

OFFICE LEASE

between

333 VALENCIA OWNER, L.L.C.,  
a Delaware limited liability company  
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Tenant

For the lease of the 2nd, 3rd & 4th floors at  
333 Valencia Street  
San Francisco, California

June 30, 2020

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## OFFICE LEASE

THIS OFFICE LEASE (this "Lease"), dated for reference purposes only as of June 30, 2020, is by and between 333 VALENCIA OWNER, L.L.C., a Delaware limited liability company ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Tenant").

Landlord and City hereby agree as follows:

### 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below is deemed to incorporate all of the terms in this Lease pertaining to that item. If there is any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision will control.

Lease Reference Date:	June 30, 2020
Landlord:	333 VALENCIA OWNER, L.L.C.
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Building ( <u>Section 2.1</u> ):	333 Valencia Street, San Francisco, California
Premises ( <u>Section 2.1</u> ):	The entire second, third, and fourth floors
Rentable Area of Premises ( <u>Section 2.1</u> ):	Approximately forty-four thousand two hundred twenty-nine (44,229) rentable square feet
Term ( <u>Section 3</u> ):	<p>The Commencement Date is the date Landlord delivers the Premises with the Leasehold Improvements Substantially Completed or deemed Substantially Completed, in accordance with this Lease and the Work Letter attached as <u>Exhibit D</u> (the "Work Letter").</p> <p>The "Estimated Commencement Date" is the date occurring Two Hundred Twenty-Three (223) days following the Effective Date.</p> <p>The Expiration Date is the last day of the one hundred eightieth (180<sup>th</sup>) full calendar month after the Commencement Date.</p>
Rent Commencement Date ( <u>Section 4.1</u> ):	The date that is one hundred eighty (180) days after the Commencement Date.

Extension Option ( <u>Section 3.4</u> ):	One additional term of ten (10) years, as provided in <u>Section 3.4</u> ,
Base Rent ( <u>Section 4.1</u> ):	Annual Base Rent: \$2,209,238.55  Monthly payments: \$184,103.21
Base Rent Adjustment; Adjustment Dates ( <u>Section 4.2</u> ):	Throughout the Term, Base Rent will increase by 3% on each anniversary of the Commencement Date or, where the Commencement Date occurs on a date other than the first day of a calendar month, on the first day of the calendar month in which the Commencement Date occurred (an “ <b>Adjustment Date</b> ”)
Additional Charges ( <u>Section 4.3</u> ):	City will pay City’s Percentage Share of Real Estate Taxes and Operating Costs for the Building.
City’s Percentage Share ( <u>Section 4.4</u> ):	79.42%
Use ( <u>Section 5.1</u> ):	General Office and Public Facilities use in accordance with all Laws (as defined in <u>Section 10.1</u> ) (the “ <b>Permitted Use</b> ”).
Leasehold Improvements ( <u>Section 6</u> and Work Letter):	Landlord will complete the Base Building Work (as defined in the Work Letter) at Landlord’s sole cost and City Improvements at City’s cost after the application of the Tenant Improvement Allowance provided by Landlord equal to \$60.00 per rentable square foot of Premises, as described in the Work Letter.
Utilities and Services ( <u>Section 9.1, 9.2</u> ):	Landlord will provide Premises’ heating, ventilation, and air conditioning, and Building elevators and water service, as provided in <u>Section 9.1</u> . City will contract and pay for any electricity and any other utility services necessary for City’s uses of the Premises directly with utility providers. Landlord will provide janitorial and security services.
Other Services ( <u>Section 9.2</u> ):	City will pay or cause to be provided any services necessary for City’s uses of the Premises.



Notice Address of Landlord (Section 23.1):

c/o Murray Hill Partners LLC  
5821 Pinewood Road  
Oakland CA 94611  
Attention: Steven Wolmark  
Email: [swolmark@murrayhillpartners.com](mailto:swolmark@murrayhillpartners.com)

With a copy to:

Angelo Gordon  
2000 Avenue of the Stars, Suite 1020  
Los Angeles, CA 90067  
Attention: Alexander Chan, Vice President  
Email: [ACHan@angelogordon.com](mailto:ACHan@angelogordon.com)

and by email only to:

Rodriguez Wright LLP  
Stephen M. Wright  
Email: [swright@rodriguezwright.com](mailto:swright@rodriguezwright.com)

Key Contact for Landlord:

Steven Wolmark

Landlord Contact Telephone No.:

510-984-3867

Notice Address for Tenant (Section 23.1):

Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: 333 Valencia St.  
Fax No.: (415) 552-9216

with a copy to:

Department of Public Health  
Attention: Director  
101 Grove St.  
San Francisco, CA 94102

and to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: Real Estate & Finance Team  
Re: 333 Valencia St  
Fax No.: (415) 554-4757

Key Contact for Tenant:

Jeff Suess

Tenant Contact Telephone No.:

415-554-9873

Alternate Contact for Tenant:

Josh Keene

Alternate Contact Telephone No.:

415-554-9859

Brokers (Section 23.8):

Colliers International (John Jensen) on behalf of Landlord

Other Noteworthy Provisions (Section 22):

City has the right to purchase the Building as provided in Section 22.

## 2. PREMISES

### 2.1. Lease Premises

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, those premises in the building identified in the Basic Lease Information (the “**Building**”) and shown on the floor plans attached as Exhibit A (the “**Premises**”). The Premises contain the rentable area and are located on the floors of the Building specified in the Basic Lease Information. As used in this Lease, the term “**rentable area**” means that measurement of interior floor area computed in accordance with the “Office Buildings: Standard Methods of Measurements” ANSI/BOMA Z65.1, adopted by the Building Owners and Managers Association (BOMA), based on the usable square footage and utilizing a 24% load factor (the “**BOMA Standard**”), as reasonably determined by Landlord’s architect. The Building, the land on which the Building is located, and all other improvements on or appurtenances to the land are referred to collectively as the “**Property**.”

Within thirty (30) days following the Commencement Date, City may cause the Premises to be remeasured in accordance with the BOMA Standard to confirm the rentable area of the Premises. In no event will any change in the rentable square footage as determined by remeasurement of the Building or any portion thereof result in an adjustment in Base Rent, the purchase price under Section 22, or other monetary obligations under this Lease.

### 2.2. Common Areas

City has the non-exclusive right to use, together with other tenants in the Building, the lobbies, corridors, elevators, stairways, and other public areas of the Building and the Property (collectively, the “**Common Areas**”), and the non-exclusive right of access to and from the Premises by the main entrances to the Building and the Property.

### 2.3. Disability Access

California Civil Code section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“**CASp**”) to determine whether the property meets all applicable construction-related accessibility requirements. City is advised that as of the Reference Date, the Premises have not been inspected by a CASp. The law does not require landlords to have the inspections performed, but Landlord may not prohibit City from obtaining a CASp inspection of the Premises for its occupancy or potential occupancy if requested by City. If City elects to obtain an inspection, City and Landlord will mutually agree on the arrangements for the time and manner of the CASp inspection and City will pay for the CASp inspection fee and the cost of any repairs necessary to correct violations of construction-related accessibility standards will be paid by the party responsible for compliance under Section 10 of this Lease.

### 3. TERM

#### 3.1. Term of Lease

The Premises are leased for a term commencing on the date that Landlord has delivered the Premises to City with the Leasehold Improvements (as defined below) Substantially Completed (as defined in the Work Letter) in accordance with the Work Letter, which may not occur before the Effective Date, as provided in Section 24.23 (Effective Date) (the “Term”). The Term will end on the expiration date specified in the Basic Lease Information, or the date that this Lease is earlier terminated under the provisions of this Lease, unless City extends the Term under Section 3.4 (Extension Option), below.

#### 3.2. Commencement Date and Expiration Date

The dates that the Term commences and expires under this Lease are the “Commencement Date” and the “Expiration Date.” If the Commencement Date occurs on a date other than the Estimated Commencement Date provided in the Basic Lease Information, then Landlord will promptly deliver to City a notice substantially in the form of the attached Exhibit B confirming the actual Commencement Date, but Landlord’s failure to do so will not affect the dates of commencement or expiration of the Term.

#### 3.3. Delay in Delivery of Possession

Landlord will use commercially reasonable efforts to deliver possession of the Premises with all of the Leasehold Improvements Substantially Completed pursuant to the Work Letter on or before the Estimated Commencement Date. If Landlord is unable to deliver possession of the Premises by the Estimated Commencement Date, then, subject to the provisions of this Section below, the validity of this Lease will not be affected by Landlord’s inability to deliver possession except that City’s obligations to pay Base Rent will not commence until the Rent Commencement Date. If the Term commences later or earlier than the Estimated Commencement Date, this Lease will still expire on the Expiration Date, unless sooner terminated under the provisions under this Lease.

If Landlord is unable to deliver possession of the Premises to City as required under this Lease within sixty (60) days after the Estimated Commencement Date (as that 60-day period may be extended due to Unavoidable Delays and Tenant Delays (both as defined in the Work Letter)), then, by written notice to Landlord delivered within ten (10) days following the end of such 60-day period, City may complete the Leasehold Improvements pursuant to the Construction Budget, with Landlord’s Oversight Fee (as defined in the Work Letter) paid to City, and Landlord will pay any reasonable costs of causing the Leasehold Improvements to be completed over the approved Construction Budget required due to Landlord’s delay in completing same together with liquidated damages required under the Work Letter. Where City does not so elect, Landlord will complete the Tenant Improvements and Landlord will pay liquidated damages in accordance with the Work Letter.

If Landlord is required to complete the Leasehold Improvements but is unable to deliver possession of the Premises to City as required under this Lease within one hundred twenty (120) days after the Estimated Commencement Date (as that 120-day period may be extended due to

Unavoidable Delays and Tenant Delays), then, by written notice to Landlord delivered within ten (10) business days following the end of such 120-day period, City may terminate this Lease, and Landlord will pay City's actual out-of-pocket damages caused by Landlord's failure to timely complete the Leasehold Improvements (including, but not limited to, any costs of the Leasehold Improvements paid by City, and holdover rent and any other liabilities incurred by City under its existing lease), after deducting the amount of any liquidated damages previously paid to City pursuant to the Work Letter, and neither Tenant nor Landlord will have any further obligations under this Lease, except for obligations under this Lease that expressly survive termination. If City does not so elect, Landlord will diligently pursue completion of the Leasehold Improvements.

### **3.4. Extension Option**

Landlord grants City the right to extend the Term (the "**Extension Option**") for the additional period specified in the Basic Lease Information (the "**Extended Term**"). The Extended Term will be on all of the terms and conditions contained in this Lease, except that (a) Base Rent will be determined under Section 4.3 below, (ii) there will be no Base Rent abatement period at the beginning of the Extended Term, (iii) City will accept the Premises in its as-is condition, without any Leasehold Improvements or Alterations being made by Landlord, and (iv) Section 22 (City's Option to Purchase) will be inapplicable during any Extended Term. City may exercise the Extension Option, if at all, by giving written notice to Landlord no sooner than four hundred fifty-six (456) days and no later than three hundred sixty-five (365) days before expiration of the Term; provided, however, if there is an uncured Event of Default on the date City gives notice exercising the Extension Option or prior to the commencement date of the Extended Term, then Landlord may reject City's exercise by notifying City in writing within ten (10) days after receipt of City's extension notice, and (ii) within ten (10) days following the date on which the Event of Default occurred, as applicable. Landlord acknowledges and agrees that City's notice of its intent to exercise an Extension Option will be subject to the Board of Supervisors and the Mayor enacting a resolution, at their respective sole and absolute discretion, approving and authorizing the extension, within ninety (90) days after the date the notice of exercise is given (unless the parties are proceeding under Section 4.3(b), in which event within ninety (90) days after the date the Director of Property approves the Base Rent under Section 4.3(b)(iv)). If the resolution is not enacted within the 90-day period, then Landlord may reject City's exercise upon written notice to City at any time before Landlord's receipt thereof. If City extends the Term as provided in this Section, then the word "**Term**" will mean and include the Extended Term.

## **4. RENT**

### **4.1. Base Rent**

Beginning on the date that is one hundred eighty (180) days after the Commencement Date (the "**Rent Commencement Date**"), City will pay to Landlord the annual Base Rent specified in the Basic Lease Information (the "**Base Rent**"). The Base Rent is payable in equal monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or other place as Landlord may designate in writing on not less than thirty (30) days' advance notice. City will pay the Base Rent and estimated Operating Costs and Real Estate Taxes (as provided in this Section 4 below) monthly within thirty (30) days after invoice from Landlord and without any deductions or setoff except as otherwise provided in this

Lease. If the Rent Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for the fractional month will be prorated based on a thirty (30)-day month.

#### **4.2. Adjustments in Base Rent**

On each Adjustment Date (as defined in the Basic Lease Information), the Base Rent for the following 12-month period will be adjusted to equal one hundred three percent (103%) of the Base Rent for the 12-month period preceding the Adjustment Date (provided any abatement at the beginning of the Term or due to casualty, condemnation, or otherwise will be deemed to have not been abated for purposes of this Section 4.2).

#### **4.3. Determination of Base Rent for the Extended Term**

(a) At the commencement of the Extended Term, the Base Rent will be adjusted to equal the prevailing market rate for space of comparable size and location to the Premises then being offered for rent in other buildings similar in age, location, and quality to the Premises (“**Comparable Space**”) situated within the Reference Area; but in no event will the monthly Base Rent be less than one hundred three percent (103%) of the monthly Base Rent for the last full calendar month of the initial Term. The “**Reference Area**” in the area bounded by Guerrero Street and Duboce Avenue, then Duboce Avenue to Valencia Street to McCoppin Street to Otis Street to Mission Street to 7<sup>th</sup> Street to Mississippi Street to Caesar Chavez Street and back to Guerrero Street and Duboce Avenue. As used in this Section, “**prevailing market rate**” means the base rent for Comparable Space in the Reference Area, taking into account (i) any additional rent and all other payments and escalations payable under this Lease, (ii) floor location and size of the premises covered by leases of the Comparable Space, (iii) the duration of Extended Term under this Lease and the term of the leases for Comparable Space, (iv) free rent and any other tenant concessions given under the leases for Comparable Space, (v) tenant improvement allowances and other allowances given under the leases for Comparable Space, and (vi) other relevant factors (as determined by the appraiser, if applicable). In addition, the following must be considered when determining the prevailing market rate: the rental rate that would be applicable for a lease term commencing on the commencement date of the Extended Term and that would be payable in any arms’ length negotiations for the Premises in their then as-is condition, which rental rate will be established by reference to rental terms in leases actually executed for Comparable Space under primary lease (and not sublease), taking into consideration the location of the Building and existing amenities, situated in similar buildings engaged in then-prevailing ordinary rental market practices with respect to tenant concessions (if any) (e.g., not offering promotional deals and other concessions to tenants in an effort to alleviate cash flow problems or in response to a greater than average vacancy rate in a particular building).

(b) Within thirty (30) days after City’s exercise of the Extension Option, Landlord will notify City of Landlord’s determination of the prevailing market rate for the Premises. If City disputes Landlord’s determination of the prevailing market rate, City will notify Landlord within fourteen (14) days after Landlord’s notice to City of the prevailing market rate and the dispute will be resolved as follows:

(i) Within thirty (30) days after Landlord's notice to City of the prevailing market rate, Landlord and City will attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve the disagreement.

