Contracts Affecting the Property; Termination of Existing Contracts**

After the Reference Date, Seller may not enter into any contract, or any amendment thereof, or waive any rights of Seller under any Assumed Contract, without in each instance obtaining City's prior written consent. City agrees that it will not unreasonably withhold or delay any such consent. Seller, as landlord under the Lease, will be excused from performing any obligations under the Lease where performance is contingent on City's consent, and City has failed to provide such consent. Seller will terminate prior to the Closing, at no cost or expense to City, any and all agreements affecting the Property that are not Assumed Contracts.

# **11. GENERAL PROVISIONS**

## **11.1 Notices**

Section 24.1 of the Lease applies to all notices to be given under this Agreement.

## **11.2 Brokers and Finders**

Neither party has had any contact or dealings regarding the Property, or any communication in connection with this transaction, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the purchase and sale contemplated under this Agreement. If any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim will be responsible for such

commission or fee and will indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section will survive the Closing.

### **11.3 Successors and Assigns**

This Agreement is binding upon, and will inure to the benefit of, the parties to this Agreement and their respective successors, heirs, administrators, and assigns. City will have the right, upon notice to Seller, to assign its right, title and interest in and to this Agreement to the nominee or one (1) or more assignees at any time before the Closing Date.

### **11.4 Amendments**

Except as otherwise provided in this Agreement or the Lease, this Agreement may be amended or modified only by a written instrument executed by City and Seller.

### **11.5 Continuation and Survival of Representations and Warranties**

All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to be, and will remain, true and correct as of the Closing, and will survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond any termination of this Agreement for a period of twelve (12) months after the Closing Date (the “**Survival Period**”), at which time such representations and warranties shall terminate. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Seller in conjunction with this transaction will constitute representations and warranties.

### **11.6 Governing Law**

This Agreement is governed by and will be construed in accordance with the laws of the State of California and the City and County of San Francisco.

### **11.7 Merger of Prior Agreements**

The parties intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) are the final expression of their agreement with respect to the purchase and sale of the Property as described in this Agreement and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement will constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes from prior drafts) may be introduced in any judicial, administrative, or other legal proceeding involving this Agreement.

### **11.8 Parties and Their Agents; Approvals**

The term "Seller" includes the plural as well as the singular. If there is more than one (1) Seller, then the obligations under this Agreement imposed on Seller will be joint and several.

The term "**Agents**" when used with respect to either party includes the agents, employees, officers, contractors, and representatives of such party. All approvals, consents, or other determinations permitted or required by City under this Agreement will be made by or through City's Director of Property unless otherwise provided in this Agreement or applicable Laws.

### **11.9 Interpretation of Agreement; Cooperative Draft**

The article, section, and other headings of this Agreement and the table of contents are for convenience of reference only and will not affect the meaning or interpretation of any provision of the Agreement. Whenever the context requires, the use of the singular will be deemed to include the plural and vice versa, and each gender reference will be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement will be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

### **11.10 Attorneys' Fees**

If either Seller or City fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the non-prevailing party in the dispute, as the case may be, will pay the reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the dispute and/or prosecution or defense of an action and enforcing or establishing its rights under this Agreement (whether or not any action is prosecuted to a judgment). For purposes of this Agreement, reasonable attorneys' fees of City's Office of the City Attorney will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the legal subject matter area who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" also includes all fees incurred for appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought in the matter for which the fees were incurred. The term "costs" means the costs and expenses of counsel to the parties, which may include printing, duplicating, and other similar expenses, air freight charges, expert fees, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

### **11.11 Sunshine Ordinance**

Seller understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. Seller hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.



### **11.12 Conflicts of Interest**

Through its execution of this Agreement, Seller acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Seller becomes aware of any such fact during the term of this Agreement, Seller will immediately notify the City.

### **11.13 Notification of Prohibition on Contributions**

Through its execution of this Agreement, Seller acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from any department of the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Seller acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Seller further acknowledges that the (i) prohibition on contributions applies to each Seller; each member of Seller's board of directors, and Seller's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Seller; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom Seller is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, Seller certifies that Seller has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

### **11.14 Non-Liability of City Officials, Employees and Agents**

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City will be personally liable to Seller, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Seller, its successors and assigns, or for any obligation of City under this Agreement.

### **11.15 Counterparts**

This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

### **11.16 Effective Date**

For the avoidance of doubt, as provided in Section 22.1 of the Lease, this Agreement is expressly incorporated into Section 22.1 of the Lease and is effective on the Reference Date, notwithstanding signatures by the parties. Seller and/or City may elect to execute this Agreement for its or their preference or convenience, but the failure of either party to execute this Agreement will not affect the effectiveness or binding nature of the Agreement.