(ii) If within that thirty (30)-day period Landlord and City cannot agree on the prevailing market rate, then each will select one appraiser to determine the prevailing market rate. Within thirty (30) days after the expiration of the thirty (30) day consultation period, each party will cause its appraiser prepare and complete an appraisal report determining the prevailing market rate and submit the report to Landlord and City.

(iii) If only one appraisal report is submitted within that 30-day period, then the prevailing market rate determined in that appraisal report will be used to establish the Base Rent for the Extended Term. If both appraisal reports are submitted within the 30-day period, and if the prevailing market rates determined in the two appraisal reports differ by less than ten percent (10%) of the higher of the two, then the average of the two will be the prevailing market rate. If the prevailing market rates in the two appraisal reports differ by more than ten percent (10%) of the higher of the two, then the two appraisers will immediately select a Third Appraiser (defined in subsection (v) below), who will within ten (10) days after their selection determine which of the first two appraisal reports specified a value closest to the actual fair market value. The determination of the Third Appraiser will be limited solely to the issue of deciding which of the value determinations of the first two appraisal reports is closest to the actual fair market value and will be the prevailing market rate.

(iv) If City's Director of Property does not approve the prevailing market rate as determined by the appraisal procedure specified above, the Director of Property may revoke City's exercise of the Extension Option upon written notice delivered to Landlord no later than ten (10) business days following the Third Appraiser's determination. If the City's Director of Property approved the prevailing market rate as determined under this Section, then City will seek any required approval or resolution within ninety (90) days after the date on which the prevailing market rate is determined.

(v) All appraisers must be "MAI" designated members of the Appraisal Institute with not less than ten (10) years' experience appraising leases of commercial properties similar to the Premises in the Reference Area. The "**Third Appraiser**" means a real estate appraiser meeting all the foregoing requirements who (1) has not worked with either Landlord or City on this Property or otherwise or (2) who has not worked with Landlord on this lease or otherwise and who has not worked with City on this Lease or this Property, but is qualified as an approved vendor by City. The Third Appraiser selected by the first two appraisers will be qualified under clause (2) of the definition above, and Landlord and City will each pay one-half of the cost of the Third Appraiser, unless Landlord requires that the Third Appraiser be qualified under clause (1) of the definition above, in which event Landlord will pay for the cost of the Third Appraiser.

#### **4.4. Additional Charges**

City will pay to Landlord any charges or other amounts required under this Lease as additional rent ("**Additional Charges**"), including the charges for Real Estate Taxes and Operating Costs, as provided below. All Additional Charges are payable to Landlord at the place

where the Base Rent is payable. The Base Rent and Additional Charges are sometimes collectively referred to "Rent."

#### 4.5. Definitions

(a) "City's Percentage Share" means the percentage specified in the Basic Lease Information.

(b) "Expense Year" means each calendar year commencing January 1st of each year during the Term, including any partial year in which this Lease commences. By advance written notice to City, Landlord may change the Expense Year to any other twelve (12) consecutive month period and, in the event of a change, City's Percentage Share of Operating Costs will be equitably adjusted for the Expense Years involved in the change.

(c) "Operating Costs" means the total reasonable and customary costs and expenses actually paid or incurred by Landlord in connection with the management, operation, maintenance, and repair of the Building, including: (1) the cost of air conditioning, electricity, steam, water and sewer, heating, mechanical, telephone, ventilating, , and all other utilities, (2) the cost of general maintenance (including maintenance of life safety and elevators), cleaning, pest control, window washing, rubbish removal and service contracts, including all supplies, tools, and equipment for that maintenance, cleaning, and service, (3) the costs incurred by Landlord for all insurance and deductibles pursuant to Section 17.2 (Landlord's Insurance), (4) wages, salaries, payroll taxes, and other labor costs and employee benefits relating to Landlord's employees or its Agents (defined in Section 24.5 (Parties and Their Agents, Approvals) below) engaged in the operation, repair, or maintenance, of the Building, allocated in proportion to the percentage of that person's working time actually spent working in connection with the Building, (5) reasonable management fees, (6) fees, charges, and other costs of all independent contractors engaged by Landlord, allocated in proportion to the percentage of that person's working time actually spent working in connection with the Building, (7) accounting and legal expenses, (8) depreciation on personal property, including carpeting in public corridors and Common Areas and window coverings provided by Landlord, (9) reserved; (10) costs of capital repairs, capital improvements, and equipment (A) required by applicable Laws enacted on or after the date of this Lease amortized over the useful life of the improvement and/or equipment, together with interest at the actual interest rate incurred by Landlord in connection those capital repairs, improvements, or equipment, unless caused by Landlord's deliberate or negligent violation of applicable Laws, and except to the extent the improvements are attributable to or are made for the primary benefit of a tenant or occupant other than City, or (B) acquired to cause, in Landlord's good faith judgment, an immediate (i.e., commencing within the first year after completion of the repairs or improvements or installation of equipment) reduction in other Operating Costs, amortized over the useful life of the repairs, improvements, or equipment at an annual rate reasonably calculated to equal the amount of Operating Costs to be saved in each calendar year throughout the Term (as determined at the time Landlord elected to proceed with the capital repair or improvement or acquisition of the capital equipment to reduce Operating Costs), together with interest at the actual interest rate incurred by Landlord; (11) sales, use and excise taxes on goods and services purchased by Landlord in connection with the operation, maintenance, or repair of the Property and Building; and (12) fees and expenses for painting the exterior or the public or Common Areas and the cost

of maintaining the sidewalks, landscaping and other areas of the Property (other than parking) that Landlord is required or elects to maintain and repair.

“**Operating Costs**” expressly do not include the following:

(i) Costs of capital repairs and replacements, capital improvements, capital equipment, and capital tools, and rental payments and other related expenses incurred in leasing air conditioning systems, elevators, or other equipment ordinarily considered to be of a capital nature, except as expressly permitted under clause (10) above;

(ii) Rentals and other related expenses for items (except when needed in connection with normal repairs and maintenance of permanent systems) that, if purchased rather than rented, would constitute a capital improvement that is specifically excluded in item 1 above (excluding, however, equipment not affixed to the Building that is used in providing janitorial or similar services);

(iii) Depreciation, amortization, and interest payments (including interest, principal, points, and fees on debt or amortization payment on any mortgages, deeds of trust, or other debt instruments) except to the extent permitted under clause (10) above and except on materials, tools, supplies, and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where the depreciation, amortization, and interest payments would otherwise have been included in the charge for the third party’s services, all as determined in accordance with sound real estate accounting principles, consistently applied;

(iv) Costs incurred by Landlord because of fire, windstorm, or other casualty or by the exercise of the right of eminent domain to the extent Landlord is entitled to be compensated through proceeds or insurance or condemnation awards, or would have been reimbursed if Landlord had in force all of the insurance required to be carried by Landlord under this Lease,

(v) Costs incurred by Landlord in the event any portion of the Building is made untenable by fire or other casualty required to be insured against under the terms of the Lease and cost of earthquake repairs in excess of one hundred fifty thousand dollars (\$150,000) per earthquake (for this purpose, an earthquake is defined collectively as the initial earthquake and the aftershocks that relate to the initial earthquake);

(vi) Costs for which the Landlord is entitled to be reimbursed (other than as a reimbursement of Operating Costs) under any warranty, or by any tenant or occupant of the Building, or by insurance by its carrier or any tenant’s carrier, or by anyone else;

(vii) Costs, including permit, license, and inspection costs, incurred for the installation of improvements made for other tenants or occupants of the Building or incurred in renovating or otherwise improving, decorating, painting, or redecorating vacant for-lease space for tenants or occupants in the Building;

(viii) Leasing commissions, attorneys’ and other professionals’ fees, space planning costs, and all other costs and expenses in connection with negotiations with present



or prospective tenants or other occupants in the Building or any present or future ground lessors or holders of any mortgages or other encumbrances affecting any of the Building;

(ix) Leasing commissions, attorneys' fees, costs, and disbursements and other expenses incurred in connection with negotiations or disputes with tenants or other occupants or prospective tenant or other occupants, or associated with the enforcement of any leases or costs of the defense of Landlord's title to the Building or the Property;

(x) Expenses in connection with services or other benefits that are not offered to City or for which City is charged directly but that Landlord provides to another tenant or occupant of the Building;

(xi) Costs incurred by Landlord resulting from any dispute under the terms and conditions of any lease, ground lease, mortgage, or deed of trust, or covenants, conditions, or restrictions encumbering the Building or Property, or due to any violation by Landlord or any other tenant or occupant of the Building of applicable Laws;

(xii) Costs incurred in connection with upgrading the Building to comply with disabled access, life, fire and safety codes effective before the date of the Lease, and costs incurred in connection with upgrading the Building to comply with the Americans with Disabilities Act, as amended, and Title 24 of the California Code of Regulations (or its successor), the San Francisco Sprinkler Ordinance and the San Francisco Unreinforced Masonry Building Ordinance, except to the extent of new requirements or interpretations first effective after the date of this Lease;

(xiii) Payments for management or other services in or to the Building, or for supplies or other materials to Landlord's subsidiaries or affiliates, to the extent that the costs of the services, supplies, or materials exceed the costs that would have been paid had the services, supplies, or materials been provided by parties unaffiliated with the Landlord on a competitive basis;

(xiv) Costs for which Landlord has been compensated by a management fee, and any managements fees in excess of management fees normally charged by Landlord of comparable buildings in San Francisco;

(xv) Any ground lease rental or rental under any other underlying leases;

(xvi) Except as specifically permitted under clause (10) above, interest, principal, points, and fees on debts or amortization on any mortgage, deed of trust, or any other debt instrument encumbering any of the Building or the Property;

(xvii) Any compensation paid to clerks, attendants, or other persons in commercial concessions operated by Landlord or in any parking facility at or for the Building;

(xviii) All items and services for which City or any other tenant or occupant of the Building or anyone reimburses Landlord (other than through the tenant's or occupant's proportionate share of Operating Costs), or that Landlord provides selectively to one or more other

tenants or occupants without reimbursement, or that are not provided in reasonable proportion to the Premises but that Landlord provides to another tenant or other occupant of the Building;

(xix) Advertising or promotional expenditures, and the costs of acquiring and installing signs in or on any of the Building identifying the owner of the Building or any tenant or occupant of the Building;

(xx) Costs of any electric power used by any tenant in the Building for which the tenant directly contracts with the local public service company or of which any tenant is separately metered or submetered and pays Landlord directly (and if any tenant in the Building contracts directly for electric power service or is separately metered or submetered during any portion of the relevant period, the total electric power costs for the Building must be "grossed up" to reflect what those costs would have been had each tenant in the Building used a commercially reasonable, standard amount of electric power;

(xxi) Services provided, taxes attributable to, and costs incurred to the extent connected with the operation of retail, restaurant, and garage operations in the Building;

(xxii) Costs for which Landlord has been compensated by a management fee, and any management fees in excess of management fees normally charged by Landlord of comparable buildings in San Francisco;

(xxiii) "in-house" legal or accounting fees;

(xxiv) Real Estate Taxes of any kind and any tax penalties incurred as a result of Landlord's negligence or Landlord's inability or unwillingness to make payments when due;

(xxv) Fines, costs, penalties, or interest resulting from the negligence of other tenants or of the Landlord or their Agents;

(xxvi) Costs arising from the presence of Hazardous Material in or about the Building including groundwater or soil conditions;

(xxvii) Costs, fees, dues, contributions, or similar expenses for or related to charitable or political causes or candidates;

(xxviii) Costs as a result of repairs of latent defects in the design or improvements made or installed by Landlord in the Building or in the Building Systems;

(xxix) Costs for sculpture, paintings, or other objects of art;

(xxx) Costs arising from claims, disputes, or potential disputes (including tax disputes where the tenants of the Building would receive benefits if Landlord prevails, except as expressly provided in this subsection (xxx) below, in connection with potential or actual claims, litigation, or arbitrations pertaining to Landlord or the Building, including all attorneys' fees and costs of settlement, judgments, and other similar payments, but the legal and other costs of tax

disputes that result in a savings in Real Estate Taxes may be included in Operating Costs as follows:

- (A) The costs of such tax disputes may not exceed the amount of the Real Estate Tax savings, and
- (B) The amount of such costs included in Operating Costs in any Expense Year may not exceed the amount of the savings in Real Estate Taxes in the correlating Tax Year, but Landlord may carry over any excess costs until Landlord has been reimbursed through Operating Costs all of the costs of such tax dispute that may be reimbursed under this subsection (xxx);

(xxx) All direct cost of refinancing, selling, exchanging, or otherwise transferring ownership of the Building or the Property or any interest in the Property or portion of it, including broker commissions, attorney's fees, and closing costs;

(xxxii) Reserves for bad debts, rent loss, capital items, future improvements, repairs, or additions, Real Estate Taxes, or Operating Costs;

(xxxiii) The wages and benefits of any employee who does not devote substantially all of his or her employed time to the Building unless the wages and benefits are prorated to reflect time spent on operating and managing the Building vis-a-vis time spent on matters unrelated to operating and managing the Building;

(xxxiv) Landlord's general corporate overhead and general and administrative expenses and all costs associated with the operation of the business of the ownership or entity that constitutes "Landlord," as distinguished from the costs of Building operations, management, maintenance or repair; and

(xxxv) Any other expense that under sound real estate accounting principles would not be considered a maintenance or operating expense by landlord of comparable buildings in San Francisco.

(d) **"Real Estate Taxes"** means all taxes, assessments, and charges levied, assessed, or imposed on or with respect to the Building, or Landlord's interest in the Building, general or special, ordinary or extraordinary, and foreseeable or unforeseeable. Real Estate Taxes include all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services, service payments in lieu of taxes that are now or later levied or assessed against Landlord by the federal, state, or local government, district or public corporation, and will also include any other tax, fee, or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes. Real Estate Taxes will include any increase in any of the foregoing due to reassessment after the construction of improvements to the Property or any "change in ownership" (as defined in the California Revenue and Taxation Code) or with respect to all or any part of the Property or resulting from any other re-assessment of the Property. Real Estate Taxes expressly do not include: (1) franchise, transfer, inheritance, gross receipts, or capital

stock taxes, or income taxes of Landlord from all sources unless, due to a change in the method of taxation, any of those taxes are levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax, (2) any penalties, fines, interest, or charges attributable to the late payment of any taxes, except to the extent attributable to City's failure to pay its portion of Real Estate Taxes, (3) any personal property taxes payable by City or by any other tenant or occupant of the Building, or (4) Commercial Rent Tax for Childcare and Early Education (Prop. C) to the extent such gross receipts received from leases to government entities are exempt from this tax.

(e) "Tax Year" means each calendar year during the Term, including any partial year during which this Lease commences; provided that, by notice to City, Landlord may change the Tax Year from time to time to any other twelve (12) consecutive month period and, in the event of that change, City's Percentage Share of Real Estate Taxes will be equitably adjusted for the Tax Year during the change.

#### 4.6. Calculation and Payment of Percentage Share of Operating Costs

(a) If, during any Expense Year, the Building is less than 100% occupied, then, for purposes of calculating City's Share of Operating Costs for that Expense Year, the amount of Operating Costs that fluctuate with Building occupancy, including utilities, trash removal, and management fees, will be "grossed-up" to the amount which, in Landlord's estimation, would have been incurred by Landlord had the Building been 100% occupied for that entire calendar year.

(b) The computation of Operating Costs will be made in accordance with sound real estate accounting principles. With respect to the costs of capital repairs, improvements, or equipment included in Operating Costs under clause (10) of the definition of Operating Costs, those costs will be included in Operating Costs only after the capital Improvement is completed and put into service and will be amortized over the useful life of the capital improvements, together with interest on the unamortized balance at a rate per annum equal to three percent (3%) over the Treasury Rate charged at the time the capital improvement is constructed, but not more than the maximum rate permitted by law at the time the capital improvement is constructed. Landlord will not collect or be entitled to collect Operating Costs from all of its tenants in the Building an amount that is more than 100% of the Operating Costs actually paid by Landlord in connection with the Building.

(c) Commencing on the Commencement Date, City will pay to Landlord each month, as Additional Charges, one twelfth (1/12) of City's Percentage Share of the Operating Costs for that Expense Year, as provided in this Section. City will make the payments together with Base Rent payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to City at least four (4) months before the first payment of City's Percentage Share of Operating Costs is due. Landlord will update its estimates of Operating Costs each Expense Year, but no revised estimates will be retroactive. Landlord must make commercially reasonable efforts to provide any revised estimates to City at least four (4) months before the commencement of the Expense Year, but the prior year's estimate will continue to be effective until updated. With reasonable promptness not to exceed ninety (90) days after the expiration of each Expense Year, Landlord will furnish City with a statement ("**Landlord's Expense Statement**"), prepared by an independent certified public accountant, setting forth in reasonable

detail the actual Operating Costs for the Expense Year and City's Percentage Share. If City's Percentage Share of the actual Operating Costs for the Expense Year exceeds the estimated Operating Costs paid by City for that Expense Year, City will pay to Landlord (whether or not this Lease has terminated) the difference between the amount of estimated Operating Costs paid by City and City's Percentage Share of the actual Operating Costs within thirty (30) days after the receipt of Landlord's Expense Statement. If the total amount paid by City for its Percentage Share of Operating Costs exceeds City's Operating Costs Share of the actual Operating Costs for the Expense Year, the excess will be credited against the next installments of City's Percentage Share of Operating Costs or refunded to City, at City's option. In no event may Landlord be reimbursed for more than one hundred percent (100%) of the Operating Costs in any Expense Year.

(d) The Operating Costs for (i) elevator maintenance, (ii) window washing on floors 2-4, (iii) window washing on floor 1, (iv) maintenance (including service contracts), repair and replacement of supplemental HVAC units exclusively serving the Premises or exclusively serving other tenants' premises, and (v) janitorial services provided exclusively to the Premises and exclusively to other tenants' premises and (vi) any the costs of maintaining any outdoor areas (including, but not limited to, landscaping, paving, striping, and lighting) not accessible to all tenants will be allocated to reflect that measurably different services, work, or benefits associated with those Operating Costs are being provided to or conferred upon different tenants or groups of tenants. Operating Costs related to security for the Premises as described in Section 9.2 will be allocated to Tenant. The allocations of those Operating Costs by Landlord under this Section are sometimes referred to as "Cost Pools." Specifically, (A) "City's Percentage Share" as to the Cost Pool for elevator maintenance will be a fraction, expressed as a percentage, the numerator of which is the rentable square footage of the Premises and the denominator of which is the total rentable square footage of all tenants of the Building who do not have a separate entrance and use the elevators to access all or a portion of their space; (B) "City's Percentage Share" as to the Cost Pool for window washing on floors 2-4 will be a fraction, expressed as a percentage, the numerator of which is the rentable square footage of the Premises and the denominator of which is the total rentable square footage of all tenants of the Building with premises on floors 2-4; (C) the Cost Pool for Operating Costs related to outdoor areas will be allocated solely to those tenants having access to those outdoor areas; and (D) the Cost Pool for window washing on floor 1 will be allocated entirely to the floor 1 tenants and City's Percentage Share of those Operating Costs will be zero.

#### **4.7. Calculation and Payment of Percentage Share of Real Estate Taxes**

Commencing on the Commencement Date, City will pay Landlord each month, as Additional Charges, one twelfth (1/12) of City's Percentage Share of the Real Estate Taxes for each Tax Year, as provided in this Section. City will make those payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to City. Landlord will update its estimates of Real Estate Taxes each Tax Year. Landlord will make commercially reasonable efforts to provide any revised estimates to City at least four (4) months before the commencement of the Tax Year, but the prior year's estimate will continue to be effective until Landlord provides the revised estimates. With reasonable promptness not to exceed thirty (30) days after Landlord has received the tax bills for any Tax Year (or any updated tax bills), or in conjunction with delivery of Landlord's Expense Statement, Landlord will furnish City with a statement ("**Landlord's Tax Statement**") setting forth the actual amount of Real Property Taxes

for the Tax Year and City's Percentage Share. If City's Percentage Share of the actual Real Estate Taxes for the Tax Year exceeds the estimated Real Estate Taxes paid by City for that Tax Year, City will pay to Landlord (whether or not this Lease has terminated) City's Percentage Share of the actual Real Estate Taxes within thirty (30) days after the receipt of Landlord's Tax Statement. If the total amount of estimated Real Estate Taxes paid by City for the Tax Year exceeds City's Percentage Share of the actual Real Estate Taxes, the excess will be credited against the next installments of City's Percentage Share of Real Estate Taxes, or at City's option, the excess will be refunded to City. In no event may Landlord be reimbursed for more than one hundred percent (100%) of the Real Estate Taxes in any Tax Year. Accordingly, Landlord will credit to Tenant Tenant's Percentage Share of any award or benefit based on a reduction in Real Estate Taxes (whether retroactive, current, or prospective).

#### **4.8. Proration**

If the Commencement Date or Expiration Date occurred on a date other than the first or last day of a Tax Year or Expense Year, then City's Percentage Share of Real Estate Taxes or Operating Costs for the Tax Year or Expense Year in which the Commencement Date or Expiration Date occurs, will be prorated based on a three hundred sixty-five (365)-day year.

#### **4.9. Audits**

City will have the right, upon not less than five (5) business days' notice to Landlord, to audit the books and records related to Operating Costs, Real Estate Taxes and any other amount the City is obligated to pay to Landlord under this Lease. City must notify Landlord in writing of any objection to any charge within three (3) years after receipt of Landlord's Expense Statement or Landlord's Tax Statement, or invoice as applicable, otherwise City will be deemed to have waived any objection and will have no right to audit the books and records related to such charge under this Section. If the audit discloses any discrepancies that would result in a reduction of such amounts, and Landlord agrees with City's determination, then Landlord will within thirty (30) days thereafter refund to City the amount of any overpayment by City (or at City's option, credit such amount against Base Rent next due). If Landlord disagrees with the results of City's review and the parties cannot otherwise agree, then Landlord's and Tenant's auditor will together select a Neutral Auditor to conduct a review of such books and records, and the determination reached by such Neutral Auditor will be final and conclusive. If the amounts paid by City to Landlord (i) exceed the amounts to which Landlord is entitled under this Lease, then Landlord will within thirty (30) days refund or credit such amount to City as set forth above, or (ii) are less than the amounts to which Landlord is entitled under this Lease, then Tenant will pay the deficiency as Additional Charges within thirty (30) days of the final determination. City will pay the cost of its audit, provided that if any such audit discloses any discrepancies that result in a reduction of five percent (5%) of Operating Costs, Real Estate Taxes or other amounts, as applicable or more for any year, then Landlord will pay the actual costs of the audit. Each party will be responsible for its own review costs. A "Neutral Auditor" is a qualified real estate auditor of similar qualifications as City's and Landlord's auditors who (1) has not worked with either Landlord or City on the Premises or otherwise or (2) who has not worked with Landlord on this Lease or other wise and who has not worked with City on this Lease or this Premises, but is qualified as an approved vendor by City. The Neutral Auditor selected by the Landlord's and City's auditors will be qualified under clause (2) of the definition above, and Landlord and City will each pay one-half of the cost

of the Neutral Auditor, or if required by Landlord, will be qualified under clause (1) of the definition above, and Landlord will pay for the cost of the Neutral Auditor (except as otherwise provided in this Section).

#### **4.10. Records**

Landlord will maintain at its offices in the Bay Area in a safe, complete, and organized manner all of its records related to this Lease, Real Estate Taxes, Operating Costs, and any other charges paid by City under this Lease, for at least three (3) years following the end of each calendar year in which such cost was incurred. Landlord will maintain the records on a current basis and in sufficient detail to facilitate adequate review and audit. All books and records will be available for inspection, copying, and audit by City and its representatives, at City's expense, subject to the provisions of Section 4.9 (Audits).

#### **4.11. Payments by City**

Landlord acknowledges that City cannot make any payments to Landlord unless Landlord is qualified as an approved vendor in City's financial and payment system. Therefore, City will not be in default of any monetary obligation under this Lease and no interest or late charge will apply, if Landlord is not an approved vendor with City. More information about being an approved vendor with City is available at <https://sfcitypartner.sfgov.org/Vendor/BecomeSupplier>. All Rent that has accrued while Landlord was not an approved vendor will be payable within twenty (20) days after City receives Landlord's written notice and the Contract Monitoring Division confirms that Landlord has been approved as a City vendor.

#### **4.12. Landlord's Compliance with City Business and Tax and Regulations Code**

Landlord acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Landlord under this Lease is withheld, then City will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Landlord, without interest, late fees, penalties, or other charges, upon Landlord coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

#### **4.13. Additional Services**

City may request that Landlord arrange or provide additional services for the Premises, which Landlord may arrange or provide in its reasonable discretion. If Landlord elects to provide the requested additional services, then City will pay Landlord as Additional Charges the cost of those services, plus a four percent (4%) administrative fee, but Landlord will not contract for or provide any services without City's prior written approval of the total or estimated cost of the additional services. City will pay for the cost of the requested additional services and administrative fee within thirty (30) days after receipt of an invoice; provided, however, that City may elect to provide any deposit or other prepayment that City determines is appropriate given the nature of the requested services. Wherever possible, any additional terms for the additional

services will be memorialized by a written agreement, which, upon execution by Landlord and City, will be considered a part of this Lease.

## **5. USE**

### **5.1. Permitted Use**

City may use the Premises for general office uses and any other uses specified in the Basic Lease Information, and for no other use without Landlord's prior written consent, which may not be unreasonably withheld, conditioned, or delayed.

### **5.2. Observance of Rules and Regulations**

City will observe the rules and regulations for the Building attached to this Lease as **Exhibit C** (the "Rules and Regulations"), but the provisions of this Lease will govern over any conflicting Rules and Regulations. Landlord may make reasonable changes to the Rules and Regulations, but all changes must be applicable to all other office tenants and the changes may not (a) materially reduce Landlord's obligations under the Lease, (b) conflict with the provisions of this Lease, (c) materially increase City's burdens or obligations, (d) impose a charge on City for services that this Lease expressly states are to be provided to City at no charge, or (e) materially adversely affect any permitted use of the Premises. The changes permitted under this Section will be binding on City within a reasonable implementation period after delivery of Landlord's written notice of the changes to City. Landlord will make commercially reasonable efforts to administer the Rules and Regulations in a fair and nondiscriminatory manner and use commercially reasonable efforts to cause other Building tenants to comply with them. Landlord will notify City of any waiver of or special dispensation under the Rules and Regulations granted by Landlord to any other tenant in the Building and on request for a substantially similar situation (in terms of duration, size, number or employees or users impacted, inconvenience to other Building users, costs to Landlord, etc.), City will be entitled to the same waiver or special dispensation.

### **5.3. Interference with Access**

Landlord will provide to City uninterrupted (to the maximum extent possible and subject to the terms of this Lease) access to the Building and the Premises twenty-four (24) hours per day, seven (7) days per week, including during any power outages affecting the Premises or any portion of the Building; but Landlord may, after consultation with City's Administrator (or reasonably endeavoring to consult with the Administrator for an urgent situation), interrupt City's access to the Premises or the Building if there is an immediate threat that will render the Premises, the Common Areas, or any other portion of the Building unsafe for human occupancy. If City's use of any of the Premises is interrupted or access to the Premises materially impaired because the Premises, the Common Areas, or any other portion of the Building is unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than a default by Tenant of its obligations under this Lease, then Landlord will immediately undertake all commercially reasonable steps to correct the condition. If the condition continues for two (2) business days and materially impairs City's ability to carry on its business in the Premises, then the Rent will be abated based on the extent to which the condition interferes with City's ability to normally and safely carry on its business at the Premises. If the condition



continues for sixty (60) consecutive days or more after Landlord is notified that City's use is interrupted or materially impaired then, without limiting any of its other rights under this Lease, at any time after the 60-day period City's use continues to be interrupted or materially impaired, then City may send written notice to Landlord stating that City will terminate this Lease, unless within two (2) business days after Landlord receives City's notice Landlord supplies City with evidence reasonably satisfactory to City that City's normal and safe use will be restored within ninety (90) days after the date City's use was interrupted or materially impaired, and City's full use is actually restored within that 90-day period. If City's use is not actually restored within that 90-day period, then City may terminate this Lease immediately upon written notice to Landlord. Nothing in this Section will limit the parties' rights with respect to any disruption due to casualty under Section 12 (Damage and Destruction).

## **6. LEASEHOLD IMPROVEMENTS**

### **6.1. Landlord's Obligation to Construct Improvements**

Landlord, through its general contractor reasonably approved by City, will construct the Premises, perform the work, and make the installations in the Premises as provided in the Work Letter attached hereto as **Exhibit D**. Such work and installations are referred to as the "Leasehold Improvement Work" and "Leasehold Improvements."

### **6.2. Construction of Improvements that Disturb or Remove Exterior Paint**

On any work on the Building, Landlord, on behalf of itself and its successors, assigns, and Agents, will comply with all requirements of the San Francisco Building Code Chapter 34 and all other applicable local, state, and federal laws, including the California and United States Occupational and Health Safety Acts and their implementing regulations, when the work or alteration disturbs or removes exterior or interior lead-based or "presumed" lead-based paint (as defined below). Landlord and its Agents must give to City three (3) business days' prior written notice of any disturbance or removal of exterior or interior lead-based or presumed lead-based paint. Landlord acknowledges that the required notification to the Department of Building Inspection regarding the disturbance or removal of exterior lead-based paint under San Francisco Building Code Chapter 34 does not constitute notification to City as tenant under this Lease and similarly that notice under this Lease does not constitute notice under San Francisco Building Code Chapter 34. Further, Landlord and its Agents, when disturbing or removing exterior or interior lead-based or presumed lead-based paint, will not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding, or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Landlord will comply with the requirements of California Code of Regulations Title 17 when taking measures that are designed to reduce or eliminate lead hazards. Under this Section, paint on the exterior or interior of buildings built before January 1, 1979 is presumed to be lead-based paint unless a lead-based paint test, as defined by San Francisco Building Code Chapter 34, demonstrates an absence of lead-based paint on the interior or exterior surfaces of the buildings. Under this Section, lead-based paint is "disturbed or removed" if the work or alteration involves any action that creates friction, pressure, heat, or a

chemical reaction on any lead-based or presumed lead-based paint on a surface so as to abrade, loosen, penetrate, cut through, or eliminate paint from that surface.