### **11.17 Severability**

If any provision of this Agreement or its application to any person, entity, or circumstance is invalid or unenforceable, the remainder of this Agreement, or its application to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected, and each other provision of this Agreement will be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

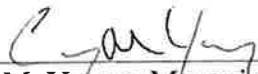
NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SELLER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS WILL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT WILL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT SUCH LEGISLATION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

*[SIGNATURES ON FOLLOWING PAGES]*

The parties have duly executed this Agreement as of the respective dates written below.

SELLER:


TC II 888 POST, LLC,  
a Delaware limited liability company

By:   
Craig M. Young, Managing Member

Date: 5/18/21

CITY:

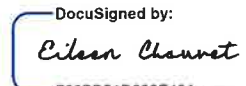
CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By:   
Andrico Q. Penick  
Director of Property

Date: 5/20/21

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:   
Eileen Chauvet  
Deputy City Attorney

**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Commencing at the point of intersection of the Northerly line of Post Street and the Easterly line of Hyde Street; running thence Northerly along the Easterly line of Hyde Street, 137 feet 6 inches; thence at a right angle Easterly 77 feet 6 inches; thence at a right angle Southerly 137 feet 6 inches to the Northerly line of Post Street; thence at a right angle Westerly along said line of Post Street, 77 feet 6 inches to the point of commencement.

Being part of 50 Vara Lot No. 1269, in Block No. 280.

APN: Lot 009, Block 300

**EXHIBIT B**

**GRANT DEED**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

The undersigned hereby declares this  
instrument to be exempt from Recording Fees  
(CA Govt. Code § 27383) and Documentary  
Transfer Tax (S.F. Bus. & Tax Reg. Code  
§ 1105)

(Space above this line reserved for Recorder's  
use only)

**GRANT DEED**

(Assessor's Parcel No. 0300/009)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, TC II 888 POST, LLC, a Delaware limited liability company, hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, all of Grantor's interest in the real property located in the City and County of San Francisco, State of California, described in Exhibit A attached hereto and made a part hereof, together with the tenements, easements, rights of way and appurtenances belonging or in any way appertaining to the same, and the improvements thereon.

*[SIGNATURES ON FOLLOWING PAGE]*

Executed as of \_\_\_\_\_, 2020.

TC II 888 POST, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Craig M. Young, Managing Member



CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property located at 888 Post Street conveyed by the foregoing Grant Deed dated \_\_\_\_\_ to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and Resolution No. \_\_\_\_\_, approved \_\_\_\_\_, 20\_\_\_\_, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

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

Andrico Q. Penick  
Director of Property



**EXHIBIT C**

**CERTIFICATE OF TRANSFEROR  
OTHER THAN AN INDIVIDUAL  
(FIRPTA Affidavit)**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the transferee of certain real property located in the City and County of San Francisco, California, that withholding of tax is not required upon the disposition of such U.S. real property interest by TC II 888 POST, LLC, a Delaware limited liability company ("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Transferor's U.S. employer identification number is \_\_\_\_\_; and

3. Transferor's office address is \_\_\_\_\_

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

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

On behalf of:

TC II 888 POST, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Craig M. Young, Managing Member

**EXHIBIT D**

**ASSIGNMENT OF LEASE**

THIS ASSIGNMENT OF LEASES, made as of \_\_\_\_\_, \_\_\_\_ (the “**Effective Date**”), by and between \_\_\_\_\_, a \_\_\_\_\_ (“**Seller**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Buyer**”),

W I T N E S S E T H:

For valuable consideration, receipt of which is acknowledged, Seller and Buyer agree as follows:

1. Assignment and Assumption.

(a) Seller hereby assigns and transfers to Buyer all right, title and interest of Seller in, to and under the Master Lease dated as of January 13, 2020 (the “**Lease**”).

(b) Buyer accepts the foregoing assignment, and assumes and agrees to perform all of the covenants and agreements in the Lease to be performed by Seller that arise or accrue from and after the Effective Date.

2. Further Assurances. Seller and Buyer will execute such other documents and perform such other acts as may be reasonably necessary or proper and usual to effect this Assignment.

3. Governing Law. This Assignment is governed by and construed in accordance with the laws of the State of California.

4. Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of Seller and Buyer and their respective personal representatives, heirs, successors and assigns.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Seller and Buyer have executed this Assignment as of the Effective Date.

SELLER:

TC II 888 POST, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Craig M. Young, Managing Member

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

BUYER:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Andrico Q. Penick, Director of Property

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