## 7. ALTERATIONS

### 7.1. Alterations by City

(a) City may not make or permit any alterations, installations, additions, or improvements (collectively, “**Alterations**”) to the Premises without first obtaining Landlord’s written consent, which Landlord will not unreasonably withhold, condition, or delay. Installation of furnishings, fixtures, equipment, or decorative improvements that do not affect the Building Systems or structural integrity of the Building, and the repainting and re-carpeting of the Premises (collectively, “**Cosmetic Work**”) do not constitute Alterations and do not require Landlord’s consent; provided that City will notify Landlord of any Cosmetic Work performed by third-party contractors or material suppliers with a cost of more than \$10,000 at least five (5) business days in advance and, upon request, presented with invoices establishing the cost together with unconditional lien waivers from any materialmen or contractors. Any Alterations permitted under this Lease will be made at City’s cost in compliance with applicable Laws (as defined in Section 10.1 (Landlord’s Compliance with Laws)). Without out-of-pocket cost to itself, Landlord will cooperate with City in securing building and other permits and authorizations needed for any permitted Alterations. Landlord will not be entitled to any construction or other administrative fee in connection with any Cosmetic Work; Landlord will receive an administrative fee equal to four percent (4%) of the costs of any Alterations, and City will reimburse Landlord for the reasonable and actual fees and charges paid to third party architects, engineers, and other consultants for review of the proposed Alterations and related plans and specifications, up to a maximum of five percent (5%) of the costs of the Alterations, within thirty (30) days of demand. Except for Exterior Antennas, as provided below, City will not be required to remove any Alterations on the expiration or sooner termination of this Lease unless Landlord notifies City in writing at the time Landlord approves the Alterations that they must be removed. City is not required to remove any Cosmetic Work.

(b) If City desires to install exterior antennas and telecommunications equipment (“**Exterior Antennas**”), the location, number, appearance and installation will at all times be in compliance with all Laws and Building insurance requirements, and subject to Landlord’s reasonable approval. City may not void any roof warranty in connection with installation, repair, maintenance, or replacement of Exterior Antennas. Notwithstanding anything in this Lease to the contrary, City will be solely responsible for any damage to the Building caused by its Exterior Antennas (including damage to the roof and roof membrane) and any injury to persons related to the Exterior Antennas. Landlord reserves the right to require that City use Landlord’s approved contractors for any work related to Exterior Antennas. City may not access the roof of the Building or exterior portions of the Building above ground level without Landlord’s prior written consent, not to be unreasonably withheld. City will make commercially reasonable efforts to ensure that its Exterior Antennas do not unreasonably interfere with other equipment in or on the Building, and must remove all Exterior Antennas and repair any damage related to that removal on termination of the Lease.

## 7.2. Title to Improvements

Except for City's Personal Property (as defined in the next Section), all appurtenances, fixtures, improvements, equipment, additions, and other property permanently installed in the Premises as of the Commencement Date or during the Term will be and will remain Landlord's property. City may not remove Landlord's property without Landlord's written approval.

## 7.3. City's Personal Property

(a) All furniture, furnishings, equipment, trade fixtures, and articles of movable personal property installed in the Premises by or for City and that can be removed without structural damage to the Premises (collectively, "**City's Personal Property**") are and will remain City's property. Landlord may assist City by facilitating the ordering and installation of City's Personal Property and City will reimburse Landlord for all fees, costs, and expenses within thirty (30) days after receipt of an invoice plus a four percent (4%) administrative fee; provided, however, that City may elect to provide any deposit or other expense required at the time of ordering City's Personal Property. Although Landlord may facilitate ordering and installation of City's Personal Property, all items will remain City's Personal Property and not be considered Leasehold Improvements or constitute any component of the Leasehold Improvements. At any time during the Term, City may remove any of City's Personal Property, and City will repair any damage to the Premises resulting from that removal. On the expiration or earlier termination of this Lease, City will remove the Property from the Premises in accordance with Section 20 (Surrender of Premises).

(b) Landlord acknowledges that some of City's Personal Property may be financed by an equipment lease financing otherwise subjected to a security interest, or owned by an equipment company and leased to City. Landlord recognizes the rights of any supplier, lessor, or lender (collectively, a "**Supplier**") who has an interest in any items of City's Personal Property to enter the Premises and remove such City's Personal Property at any time during the Term upon at least two (2) business days' prior written notice to Landlord, and subject to such Supplier entering into a commercially reasonable access agreement with Landlord providing for indemnification of Landlord, insurance, authorization, restoration and other reasonable terms. City agrees that Landlord may allow any Supplier access upon written demand from the Supplier, without verification whether or not removal is appropriate, and Landlord will not be liable for any error or removal of City's Personal Property. On City's reasonable request, Landlord will execute and deliver a commercially reasonable document required by any Supplier in connection with the installation in the Premises of any items of City's Personal Property, under which Landlord waives any rights it may have or acquire with respect to City's Personal Property, so long as the Supplier agrees that it (i) will remove the Property from the Premises within ten (10) days after the Expiration Date (and if it does not remove City's Personal Property within that time the Supplier will have waived any rights it may have had to City's Personal Property), and (ii) will repair any damage caused by the removal of City's Personal Property, and (iii) such other terms as are reasonably required by Landlord, in a form reasonably acceptable to Landlord.

#### **7.4. Alteration by Landlord**

(a) Landlord will use commercially reasonable efforts to minimize interference with or disruption to City's use and occupancy of the Premises during any alterations, installations, additions, or improvements to the Building, including any leasehold improvement work for other tenants in the Building. Landlord will make commercially reasonable efforts to promptly remedy any interference or disruption over which Landlord has control on receiving City's notice thereof.

(b) In the event any governmental authority having jurisdiction over the Property or the Building promulgates or revises any Law or building, fire or other code or imposes mandatory controls on Landlord or the Property or the Building relating to the use or conservation of energy or utilities or the reduction of automobile or other emissions (collectively, "**Controls**"), or in the event Landlord is required to make alterations to the Property or the Building in order to comply with such mandatory Controls, Landlord may comply with such Controls or make such alterations to the Property or the Building related compliance with the Controls. Such compliance and the making of such alterations will not constitute an eviction of City, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by City. But, where Landlord's compliance with the Controls prevents City from using the Premises for the Permitted Use, it will be an interference under Section 5.3.

### **8. REPAIRS AND MAINTENANCE**

#### **8.1. Landlord's Repairs**

Subject to Tenant's obligations under Section 8.2 below, at its cost (subject to reimbursement as an Operating Cost to the extent permitted under this Lease) Landlord will repair and maintain the exterior and structural portions of the Building in first-class condition (including the roof, foundation, bearing and exterior walls, windows, doors, door frames, demising walls, and subflooring), and the heating, ventilating, air conditioning ("**HVAC**") systems (except as provided in Section 8.2(b) below), plumbing, electrical, fire protection, life safety, security, and other mechanical, electrical, and communications systems of the Building to the point of entry into the Premises (collectively, the "**Building Systems**") and the Common Areas. Without limiting the foregoing, Landlord will maintain the Building in a clean, safe, and attractive manner, will provide exterior graffiti removal with reasonable frequency, will make commercially reasonable efforts to not allow other tenants of the Building to unreasonably disturb or interfere with City's use of the Premises, and on request from Tenant with respect to a particular problem or situation, will make commercially reasonable efforts to prevent from being done in or about the Building or the Common Areas anything that is illegal, is dangerous to persons or property, or constitutes a nuisance.

#### **8.2. City's Repairs**

(a) Subject to Landlord's warranty under Section 10.1 (Premises Condition), any construction warranties or guaranties received in connection with Landlord's completion of the Leasehold Improvements, and Landlord's repair and maintenance obligations under this Lease, City will repair and maintain at its cost the interior portions of the Premises and will keep the

Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty or condemnation (which are addressed in Sections 12 and 13 below). City will make any required repairs and replacements to the interior of the Premises that Landlord specifies in writing (i) at City's cost, (ii) by contractors or mechanics selected by City and reasonably approved by Landlord, (iii) so that the interior portions of the Premises will be at least substantially equal in quality, value, and utility to the original work or installation before the damage, (iv) in a manner and using equipment and materials that will not materially interfere with or impair the operations, use, or occupation of the Building or the Building Systems, and (v) in compliance with all applicable Laws, including any applicable contracting requirements under City's Charter and Administrative Code. At all times during the Term, promptly after City's reasonable notice, Landlord will provide City and its Agents with access to those portions of the Building that are necessary to maintain or repair the telecommunications and data and computer cabling facilities and equipment installed by City.

(b) City, at City's cost, will obtain and keep in full force and effect standard maintenance and service contracts for any supplemental HVAC systems serving the Premises installed by Tenant as an Alteration after the Commencement Date (i.e., not Building HVAC system serving the Premises or supplemental HVAC systems serving the Premises installed by Landlord), and will maintain (i) such unit(s) and systems, and (ii) the security system serving the Premises (subject to Section 9.2(b) below) in good condition and proper working order throughout the Term. Any replacement of supplemental HVAC systems in and serving only the Premises will be done by City, at City's cost, as an Alteration, unless the replacement is necessitated by Landlord's negligence or willful misconduct.

(c) City, at its expense, will (i) use Mold Prevention; and (ii) promptly notify Landlord if it observes, suspects, has reason to believe that any Mold Condition exists at the Premises. "**Mold Prevention Practices**" means good housekeeping practices. "**Mold Conditions**" means mold and any other conditions that reasonably can be expected to cause or result from mold or fungus, including observed or suspected instances of water damage, condensation, seepage, leaks, or any other water penetration (from any source, internal or external), mold growth, mildew, and complaints of respiratory ailments or eye irritation by City's Agents and Invitees. City will allow Landlord to evaluate and make recommendations. Landlord will not be liable for any personal injury or damages to property caused by or associated with the growth of or occurrence of mold or mildew on or in the Premises or Building that are preventable through City's use of Mold Prevention Practices.

### **8.3. Liens**

City will keep the Premises free from liens arising out of any work performed, material furnished, or obligations incurred by City during the Term. Landlord may post on the Premises any notices permitted or required by Laws or that are needed for the protection of Landlord, the Premises, or the Building, from mechanics' and material suppliers' liens. City will give Landlord at least ten (10) days' prior written notice of commencement of any repair or construction by City on the Premises to allow Landlord to post a Notice of Non-Responsibility with respect to the work.

## 9. UTILITIES AND SERVICES

### 9.1. Landlord's Provision of Utilities

(a) Landlord will furnish the following utilities and services to the Premises: (i) heating, air conditioning, and ventilation in amounts required under this Lease consistent with the ASHRAE standard (defined below), during the period from 8:00 a.m. to 6:00 p.m., Monday through Friday, except holidays generally recognized in San Francisco; (ii) elevator service by two (2) elevators (subject to the terms of the Work Letter) on a twenty-four (24) hours-a-day, three hundred sixty-five (365) days-a-year basis ("**Daily Basis**"); and (iii) water for lavatory, kitchen, and drinking purposes on a Daily Basis; all subject to temporary interruptions as permitted under this Lease, including in connection with maintenance or repair. Without limiting Landlord's obligations under this Section, Landlord will furnish all utilities and services required under this Lease in a manner consistent with utilities and services normally provided in other first class buildings similar to the Building in the Reference Area. If City requires heating or air conditioning before or after the hours set forth above, then Landlord will furnish heating or air conditioning so long as Tenant provides Landlord reasonable notice of City's requirement, and City will pay Landlord for the cost of the extra service in an amount not to exceed Landlord's actual cost in providing the service. The "**ASHRAE Standard**" means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc. guidelines intended to satisfy the majority of building occupants wearing a normal amount of clothing while working at a desk, which provide for temperatures of between 68° F to 74° F in the winter and 72° F to 80° F in the summer, with a relative humidity between 30 and 60 percent.

(b) City will not alter, adjust, or tamper with the installations or facilities supplying climate control to the Building or the Premises (other than any supplemental HVAC units). If the temperature otherwise maintained in any portion of the Premises by the HVAC system is affected as a result of (i) the type or quantity of any lights, machines or equipment (other than typical office equipment) used by City in the Premises, (ii) the occupancy of such portion of the Premises by more than one person per one hundred seventy-five (175) square feet of usable area therein, (iii) an electrical load for lighting or power in excess of standard use, (iv) any rearrangement of partitioning or other improvements, or (v) any supplemental HVAC units installed by City, then at City's sole cost, Landlord may install any equipment, or modify any existing equipment Landlord deems necessary to restore the temperature balance (such new equipment or modifications to existing equipment termed herein "**Temperature Balance Equipment**"). City agrees to cooperate with Landlord and to abide by the regulations and requirements Landlord may prescribe for the proper functioning and protection of the HVAC system. Landlord makes no representation to City regarding the adequacy or fitness of any equipment in the Building to maintain temperatures that may be required for, or because of, any of City's equipment in the Premises that is not typical office equipment (e.g., computers, copiers, printers, coffee machines, water coolers, etc., but specifically excluding IDF (intermediate distribution frame) rooms, which are served by supplemental units), and Landlord will have no liability for loss or damage suffered by City or others in connection therewith.

(c) City will contract and pay for electrical service directly with the service provider.

## 9.2. Services

(a) As an Operating Expense, Landlord will provide janitorial service in accordance with the specifications contained in the attached Exhibit H.

(b) As an Operating Expense, Landlord will provide security for the Building in accordance with the specifications contained in the attached Exhibit I. Except in the case of defective installation of the security system by Landlord (which Landlord will remedy at Landlord's expense within five (5) business days after notice from City), City acknowledges that City is solely responsible for any safety and security devices, and in no event will Landlord be responsible for theft or other criminal acts, or the safety of persons or property and City expressly assumes the risk that any safety device, service, or program may not be effective or may malfunction or be circumvented.

(c) City, at City's expense, will provide or procure (whether under Section 4.13 (Additional Services) or otherwise) any other services for the Premises as City may require, City will ensure that Landlord has keys and codes needed to access the Premises in the event of an emergency or as otherwise allowed under this Lease; if City fails to provide the keys and codes, then in an emergency Landlord may access the Building by any means reasonably necessary and City will be responsible for any and all repair costs reasonably incurred due to Landlord's emergency entry.

## 9.3. Disruption in Essential Utilities or Services

(a) If any failure, stoppage, or interruption of any utilities or services to be furnished by Landlord occurs, upon notice to Landlord, or Landlord's actual knowledge thereof, Landlord will promptly notify City of the failure, stoppage, or interruption; diligently attempt to restore service as promptly as possible; and keep City apprised of its efforts. Absent Landlord's negligence or willful misconduct, however, Landlord will not be responsible for disruptions in utilities or services related to shutdowns except as provided in subsection (b) below and City hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Laws permitting the termination of this Lease due to such interruption, failure, or inability to the extent it provides greater termination rights to City than what is provided in this Lease.

(b) If Landlord is unable to supply any of the Building's sanitary, electrical, heating, air conditioning, water, elevator, fire protection/security, or life safety or other hazard detection /alarm serving the Premises for which Landlord is responsible under this Lease (collectively, "**Essential Services**") and that inability of Landlord materially impairs City's ability to carry on its business in the Premises for (a) three (3) or more consecutive business days and it is in Landlord's reasonable control to restore the Essential Services or (b) five (5) or more consecutive business days if the failure is not within Landlord's reasonable control, then the Rent will be abated based on the extent that the lack of the Essential Services impairs City's ability to normally carry on its business in the Premises; or, alternatively at City's election and following notice to Landlord, City may provide the Essential Services at a reasonable cost and offset such cost against the Rent next due under this Lease. The abatement or right to provide the Essential Services and offset against Rent will continue until the Essential Services have been restored so

that the lack of any remaining Essential Services no longer materially impairs City's ability to carry on its business in the Premises. Landlord will use commercially reasonable efforts to restore disrupted Essential Services as soon as possible. If the failure to provide any Essential Services occurs for any reason for ninety (90) consecutive days or more and that failure interferes with City's ability to normally carry on its business in the Premises (and City does not carry on its business in the Premises), then, without limiting any of its other rights or remedies under this Lease or at law or in equity, City may terminate this Lease on written notice to Landlord given after the expiration of such 90-day period and while the disruption is continuing. But City will not be entitled to any abatement of Rent or right to terminate if Landlord's inability to supply Essential Services to City results solely due to the negligent acts or omissions of City and its Agents and Invitees.

## **10. COMPLIANCE WITH LAWS; PREMISES CONDITION**

### **10.1. Landlord's Compliance with Laws; Premises Condition; Indemnity**

Subject to City's obligation under Section 8.2 (City's Repairs), Landlord will at all times during the Term maintain, at its cost (subject to reimbursement as an Operating Cost to the extent permitted by this Lease), the Property, Building, Common Areas, and the Building Systems in compliance with applicable present or future federal, state, local, and administrative laws, rules, regulations, orders, and requirements (collectively, "**Laws**"). Landlord represents and warrants to City, and covenants with City, as follows to Landlord's actual knowledge: (defined below) **(a)** the physical structure, fixtures, and permanent improvements of the Premises (including the Leasehold Improvements) and all portions of the Property and the Building along the path of travel to the Premises (including the Building entrances, Common Areas, restrooms, elevators, lobbies and drinking fountains) are now, and as of the Commencement Date will be, in compliance with the requirements of the Americans With Disabilities Act of 1990, California Code of Regulations Title 24, and all other applicable Laws intended to provide equal accessibility for persons with disabilities (collectively, "**Disabilities Laws**"); **(b)** the Building is not an unreinforced masonry building, and is now, and as of the Commencement Date will be, in compliance with all applicable Laws relating to seismic safety (collectively, "**Seismic Safety Laws**"); **(c)** the Building, the Common Areas, and Building Systems serving the Premises are now, and as of the Commencement Date will be, in compliance with all applicable Laws relating to fire and life safety (including the San Francisco High-Rise Sprinkler Ordinance) (collectively, "**Life Safety Laws**"); **(d)** the Building, the Common Areas, and Building Systems serving the Premises are now, and as of the Commencement Date will be, in compliance with all other applicable Laws; and **(e)** there are not now, and as of the Commencement Date will not be, any material physical or mechanical defects in the Premises, Building, or the Building Systems that would materially adversely affect City's intended use of the Premises. The foregoing representation, warranty, and covenant is to the actual knowledge of Steve Wolmark, a manager of Landlord, based on the representations and warranties of the architect and contractor retained in connection with completing Leasehold Improvements, without any duty of investigation. Without limiting Section 16.2 (Landlord's Indemnity), Landlord will Indemnify City against any and all Claims (defined in Section 16.1 (City's Indemnity) below) arising out of **(i)** any failure of the Property, Building, Common Areas, Building Systems (or any portion of any of them) to comply with applicable Laws (other than City's failure to comply with all applicable Laws as provided under Section 10.2 below); or **(ii)** any misrepresentation by Landlord under this Section.



## 10.2. City's Compliance with Laws; Indemnity

City will use the Premises during the Term in compliance with applicable Laws, except that City will not be required to make any structural alterations, additions, or other modifications in order to comply with applicable Laws unless the modifications are necessary primarily because of any Alterations or Cosmetic Work to the Premises made by City under Section 7 (Alterations) and the modifications are not otherwise Landlord's responsibility under this Lease. City will be responsible for complying with any requirement of the Disabilities Laws relating to the placement of City's furniture or other City Personal Property and the operation of any programs in the Premises, other than any requirement relating to the physical structure, fixtures, and permanent improvements of the Premises or portions of the Property or Building along the path of travel to the Premises, which are Landlord's obligation as provided in Section 10.1 (Premises Condition). Without limiting Section 16.1 (City's Indemnity), City will Indemnify Landlord against any and all Claims arising out of City's failure to comply with all applicable Laws as provided in this Section.

## 10.3. City's Compliance with Insurance Requirements

City will not conduct any use in or about the Premises that would: (a) invalidate or be in conflict with any fire or other casualty insurance policies covering the Building or any property located in the Building, (b) result in a refusal by casualty insurance companies of good standing to insure the Building or property in the Building in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering the Building, (c) cause an increase in the casualty insurance premium for the Building unless City agrees to pay the increase, or (d) subject Landlord to any liability or responsibility for injury to any person or property solely because of the business operation conducted by City in the Premises; provided, however, Landlord will provide City with reasonable prior written notice of any applicable insurance requirements and no insurance requirements will materially and adversely interfere with City's normal office use in the Premises.

## 11. SUBORDINATION

(a) Subject to subsection (b) below, this Lease is subject and subordinate at all times to the following (each an "Encumbrance"): (i) any reciprocal easement agreements, ground leases, or other underlying leases that may later be executed affecting Landlord's interest in the Property (or any portion of it), and (ii) the lien of any mortgages or deeds of trust and renewals, modifications, consolidations, replacements, and extensions of any of the foregoing that may be executed by Landlord at any time in any amount for which any part of the Property, any ground lease, or underlying lease, or Landlord's interest or estate in them is subject. But, if the ground lessor, mortgagee, trustee, or holder of any mortgage or deed of trust (each an "Encumbrancer") elects to have City's interest in this Lease be superior to its Encumbrance, then, on City's receipt of a notice from the Encumbrancer, this Lease will be deemed superior, whether this Lease was executed before or after the date of the Encumbrance or the date of its recording. The provisions of this subsection 11(a) are self-operative and no further instrument will be required. At Landlord's request, however, City will enter into a subordination, nondisturbance, and attornment agreement ("SNDA") with Encumbrancer in a form reasonably acceptable to City and Encumbrancer evidencing the subordination or superiority of this Lease. City's covenant under this subsection (a)

to subordinate this Lease to any Encumbrance is conditioned on each senior instrument containing the commitments in subsection (b) below.

(b) If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or if any ground lease or underlying lease to which this Lease is subordinate is terminated, then this Lease will not be barred, terminated, cut off, or foreclosed and the rights and possession of City under this Lease will not be disturbed unless an Event of Default has occurred and is continuing. City will attorn to and become the tenant of the successor-in-interest to Landlord, provided that City has received proper written notice of the succession and the name and address of the successor landlord. The provisions of this Section 11(b) are self-operative and no further instrument will be required. Landlord agrees, however, upon request by City and in the form of Exhibit G or such other form reasonably acceptable to City, to cause any Encumbrancer to execute an SNDA evidencing the foregoing non-disturbance provisions together with the priority or subordination of this Lease with respect to any such Encumbrance. City will execute or provide comments to any proposed SNDA within fifteen (15) days after Landlord's request for approval.

(c) Concurrently with the execution of this Lease, Landlord and City will execute and Landlord will cause its current mortgagee or beneficiary under any deed of trust given by Landlord to execute the Subordination and Nondisturbance Agreement in the form attached as Exhibit G.

## **12. DAMAGE AND DESTRUCTION**

(a) If the Premises, the Building, or any Building Systems are damaged by fire or other casualty, Landlord will repair the same without delay (and if Landlord is then carrying insurance on the Leasehold Improvements or if, at its sole option, City makes sufficient funds available to Landlord, Landlord will also repair the Leasehold Improvements) so long as the repairs can be made under applicable Laws within one hundred eighty (180) days after Landlord obtains all necessary permits but not later than three hundred sixty-five (365) days after the date of the damage (the "**Repair Period**"). If Landlord is obligated to repair as provided above, then this Lease will remain in full force and effect, except that City will be entitled to an abatement of Rent until the Premises are restored to their condition before the casualty unless the repair is necessitated by the negligence or misconduct of City and its Agents and Invitees and the damage is not covered by insurance. The abatement in Rent will be based on the extent to which the damage and the making of the repairs interferes with City's use of the Premises. Landlord's repairs will not include, and the Rent will not be abated as a result of, any damage by fire or other cause to City's Personal Property or any damage caused by the negligence or willful misconduct of City or its Agents that is not covered by insurance. In no event will Landlord be responsible to repair or replace City's Personal Property unless the repair or replacement is required because of Landlord's active negligence or willful misconduct.

(b) Within twenty (20) days after the date Landlord is notified or has actual knowledge of the damage, Landlord will notify City whether, in Landlord's reasonable judgment made in good faith, the repairs can be made within the Repair Period. If the repairs cannot be made within the Repair Period, then either party may terminate this Lease by giving written notice to the other given within thirty (30) days after the date of Landlord's notice. The termination date will be the date specified in the termination notice, which date may be not less than thirty (30) or

more than sixty (60) days after Landlord's notice. If either party elects to terminate this Lease, then the Rent will be reduced by a proportionate amount based on the extent to which the damage interferes with the normal conduct of City's business in the Premises, and City will pay the reduced Rent up to the date of termination. Landlord will refund to City any Rent previously paid for any period after the date of termination.

(c) Notwithstanding the foregoing, if the Premises are damaged or destroyed and the damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Landlord is required to carry under this Lease (for purposes of this subsection the amount of Landlord's deductible will be considered part of the proceeds) or where Landlord's lender refuses to release such proceeds, then Landlord may terminate this Lease by written notice to City within thirty (30) days after the date Landlord receives written notice that the damage is not covered by insurance or Landlord's lender has refused to release the proceeds. Landlord's termination notice must include adequate written evidence of the denial of insurance coverage or lender's refusal to release the proceeds. If Landlord does not elect to terminate this Lease as provided in this subsection (c), then subsections (a) and (b) will apply.

(d) If during the last six (6) months of the Term there is substantial damage that Landlord would be required to repair under this Section, then within thirty (30) days after the date of the damage Landlord or City may, each at its option, terminate this Lease as of the date the damage occurred by giving written notice to the other party of its election to do so; provided, however, Landlord may terminate this Lease only if it would take more than sixty (60) days to repair the damage or the damage will not be completed prior to the Expiration Date despite Landlord's good faith efforts to complete the repairs.

(e) The parties intend that the provisions of this Section fully govern their rights and obligations in the event of damage or destruction. Accordingly Landlord and City each waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar Law now or later in effect, to the extent those rights are inconsistent with the provisions of this Section.

## **13. EMINENT DOMAIN**

### **13.1. Definitions**

**"Taking"** means a taking or damaging, including severance damage, by eminent domain, inverse condemnation, or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation, or in settlement of a condemnation action.

**"Date of Taking"** means the earlier of (a) the date on which title to the portion of the Property taken passes to and vests in the condemnor or (b) the date on which City is dispossessed.

**"Award"** means all compensation, sums, or anything of value paid, awarded or received for a Taking, whether under any judgment, agreement, settlement, or otherwise.

### **13.2. General**

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or the Building or any interest in this Lease, the rights and obligations of the parties will be determined under this Section. City and Landlord intend that the provisions of this Section govern fully in the event of a Taking and accordingly, Landlord and City each waives any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar Law now or later in effect.

### **13.3. Total Taking; Automatic Termination**

If there is a total Taking of the Premises, then this Lease will terminate as of the Date of Taking.

### **13.4. Partial Taking; Election to Terminate**

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease will terminate in its entirety if all of the following exist: (i) the partial Taking, in City's reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by City for its intended purposes or otherwise materially adversely affects City's normal operations in the Premises or adversely affects access to the Premises, (ii) the condition rendering the Premises untenable or unsuitable or that materially adversely affects City's normal operations or adversely affects access to the Premises either is not curable or is curable but Landlord is unwilling or unable to cure the condition, and (iii) City elects to terminate on written notice to Landlord delivered within thirty (30) days after the Date of Taking.

(b) If a partial Taking of a substantial portion of the Building occurs, but subsection (a) above does not apply, then by written notice to the other delivered within thirty (30) days after the Date of Taking, either City or Landlord may terminate this Lease, provided that, as a condition to City's right to terminate, the portion of the Building taken must, in City's reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes or otherwise materially and adversely affect City's normal operations in the Premises or access to the Premises.

(c) If either party elects to terminate this Lease under this Section, then this Lease will terminate on the later of the thirtieth (30<sup>th</sup>) day after the written notice is given or the Date of Taking.

### **13.5. Termination of Lease; Rent and Award**

On termination of this Lease in its entirety under Section 13.3 (Total Taking; Automatic Termination) or under Section 13.4 (Partial Taking; Continuation of Lease), then: (a) City's obligation to pay Rent will continue up until the date of termination and then will cease, and (b) Landlord will be entitled to the entire Award, except that City will receive any portion of the Award for the unamortized cost of any Leasehold Improvements paid for by City and any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

### **13.6. Partial Taking; Continuation of Lease**

If there is a partial Taking of the Premises and this Lease is not terminated in its entirety under Section 13.4 (Partial Taking; Continuation of Lease) above, then this Lease will terminate as to the portion of the Premises taken, but will remain in effect as to the portion not taken, and the rights and obligations of the parties will be as follows: (a) Rent will be equitably reduced depending on the configuration of the Premises and the portion taken (for instance, if the area of the Premises taken has no special or significant use, then the reduction may be by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises before the Date of Taking), and (b) Landlord will be entitled to the entire Award in connection therewith, provided that City will receive any portion of the Award for the unamortized cost of any Leasehold Improvements paid for by City in the portion of the Premises taken and any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

### **13.7. Temporary Taking**

Notwithstanding anything to contrary in this Section, if a Taking of the Premises occurs for sixty (60) consecutive days or fewer, this Lease will remain unaffected by the temporary Taking, and City will continue to pay Rent and to perform all of the terms, conditions, and covenants of this Lease. In the event of a temporary Taking, City will be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by City and any out-of-pocket costs incurred by City due to the temporary Taking for the period of the Taking.

## **14. ASSIGNMENT AND SUBLETTING**

(a) Except as provided in this Section, City may not directly or indirectly sell, assign, encumber, pledge, or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate created by this Lease or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises, without Landlord's prior written consent in each instance, which will not be unreasonably withheld, conditioned, or delayed. From time to time, on notice to Landlord, but without Landlord's consent, City may transfer this Lease or use and occupancy of all or any of the Premises to any department, commission, or agency of the City and County of San Francisco or related governmental entity for uses permitted under this Lease, and City will not be released.

(b) Landlord will have no obligation to consent to any assignment, sublease, or other transfer: (i) that releases City, (ii) if the assignee or transferee is not credit worthy, as reasonably determined by Landlord, (iii) where the transferee is not of a character reasonably acceptable to Landlord, or (iv) where any lender or mortgagee fails to consent (where such consent is required).

(c) If City desires to assign, sublet, or transfer all or part of this Lease or the Premises, then in connection with City's request to Landlord for Landlord's consent thereto, City will give notice to Landlord in writing ("**Tenant's Request Notice**") containing: (i) the identity of the proposed assignee, subtenant or other party and a description of its business; (ii) the terms of

the proposed assignment, subletting, or other transfer (including a copy of the proposed assignment, sublease or other document); (iii) the anticipated commencement date of the proposed assignment, subletting, or other transfer (the “**proposed sublease commencement date**”); (iv) the area proposed to be assigned, sublet, or otherwise encumbered; (v) evidence of financial responsibility of such proposed assignee, subtenant, or other party (unless City remains financially liable for City’s obligations under this Lease notwithstanding any such assignment, sublet, or transfer); and (vi) a certification executed by City and such party stating whether or not any premium or other consideration is being paid for the assignment, sublease or other transfer.

(d) Landlord will have thirty (30) days in which to approve or reject the proposed assignment, sublease, or other transfer. Any net profits received by City from any sublease or assignment (after deducting all actual and reasonable internal and external City costs in connection with the proposed sublease, including marketing costs, attorneys' fees, brokers fees, and transaction costs) will be divided 50% to Landlord (the “**Additional Consideration**”) and 50% to City. Landlord will have the right to review City’s nonprivileged records relating to costs in order to confirm any net profit. After recovery of City’s costs as provided above, City will pay the Additional Consideration monthly to Landlord.

(e) In addition, in lieu of approving any proposed assignment, sublease, or transfer, Landlord will have the right to recapture the portion of the Premises that is proposed by City to be assigned, sublet, or transferred. If Landlord exercises this recapture right, (i) the recaptured space will be removed from the “Premises” for all purpose’s under this Lease and Landlord will be responsible for all costs needed to fully demise, separate, and secure the Premises from the recaptured space (including painting the demising wall in the Premises), (ii) Rent (including Additional Charges) will be proportionally reduced based upon the square footage that is removed from the Premises, and (iii) the parties agree to amend the Lease to reflect the above changes to the Premises and Rent, and any such amendment will be subject to the approval of the City’s Director of Property without the need for Board of Supervisors’ approval. In no event will the Purchase Option (defined in Section 22 (City’s Option to Purchase) be available to any assignee, subtenant, or transferee.

(f) No assignment of the Lease or right of occupancy under this Lease may be effectuated by operation of law without the prior written consent of Landlord. Any attempted assignment or transfer of this Lease or any sublet or permission to use or occupy the Premises or any part of it not in accordance with this Section 14, will be void and of no force or effect. Landlord’s collection or acceptance of rent from any assignee or subtenant will not be construed either as waiving or releasing City from any of its liabilities or obligations under this Lease as a principal or as relieving City or any assignee or subtenant from the obligation of obtaining Landlord’s prior written consent to any subsequent assignment or subletting. As security for this Lease, City hereby assigns to Landlord the rent due from any assignee or subtenant of City during any period that there exists an Event of Default. City authorizes each assignee or subtenant to pay its rent directly to Landlord upon receipt of notice from Landlord stating that there is an Event of Default under this Lease and directing payment to Landlord. Landlord’s collection of such rent will not be construed as an acceptance of such assignee or subtenant as a tenant.

(g) City will pay to Landlord its reasonable, out-of-pocket, third party expenses (including reasonable attorneys’ fees and accounting costs) incurred by Landlord in connection

with City's request for Landlord to give its consent to any assignment, subletting, or transfer within thirty (30) days after receipt of Landlord's invoice together with reasonable supporting documentation. City will deliver to Landlord a fully-executed copy of each agreement evidencing a sublease, assignment or other transfer within ten (10) days after execution thereof.

(h) All restrictions and obligations imposed pursuant to this Lease on City will extend (as applicable) to any subtenant, licensee, concessionaire, or transferee, and City will cause such person to comply with such restrictions and obligations. Any assignee will be deemed to have assumed obligations as if such assignee had originally executed this Lease. Subject to any written agreement with Landlord at the time of entering into a sublease, each sublease is subject to the condition that if the Lease is terminated or Landlord succeeds to City's interest in the Premises by voluntary surrender or otherwise, at Landlord's option the subtenant will be bound to Landlord for the balance of the term of the sublease and will attorn to and recognize Landlord as its landlord under the then executory terms of the sublease. The extension options and purchase option are personal to City and are not exercisable by any transferee under any sublease, assignment, or other transfer requiring Landlord's consent, nor may City exercise any extension options or purchase option if City has transferred more than 50% of the Premises under an assignment, sublease, or similar document where Landlord's consent is required.

## 15. DEFAULT; REMEDIES

### 15.1. Events of Default by City

Any of the following will constitute an "Event of Default" by City:

(a) After Landlord is qualified as an approved vendor as provided in Section 4.11 (Payments by City) above, City fails to make any timely payment of Rent and to cure the nonpayment within five (5) business days after receipt of written notice or nonpayment from Landlord, provided that for the first two (2) monthly payments of Rent at the beginning of the Term and for the first monthly payment of Rent after the beginning of each new fiscal year for City have twenty (20) days after written notice from Landlord to cure any nonpayment, and further provided in no event will Landlord be required to provide more than three (3) written notices under this subsection (a) in any twelve (12) month period, after which late payments will be an automatic Event of Default.

(b) City's abandons the Premises (within the meaning and under the requirements of California Civil Code section 1951.3).

(c) City assigns this Lease or subleases any portion of the Premises in violation of the terms of this Lease;

(d) City fails to provide evidence of insurance (to the extent required), estoppel certificates, signed SNDAs, or remove liens under Section 8.3 within the time provided in this Lease, which failure continues for five (5) business days after receipt of Landlord's written notice of default; or

(e) City's failure to perform any other of its covenants or obligations under this Lease (not involving the payment of money) and failure to cure the non-performance within thirty

(30) days of the date of receipt of Landlord's notice of the failure, provided that if more than thirty (30) days are reasonably required for the cure, no Event of Default will occur if City commences the cure within the 30-day period and diligently prosecutes the cure to completion (provided that where City's failure creates a dangerous condition or exposes Landlord to substantial or criminal penalties due to violations of Laws or otherwise, in which event City will be required to effect a cure within the time limit reasonably set forth by Landlord in its notice).

## **15.2. Landlord's Remedies**

On the occurrence and during the continuance of any Event of Default by City, Landlord will have all rights and remedies available under law or granted pursuant to this Lease, including the following:

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate City's right to possession of the Premises and to recover 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 rental loss for the same period that City proves could be reasonably avoided, as computed under subsection (b) of Section 1951.2.

(b) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as Landlord does not terminate City's right to possession, if City has the right to sublet or assign, subject only to reasonable limitations.

(c) Consistent with and subject to any Landlord obligation to mitigate damages under California law, if an event of default occurs under this Lease, then Landlord may put the Premises into rentable condition and relet the Premises or any part thereof for such term and on such terms and conditions (which may include any concessions or allowances granted by Landlord) as Landlord, in its reasonable discretion, may determine. Whether or not this Lease and/or City's right of possession is terminated or any suit is instituted, City will be liable for any base rent, additional rent, damages or other sum that may be due or sustained before such Event of Default, and for all actual and reasonable costs, fees and expenses incurred by Landlord in pursuit of its remedies hereunder and/or in recovering possession of the Premises as determined by a court of law. If Landlord does not terminate this Lease but instead leases or sublets the Premises, rents received by Landlord will be applied (i) first, to the payment of the costs of maintaining, preserving, altering and preparing the Premises for leasing and any other costs of leasing, including but not limited to brokers' commissions and attorneys' fees and expenses; (ii) second, to the payment of rent and additional rent then due and payable hereunder; (iii) third, to the payment of future rent as the same may become due and payable hereunder; and (iv) fourth to Landlord's damages, costs and fees related to City's default (including reasonable attorneys' fees), with any surplus held by Landlord as a security deposit under commercially reasonable standards (in a non-interest bearing account, which need not be segregated) pending termination of the Lease. If the rents received by Landlord, after application as provided above, are insufficient in any month to pay the rent due and payable hereunder for such month, City will pay such deficiency to Landlord monthly within thirty (30) days of Landlord's demand.



(d) All rights and remedies of Landlord set forth in this Lease are cumulative and in addition to all other rights and remedies available to at law or in equity, including those available as a result of any anticipatory breach of this lease. The exercise by Landlord of any such right or remedy will not prevent the concurrent or subsequent exercise of any other right or remedy.

### 15.3. Landlord's Default

City will promptly advise Landlord of any repair or other obligation under this Lease on the part of Landlord to be performed. If Landlord fails to perform any of its obligations under this Lease within ten (10) days after written notice, then (without limiting any of City's other cure or other rights under this Lease), at its sole option, City may cure the default at Landlord's expense if the default continues after ten (10) days after the date City gives notice to Landlord of City's intention to perform the cure. However, if a default occurs because of a cause beyond Landlord's control (excluding any financial inability to perform), and Landlord cannot with due diligence cure the default within the ten (10)-day period, then the ten (10)-day period will be extended if, promptly on receipt of City's notice, Landlord advises City of Landlord's intention to cure the default, and Landlord promptly commences the cure and diligently prosecutes the cure to completion (a "Correction Process"). If any default by Landlord continues for sixty (60) days and impairs City's ability to carry on its normal business in the Premises, and Landlord has not notified City of a Correction Process, then City may terminate this Lease on written notice to Landlord within thirty (30) days after the expiration of the sixty (60)-day period. If Landlord fails to cure any default within the 10-day cure period provided above (as it may be extended as provided above), then, whether or not City elects to cure Landlord's default, the Rent will be abated based on the extent to which the default interferes with City's ability to carry on its normal business at the Premises until the default is cured. City's rights under this Section and under any other provision of the Lease will not limit in any way any of its other rights and remedies under this Lease or at law or in equity, unless City has expressly waived those rights. Notwithstanding the foregoing, where Tenant elects to complete the Leasehold Improvements, then Section 3.3 will control.

## 16. INDEMNITIES

### 16.1. City's Indemnity

City will indemnify, defend, and hold harmless ("**Indemnify**") Landlord and its Agents from and against any and all claims, losses, damages, costs, and expenses, including reasonable attorneys' fees (collectively, "**Claims**"), incurred as a result of (a) City's use of the Premises, or (b) any default by City in the performance of any of its material obligations under this Lease (including the Work Letter), or (c) any negligent acts or omissions of City or its Agents in, on, or about the Premises or the Property; provided, however, City will not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents because of a Claim Indemnified by City under this Section, at its sole option, City may elect to defend the Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City will have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord will have the right, but not the

obligation, to participate in the defense of the Claim at its sole cost. City's obligations under this Section will survive the termination of the Lease for a period of three (3) years.

## **16.2. Landlord's Indemnity**

Landlord will Indemnify City and its Agents against any and all Claims incurred as a result of (a) any material default by Landlord in the performance of any of its obligations under this Lease or any breach of any representations or warranties made by Landlord under this Lease, or (b) any negligence of Landlord or its Agents in, on, or about the Premises or the Property; provided, however, Landlord will not be obligated to Indemnify City or its Agents to the extent any Claim arises out of the negligence or willful misconduct of City or its Agents. In any action or proceeding brought against City or its Agents because of a Claim Indemnified by Landlord under this Section, at its sole option, Landlord may elect to defend the Claim by attorneys selected by Landlord. Landlord will have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City will have the right, but not the obligation, to participate in the defense of any Claim at its sole cost. Landlord's obligations under this Section will survive the termination of this Lease for a period of three (3) years.

## **17. INSURANCE**

### **17.1. City's Self-Insurance**

Landlord acknowledges that City maintains a program of self-insurance and City is not be required to carry any insurance with respect to this Lease. City assumes the risk of damage to any of City's Personal Property, except for damage caused by Landlord's or its Agents' active negligence or intentional acts. City's self-insurance program will cover the following items (as if City had purchased a standard insurance policy from an independent insurance provider licensed to do business in California):

(a) Commercial general liability insurance with limits not less than Three Million Dollars (\$3,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU).

(b) Worker's Compensation Insurance with Employer's Liability limits not less than One Million Dollars (\$1,000,000) each accident.

(c) Business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, as applicable, if City uses automobiles in connection with its use of the Premises.

(d) An Umbrella policy in the amount of Five Million Dollars (\$5,000,000).

## 17.2. Landlord's Insurance

(a) At all times during the Term, Landlord will keep the Building and all improvements (including Leasehold Improvements and similar improvements for other tenants in the Building) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage (including earthquake sprinkler leakage) and other perils customarily covered under a cause of loss-special form property insurance policy in an amount equal to one hundred percent (100%) of the full insurance replacement value (replacement cost new, including debris removal and demolition) with a deductible of not more than \$1,000,000 or the amount under policies carried by institutional owners of Comparable Buildings in the Reference Area . Upon City's request, Landlord will provide to City a certificate of insurance issued by the insurance carrier, evidencing the required insurance. Landlord will provide (or cause its insurer to provide) at least thirty (30) days' prior written notice to City of any cancelation or reduction of coverage or other modification of Landlord's required insurance coverage. Landlord waives any rights to collect from City for loss or damage to the Premises or any other part of the Property to the extent covered by Landlord's property insurance.

(b) In addition, Landlord will procure and keep in effect at all times during the Term insurance as follows: (i) commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse, and underground (XCU); and (ii) worker's compensation insurance in the amounts required by applicable Laws and employer's liability with limits not less than One Million Dollars (\$1,000,000) each accident. All insurance policies required by this Lease to be maintained by Landlord must be endorsed to provide for thirty (30) days' prior written notice to Landlord and City of cancellation for any reason, intended non-renewal, or reduction in coverage (or, if such endorsement is not available from the insurer, Landlord will provide such notice to City).

(c) Landlord will maintain loss of rent coverage for a twelve (12) month period.

(d) Landlord will maintain such umbrella policy and additional coverage as it reasonably determines necessary or as required by any Encumbrancer. The parties agree that the minimums set forth in this Section 17 will be re-evaluated every five (5) years, and increased to the extent consistent with similarly situated landlords and properties.

## 17.3. Waiver of Subrogation

Notwithstanding anything to the contrary in this Lease, Landlord waives any right of recovery against City for any loss or damage relating to the Building or the Premises or any operations or contents in the Building, whether or not the loss is caused by City's fault or negligence, to the extent the loss or damage is covered by Landlord insurance that is required under this Lease or any excess coverage otherwise held by Landlord or its Agents. Landlord will obtain a waiver of subrogation endorsement from applicable insurance carriers issuing policies relating to the Building or the Premises, but Landlord's failure to do so will not affect the above waiver:

#### **17.4 Liability of Landlord**

(a) Neither Landlord nor Landlord's Agents will be liable to City and its Agents for any damage, injury, loss or claim to City's Personal Property or lost income based on or arising out of the following (except as expressly set forth in this Lease to the contrary, and except to the extent caused by Landlord or its Agents' negligence or intentional acts): repair to any portion of the Premises or the Building; interruption in the use of the Premises or the Building (except as otherwise provided in this Lease) or any equipment therein; any accident or damage resulting from any use or operation by City's or any other person or entity of elevators or heating, cooling, electrical, sewage or plumbing equipment or apparatus; termination of this Lease by reason of damage to the Premises or the Building under Article 12; any fire, robbery, theft, vandalism, mysterious disappearance or any other casualty; actions of any other person or entity; failure or inability to furnish any service specified in this Lease (except as otherwise provided in this Lease); and leakage in any part of the Premises or the Building from water, rain, ice, flooding or snow that may leak into, or flow from, any part of the Premises or the Building, or from drains, pipes or plumbing fixtures in the Premises or the Building (except to the extent due to Landlord's negligent failure to maintain the Building as required by this Lease). If any condition exists that may be the basis of a claim of constructive eviction, then City will give Landlord written notice thereof and a reasonable opportunity to correct such condition, and in the interim City will not be entitled to a rent abatement (except as otherwise allowed under this Lease). For purposes of this article, the term "Building" will be deemed to include the land on which the Building and parking are situated. Notwithstanding the foregoing provisions of this section, Landlord will not be released from liability to City for any physical injury to any natural person caused by the negligence or willful misconduct of Landlord or its Agents to the extent such damage is not covered by insurance either carried by City (or would have been had City not self-insured) or such person or required by this Lease to be carried by City.

(b) Neither Landlord nor any of its Agents (nor any past, present or future board member, partner, trustee, director, member, officer, employee, agent, representative or advisor of any of them) will under any circumstances be liable for any exemplary, punitive, consequential, or indirect damages in connection with or relating to this Lease. Neither Tenant nor any of its Agents (nor any past, present or future board member, partner, official, trustee, director, member, officer, employee, agent, representative or advisor of any of them) will under any circumstances be liable for any exemplary, punitive, consequential, or indirect damages in connection with or relating to this Lease.

(c) No landlord hereunder will be liable for any obligation or liability based on or arising out of any event or condition occurring during the period that such landlord was not the owner of the building or a landlord's interest therein; provided, however, that any successor landlord will be liable for continuing events and conditions.

(d) Subject to applicable Law, the obligations of City under this Lease are independent covenants and agreements, such that all such obligations of City, including, without limitation, the obligation to pay Base Rent, Additional Charges and all other sums due to Landlord hereunder, will continue unaffected, unless the requirement to pay or perform same has been terminated or abated pursuant to an express provision of this Lease. Such waiver and acknowledgements by City are a material inducement to Landlord entering into this Lease. City

will not have the right to set off or deduct any amount allegedly owed to City pursuant to any claim against Landlord from any Rent or other sum payable to Landlord except as provided in this Lease. Except as provided in this Lease, City's remedy for recovering upon such claim will be to institute an independent action against Landlord; provided, however, that the foregoing will not prohibit City from asserting a counterclaim in any proceeding instituted by Landlord against City.

(e) If City or any Agent or Invitee is awarded a money judgment against Landlord, then recourse for satisfaction of such judgment will be limited to execution against Landlord's estate and interest in the Building (and all property and accounts related thereto), or the amount that would have been available had Landlord maintained equity in the Building that equals or exceeds twenty percent (20%) of its fair market value. So long as Landlord complies with the foregoing equity requirement, no other asset of Landlord will be available to satisfy or be subject to any such judgment. No asset of any of Landlord's Agents (or any past, present or future board member, partner, director, member, officer, trustee, employee, agent, representative, or advisor of any of them (each, an "officer")) or any other person or entity, will be available to satisfy or be subject to any such judgment. No such Landlord's Agent, officer, or other person or entity will be held to have personal liability for satisfaction of any claim or judgment whatsoever under this Lease.

#### **18. ACCESS BY LANDLORD**

Landlord reserves for itself and any of its designated Agents the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord will give any reasonable notice), after giving City at least twenty four (24) hours' advance written notice, to (a) inspect the Premises, (b) supply any service to be provided by Landlord under this Lease, (c) show the Premises to any prospective purchasers, mortgagees or, during the last six (6) months of the Term, tenants, (d) post notices of non-responsibility, and (e) alter, improve, or repair the Premises and any portion of the Building, and, for that purpose, Landlord may erect, use, and maintain necessary structures in and through the Premises where reasonably required by the work to be performed, provided that the entrance to the Premises may not be blocked and Landlord may not materially interfere with City's use of the Premises.

#### **19. ESTOPPEL CERTIFICATES**

From time to time during the Term, by not less than thirty (30) days' prior written notice to the other party, either party may request the other party to execute, acknowledge, and deliver to the persons or entities designated by the other party a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, this the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), and (d) the date to which Rent has been paid.

#### **20. SURRENDER OF PREMISES**

On the expiration or sooner termination of this Lease, City will surrender the Premises to Landlord broom clean, free from debris, and in good order and condition, excepting reasonable use and wear and damage by fire or other casualty or condemnation. Within ten (10) days after

the Expiration Date, City will remove from the Premises all of City's Personal Property, City's telecommunications, data, and computer facilities and any Alterations City desires or is required to remove from the Premises under the provisions of Section 7.1 (Alterations by City). City will repair or pay the cost of repairing any damage to the Premises or the Building resulting from that removal. City will not be required to demolish or remove from the Premises any of the Leasehold Improvements. City's obligations under this Section will survive the expiration or earlier termination of this Lease. If City fails to remove its furniture, furnishings, equipment, City's Personal Property, debris and designated Alterations as required under this Section, Landlord will have the right at City's expense, to remove from the Premises any or all such items (and put the Premises in the condition required) and City will pay to Landlord all actual and reasonable costs incurred by Landlord in effectuating such removal and restoration plus a four percent (4%) administrative fee.

## **21. HAZARDOUS MATERIALS**

### **21.1. Definitions**

As used in this Lease, the following terms are defined below:

**"Environmental Laws"** means any Law relating to industrial hygiene, environmental conditions, or Hazardous Material, whether now in effect or later adopted.

**"Hazardous Material"** means any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the Superfund law), as amended (42 U.S.C. section 9601 et seq.), or under California Health & Safety Code section 25316; any "hazardous waste" listed under California Health & Safety Code section 25140; any asbestos and asbestos containing materials whether or not those materials are part of the structure of the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids.

**"Release"** when used with respect to Hazardous Material includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Building, or in, on, under, or about the Property.

### **21.2. Landlord's Representations and Covenants**

Landlord represents and warrants to City that, to Landlord's actual knowledge (as qualified in Section 10.1), the following statements are true and correct and will be true and correct as of the Commencement Date **(a)** the Property is not in violation of any Environmental Laws; **(b)** the Property is not now, and has not been, used for the manufacture, use, storage, discharge, deposit, transportation, or disposal of any Hazardous Material, except for the use of Hazardous Material in limited quantities as are customarily used in offices, which limited use is and has been in compliance with Environmental Laws; **(c)** the Property does not consist of any landfill or contain any underground storage tanks; **(d)** the Building does not contain any asbestos-containing

materials or have building materials that contain any other Hazardous Material in violation of applicable Laws, and the Premises or the common areas of the Building do not contain any lead-based paints in violation of applicable Laws; (e) there is and has been no Release of any Hazardous Material in the Building or in, on, under, or about the Property; and (f) the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in the Building or in, on, under, or about the Property, or the migration of Hazardous Material from or to other real property. Subject to City's obligations under this Section below, Landlord will maintain the Property throughout the Term in compliance with all Environmental Laws that could affect the health, safety, and welfare of City's employees or City's use, occupancy, or enjoyment of the Premises for their intended purposes, except to the extent caused by City and its Agents and Invitees.

### **21.3. Landlord's Environmental Indemnity**

Without limiting Landlord's Indemnity in Section 16.2 (Landlord's Indemnity), Landlord will Indemnify City and its Agents against any and all Claims arising during or after the Term (a) as a result of any breach of any of Landlord's representations, warranties, or covenants in the preceding Section, or (b) in connection with any Release of any Hazardous Material in the Building or on, under, or about the Property caused by Landlord and its Agents, unless City or its Agents caused the Release.

### **21.4. City's Covenants**

Neither City nor its Agents (nor, to the extent the Premises are used as a public facility, its Invitees) will cause any Hazardous Material to be brought on, kept, used, stored, generated, or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property in violation of any Environmental Laws.

### **21.5. City's Environmental Indemnity**

If City breaches its obligations contained in the preceding Section 21.4 (City's Covenants), or if City or its Agents cause the Release of Hazardous Material from, in, on, or about the Premises or the Property, then City will Indemnify Landlord against any and all Claims arising during or after the Term as a result of the Release, except to the extent Landlord or its Agents is responsible for the Release. The foregoing Indemnity will not include any Claims resulting from the non-negligent aggravation by City, its Agents, or Invitees of physical conditions of the Premises, or other parts of the Property, existing before City's occupancy.

## **22. CITY'S OPTION TO PURCHASE**

### **22.1. Grant of Option; Approvals; Purchase Agreement**

(a) Landlord grants to City an exclusive and irrevocable option to purchase the Property (the "**Purchase Option**") at any time after the Effective Date for the price and on the terms and conditions set forth in this Section 22. City may exercise the Purchase Option at any time during the first nine (9) months following the Effective Date (the "**Option Term**") by giving Landlord written

notice (the “**Option Notice**”) during such time, together with the purchase and sale agreement in the form attached as **Exhibit F** (the “**PSA**”), all terms of which are expressly incorporated into this Section 22. Before including the PSA with the Option Notice, City may revise the PSA only to insert factual information (e.g., Seller name, signature information, leases to be assumed, and legal description). The Purchase Price under Section 22.2 shall be determined at Closing, based on the Construction Costs (supported by the approved Construction Budget, invoices, and applications for payment) under the Work Letter. City’s purchase of the Property under the Purchase Option is subject to approval by City, at its sole discretion, of an appraisal (if required by City), the title to the Property, and any environmental and other investigations of the Property that City may deem appropriate, and approval by City’s Board of Supervisors and Mayor, at their respective sole discretion, and adoption of a resolution authorizing the purchase and ordinance appropriating all necessary funds in accordance with all applicable Laws (including CEQA) (collectively, the “**Resolution and Approvals**”), all of which conditions must be satisfied or waived by City within a sufficient time so as to allow Closing (as defined in the PSA) to occur within ninety (90) days after Landlord’s receipt of the Option Notice. During the sixty (60) day period following the Option Notice, that parties will endeavor in good faith to agree upon the Purchase Price, based on supporting documentation and Landlord’s calculation of the Purchase Price under Section 22.2 based on the Construction Costs (supported by the approved Construction Budget, invoices, and applications for payment) under the Work Letter. The parties understand and agree that if Leasehold Improvements are not complete as of the date of the Option Notice, Landlord will continue to construct Leasehold Improvements following the Option Notice and until Closing, and the Purchase Price will be increased by all Construction Costs paid by Landlord prior to or in connection with Closing. If the parties cannot agree on the estimated Purchase Price within ten (10) days prior to Closing, either party may elect to have a Neutral Auditor review this Lease, including the Work Letter, and all relevant books and records and determine the Purchase Price. The Neutral Auditor’s determination of the Purchase Price will be final and binding on Landlord and City, and will account for all Construction Costs incurred as of Closing. Closing will not be delayed as a result of the parties’ inability to agree upon the final Purchase Price, but any disputed amounts shall be paid by City and held in escrow until such amount is determined, and promptly released based on the Neutral Arbitrator’s determination, with any interest paid to the party to whom such amounts are released. City and/or Landlord may elect to execute the PSA for its preference or convenience, but the failure of either party to execute the PSA will not affect the effectiveness or binding nature of the PSA. This Purchase Option is a one-time option granted to City, and time is of the essence with respect to City’s rights and obligations under this Section 22.

## **22.2. Purchase Price**

The total purchase price for the Property (the “**Purchase Price**”) will be:

(a) Fifty-Six Million Dollars (\$56,000,000) *plus* the amount of the Construction Costs (as defined in the Work Letter) incurred by Landlord as of Closing, such Construction Costs not to exceed Two Million Six Hundred Fifty-Three Thousand Seven Hundred Forty Dollars (\$2,653,740).

(b) Under this Lease, the period between the Commencement Date and the Rent Commencement Date (the “**Free Rent Period**”) is the 180-day period in which City has no obligation to pay Base Rent (the amount of Base Rent that is not payable during the Free Rent Period is “**Free Rent.**”) If the Closing occurs before the Rent Commencement Date, then City will be credited against the Purchase Price any amount of the Free Rent remaining in the Free Rent



Period. For example, if the Commencement Date of the Lease occurs on February 15, 2021, and the Closing occurs on March 15, 2021, then an amount equal to 152 days of Base Rent will be credited against the Purchase Price.

(c) Any amounts owed under the Lease by City to Landlord, including any unpaid Base Rent and progress payments under the Work Letter, will be credited to Landlord at Closing.

### **22.3. Other Purchase Option Terms**

(a) Where the Purchase Option is terminated due to City's inability to obtain the Resolution and Approvals, City will pay Landlord within thirty (30) days of demand for all actual out-of-pocket costs, expenses, and fees Landlord incurred in connection with this Section 22, and all fees owed to the Title Company.

(b) Where Closing occurs after Landlord has entered into construction contracts for construction of the Leasehold Improvements, at Closing Landlord will assign and City will assume such construction contracts.

(c) Notwithstanding City's exercise of the Purchase Option, this Lease, including City's obligation to pay Rent, will continue in full force and effect until terminated (whether expressly, under the terms of this Lease, the PSA, or by merger or otherwise as a matter of law). If the Purchase Option or City's acquisition is terminated for any reason, then this Lease will continue in full force and effect except for this Section 22, which will be deemed terminated.

(d) This Section 22 is personal to City and the Purchase Option may not be exercised by any subtenant, assignee, or transferee. This Purchase Option may only be exercised one time by City. Time is of the essence with respect to City's exercise of the Purchase Option and Closing Date.

## **23. CITY PROVISIONS**

### **23.1. MacBride Principles - Northern Ireland**

The provisions of San Francisco Administrative Code §12F are incorporated into this Lease by this reference and made part of this Lease. Landlord confirms that Landlord has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

### **23.2. Controller's Certification of Funds**

The terms of this Lease are governed by and subject to the budgetary and fiscal provisions of City's Charter. Notwithstanding anything to the contrary contained in this Lease, there will be no obligation for the payment or expenditure of money by City under this Lease unless the Controller of the City and County of San Francisco first certifies, under Section 3.105 of City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. City will make

commercially reasonable efforts to keep Landlord apprised of the annual budget process and any matters that are likely to prevent appropriation and certification. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Lease commences, sufficient funds for the payment of Rent and any other payments required under this Lease are not appropriated, then City will immediately notify Landlord and either Landlord or City may terminate this Lease, without penalty, liability or expense of any kind to City as a result of such early termination (but the City will be liable for all amounts due prior to such termination), and such termination to be effective as of the last date on which sufficient funds are appropriated. City will use reasonable efforts to give Landlord reasonable advance notice of such termination. In the event of any subleasing, assignment or transfer, unless Landlord agrees otherwise in an SNDA, City's termination will terminate such transferee's right to occupy the Premises, and City will be liable for any and all Claims related to City's failure to surrender the Premises in accordance with this Lease, including without limitation any such transferee's failure to vacate as of City's termination date if required to do so as described above.

### **23.3. Prevailing Wages and Working Conditions**

Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code section 23.61. Landlord will require its Contractors and Subcontractors performing (i) labor in the construction of a "public work" as defined in California Labor Code section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling if paid for in whole or part out of public funds), or (ii) Covered Construction at the Premises to (A) pay workers performing the work not less than the Prevailing Rate of Wages, (B) provide the same hours, working conditions, and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ Apprentices in accordance with San Francisco Administrative Code section 23.61 (collectively, "**Prevailing Wage Requirements**"). Landlord will cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements, and City will reimburse Landlord for Landlord's actual out-of-pocket costs in cooperating with City in such action or proceeding if the action or proceeding is related to Alterations performed by City.

Landlord will include, and require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code section 23.61. Each Construction Contract must name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code section 23.61. Landlord's failure to comply with its obligations under this Section will constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code section 23.61 against the breaching party.

#### 23.4. Non Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

In the performance of this Lease, Landlord will not to discriminate against any employee of Landlord, any City employee working with Landlord, any applicant for employment with Landlord, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of those protected classes, or in retaliation for opposition to discrimination against those classes.

(b) Subcontracts

Landlord will include in all subcontracts relating to the Premises a non-discrimination clause applicable to the subcontractor in substantially the form of subsection (a) above. In addition, Landlord will incorporate by reference in all subcontracts the provisions of San Francisco Administrative Code sections 12B.2(a), 12B.2(c)-(k), and 12C.3 and require all subcontractors to comply with those provisions. Landlord's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits

Landlord does not as of the date of this Lease, and will not during the Term, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of the employees, where the domestic partnership has been registered with a governmental entity under state or local law authorizing that registration, subject to the conditions set forth in San Francisco Administrative Code section 12B.2(b).

(d) CMD Form

As a condition to this Lease, Landlord will execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division (the "CMD"). Landlord represents that before execution of the Lease: (i) Landlord executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved the form.

(e) **Incorporation of Administrative Code Provisions by Reference**

The provisions of San Francisco Administrative Code Chapters 12B and 12C relating to non-discrimination by parties contracting for the lease of property to City are incorporated into this Section by reference and made a part of this Lease as though fully set forth. Landlord will comply fully with and be bound by all of the provisions that apply to this Lease under Administrative Code Chapters 12B and 12C, including the remedies provided in those Chapters. Without limiting the foregoing, Landlord understands that under San Francisco Administrative Code section 12B.2(h) a penalty of Fifty Dollars (\$50) for each person for each calendar day during which that person was discriminated against in violation of the provisions of this Lease may be assessed against Landlord and/or deducted from any payments due Landlord.

**23.5. Tropical Hardwood and Virgin Redwood Ban**

(a) Except as expressly permitted by San Francisco Environment Code sections 802(b) and 803(b), neither Landlord nor any of its contractors may provide any items to City in the construction of the Leasehold Improvements or otherwise in the performance of this Lease that are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

(b) The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood products.

(c) If Landlord fails to comply in good faith with any of the provisions of San Francisco Environment Code Chapter 8, Landlord will be liable for liquidated damages for each violation in an amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed will be payable to the City and County of San Francisco on demand and may be set off against any monies due to Landlord from any contract with City.

**23.6. Bicycle Parking Facilities**

San Francisco Planning Code (the "Planning Code") Article 1.5, section 155.3 requires that bicycle parking must be provided at City-leased buildings at no cost to Landlord. During the Term, City will have the right to install and maintain, at no cost to Landlord, all Class 1 Bicycle Parking Spaces (as defined in the Planning Code) and all Class 2 Bicycle Parking Spaces (as defined in the Planning Code) in the Building locations required under the Planning Code.

**23.7. Resource-Efficient City Buildings**

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code sections 700 to 713 relating to green building requirements for the design, construction, and operation of City buildings. Landlord will comply with all applicable provisions of those code sections.

### **23.8. Sunshine Ordinance**

In accordance with San Francisco Administrative Code section 67.24(e), contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement, or other benefit until and unless that person or organization is awarded the contract, lease, agreement, or benefit. Information provided that is covered by this Section will be made available to the public on request.

### **23.9. Conflicts of Interest**

Through its execution of this Lease, Landlord acknowledges that it is familiar with the provisions of City's Campaign and Governmental Conduct Code Article III, Chapter 2 and California Government Code section 87100 et seq. and section 1090 et seq., and certifies that it does not know of any facts that would constitute a violation of those provisions. If Landlord becomes aware of any such fact during the Term of this Lease, Landlord will immediately notify City.

### **23.10. Notification of Prohibition on Contributions**

By executing this Lease, Landlord acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who leases, or seeks to lease, to or from any department of the City any land or building from making any campaign contribution to (a) a City elected official if the lease must be approved by that official, (b) a candidate for that City elective office, or (c) a committee controlled by that elected official or a candidate for that office, at any time from the submission of a proposal for the lease until the later of either the termination of negotiations for the lease or twelve (12) months after the date the City approves the lease. Landlord acknowledges that the foregoing restriction applies only if the lease or a combination or series of leases or other contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Landlord further acknowledges that (i) the prohibition on contributions applies to each prospective party to the lease; any person with an ownership interest of more than 10 percent (10%) in Landlord; any subcontractor listed in the lease; and any committee that is sponsored or controlled by Landlord; and (ii) within thirty (30) days of the submission of a proposal for the Lease, the City department with whom Landlord is leasing is obligated to submit to the Ethics Commission the parties to the lease and any subcontractor. Additionally, Landlord certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the lease, and has provided the names of the persons required to be informed to the City department with whom it is leasing.

### **23.11. Preservative-Treated Wood Containing Arsenic**

Landlord may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Environment Code

section 1304. The term “preservative-treated wood containing arsenic” means wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Landlord may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Landlord from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

## **24. GENERALLY APPLICABLE PROVISIONS**

### **24.1. Notices**

Except as otherwise specifically provided in this Lease, any notice given under this Lease must be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, to: (a) City at City’s address set forth in the Basic Lease Information; or (b) Landlord at Landlord’s address set forth in the Basic Lease Information; or (c) any other address designated by as either Landlord or City as its new address for notices by notice given to the other in accordance with this Section. A properly addressed notice transmitted by one of the foregoing methods will be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Except for default notices, notices may be given by email to the email address number set forth in the Basic Lease Information or any other email address as may be provided from time to time, and such notice will be deemed received on the date on which a responsive email from the recipient acknowledging receipt is delivered to the sender.

### **24.2. No Implied Waiver**

No failure by either party to insist on the strict performance of any obligation of the other party under this Lease or to exercise any right, power, or remedy after a breach of this Lease will constitute a waiver of any breach or of term, covenant, or condition. No acceptance of full or partial Rent by Landlord while City is in default will constitute a waiver of the default by Landlord. No express written waiver of any default or the performance of any provision if this Lease will affect any other default or performance, or cover any other period of time, other than the default, performance, or time specified in the express waiver. One or more written waivers of a default or the performance of any provision of this Lease will not be deemed to be a waiver of a subsequent default or performance. The consent of Landlord or City given in one instance under the terms of this Lease will not relieve the other party of any obligation to secure the consent to any other or future instance under the terms of the Lease.

### **24.3. Amendments**

The terms and provisions of this Lease may only be changed, waived, discharged, or terminated by a written instrument signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought. No waiver of any breach will affect or alter this Lease, and each and every term, covenant, and condition of this Lease will continue in full force and

effect with respect to any other then-existing or subsequent breach. Whenever this Lease requires or permits City's consent or approval, the Director of Property, or his or her designee, will be authorized to provide the consent or approval, except as otherwise provided by applicable Law, including the Charter of the City and County of San Francisco. City will promptly inform Landlord of any consent or approval that requires additional action on the part of City. City's agreement to any amendments or modifications to this Lease (including the exhibits) may be made on the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease (a) changing the legal description of the Premises, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Premises from the use authorized under Section 5.1 (Permitted Use), and (e) any other amendment or modification that materially increases City's liabilities or financial obligations under this Lease will also require the approval of City's Board of Supervisors.

#### **24.4. Authority**

Landlord represents and warrants to City that it is the sole owner of the Property and the execution and delivery of this Lease by Landlord does not violate any provision of any agreement or any applicable Laws. Landlord is a limited liability company, and each person executing this Lease on behalf of Landlord, by that person's signature, covenants and warrants that Landlord is a duly authorized and existing entity, that Landlord is qualified to do business in California, that Landlord has the full right and authority to enter into this Lease, and that each person signing on behalf of Landlord is authorized to do so. On City's request, Landlord will provide City with evidence reasonably satisfactory to City confirming these representations and warranties.

#### **24.5. Parties and Their Agents; Approvals**

If applicable, the word "Landlord" will include the plural as well as the singular. The term "Agents" when used with respect to either party includes the agents, employees, officers, and contractors of the party, and the term "Invitees" when used with respect to City will include the clients, customers, invitees, guests, licensees, assignees, or subtenants of City. All approvals, consents, or other determinations permitted or required by City under this Lease, including City's exercise of any option, must be made by or through City's Director of Property unless otherwise provided in this Lease, subject to any applicable limitations in City's Charter. If there is more than one entity that comprises Landlord, the obligations and liabilities under this Lease imposed on Landlord are joint and several.

#### **24.6. Interpretation of Lease**

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and will in no way define or limit the scope or intent of any provision of this Lease. Except as otherwise specifically provided in this Lease, wherever Landlord or City is required or requested to give its consent or approval to any matter or action by the other, the consent or approval will not be unreasonably withheld or delayed and the reasons for disapproval of consent will be stated in reasonable detail in writing. Provisions in this Lease relating to number of days will be calendar days, unless otherwise specified. If the last day of any period to give notice, reply to a notice, or to take any other action occurs on a Saturday, Sunday, or a bank or City holiday, then the last day for taking the action or giving or replying to

the notice will be the next succeeding business day. Business days do not include Saturdays, Sundays, and recognized holidays when City offices are closed, as described in Exhibit H, Paragraph XII. The words “include” or “including” or similar words will not be construed to limit any general term, statement, or other matter in this Lease or any of its attached exhibits, whether or not language of non-limitation, such as “without limitation” or similar words, are used.

#### **24.7. Successors and Assigns**

Subject to the provisions of Section 14 (Assignment and Subletting), the terms, covenants, and conditions contained in this Lease will bind and inure to the benefit of Landlord and City and, except as otherwise provided in this Lease, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Lease.

#### **24.8. Brokers**

Neither party has had any contact or dealings or communications regarding leasing the Premises 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 lease of the Premises, except for the broker, if any, identified in the Basic Lease Information. That broker’s commission is Landlord’s sole responsibility under a separate written agreement between Landlord and the broker, and City has no liability for that commission. If any other broker or finder perfects a claim for a commission or finder’s fee based on any contact, dealings, or communication, the party through whom the broker or finder makes his claim will be responsible for the commission or fee and will Indemnify the other party from any and all Claims incurred by the indemnified party. The provisions of this Section will survive any termination of this Lease.

#### **24.9. Severability**

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

#### **24.10. Governing Law**

This Lease will be construed and enforced in accordance with the laws of the State of California and City’s Charter.

#### **24.11. Entire Agreement; Incorporation of Exhibits**

The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease by this reference) are the final expression of their agreement with respect to the lease of the Premises and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Lease will constitute the complete and exclusive statement of its terms and that no extrinsic evidence



whatsoever (including prior drafts and changes) may be introduced in any judicial, administrative, or other legal proceeding involving this Lease.

#### **24.12. Attorneys' Fees**

If either Landlord or City fails to perform any of its obligations under this Lease or if a dispute arises concerning the meaning or interpretation of any provision of this Lease, 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 Lease (whether or not any action is prosecuted to a judgment). For purposes of this Lease, 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. For purposes of this Lease, reasonable attorneys' fees of Landlord will include any in-house counsel fees at the rate set forth above for City staff attorneys.

#### **24.13. Holding Over**

If City holds over in possession of the Premises after the expiration of the Term with Landlord's consent, that holding over will not be deemed to extend the Term or renew this Lease, and City's tenancy will continue as a month-to-month tenancy until the tenancy is terminated by either party by giving least thirty (30) days' prior written notice of termination. The month-to-month tenancy will be on all the terms and conditions of this Lease and at the monthly Base Rent in effect during the last month of the Term or as Landlord and City may mutually agree in writing. If City holds over without Landlord's consent, the rent payable by City during the period of holding over will be one hundred twenty-five percent (125%) of the monthly Base Rent in effect during the last month of the Term of this Lease, and the tenancy will otherwise be on the terms and conditions contained in this Lease, but, Landlord's acceptance of such holdover fee will not limit Landlord's other rights and remedies under this Lease or at Law. If, as provided in Sections 7.3(b) and 20 above, City fails to remove its or a Supplier's furniture, furnishings, equipment, City's Personal Property and designated Alterations by the Expiration Date, then City's continued possession will be deemed a holding over, but Base Rent will not be payable for a 10-day period so long as City complies with Section 20 no later than the last day of such 10-day period; if City remains in possession of the Premises beyond that 10-day period, then City's possession will be deemed a holding over and Base Rent will be payable for the entire hold over period (including the 10 days) as set forth in this Section 24.13. In no event will any nonconsensual holdover be deemed a permitted extension or renewal of the Term. City will be liable for any all Claims and damages incurred by Landlord in connection with City's nonconsensual holding over.

#### **24.14. Cumulative Remedies**

All rights and remedies of either party set forth in this Lease are cumulative, except as otherwise specifically provided in this Lease.

#### **24.15. Time of Essence**

Time is of the essence for all provisions of this Lease.

#### **24.16. Survival of Indemnities**

Termination of this Lease will not affect the right of either party to enforce any indemnities and representations and warranties given or made under this Lease to the other party, and it will not affect any provision of this Lease that expressly states it will survive termination. With respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim that actually or potentially falls within the indemnity provision even if the claim is or may be groundless, fraudulent, or false, and the obligation to defend arises at the time the claim is tendered to the indemnitor by the indemnitee and continues at all times until resolved.

#### **24.17. Signs**

City may erect or post exterior signs on or about the Premises with Landlord's prior approval, at its sole cost and in compliance with all Laws. Landlord reserves the right to review and approve the placement, design, and plan for before City erects or posts any sign, which review and approval will not be unreasonably withheld or delayed. Interior signs not visible from the exterior of the Premises are permitted as provided under Article 7 (Alterations). Upon expiration or earlier termination of this Lease, City will remove the signs at its sole cost and repair any damage caused by removal.

#### **24.18. Quiet Enjoyment and Title**

Landlord covenants and represents that it has full right, power, and authority to grant the leasehold estate as provided in this Lease, and covenants that City, on paying the Rent and performing the covenants contained in this Lease, will peaceably and quietly have, hold, and enjoy the Premises and all related rights during the Term as against all persons or entities or on account of any action, inaction, or agreement of Landlord or its Agents.

#### **24.19. Bankruptcy**

Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. City's leasehold estate under this Lease includes all rights to receive and enjoy all services, facilities, and amenities of the Premises and the Building as provided in this Lease. If any of the services, facilities, or amenities are terminated, or materially limited or restricted because of any such case or proceeding, or for any other reason, City may (a) contract directly with any third-party provider of those services,

facilities, or amenities, and (b) offset against the Rent all reasonable costs and expenses incurred by City in obtaining those services, facilities, or amenities.

#### **24.20. Transfer of Landlord's Interest**

Landlord may transfer its interest in the Property, the Building, or this Lease and on such transfer, Landlord will be relieved of Landlord's obligations under this Lease accruing from and after the date of the transfer when (a) Landlord has provided notice to City of the name and address of Landlord's successor, (b) City has reasonably approved the transferee; and (c) Landlord has delivered to City an express written assumption by the transferee of all of Landlord's obligations under this Lease. Any transfer of Landlord's interest in the Property, the Building, or this Lease to a lender in exercise of its rights is governed by Section 11 (Subordination) and any SNDA with such lender.

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

Notwithstanding anything to the contrary in this Lease, no elected or appointed board, commission, member, officer, employee, or other Agent of City will be personally liable to Landlord, its successors, or its assigns for any City default or breach or for any amount that may become due to Landlord or its successors or assigns, or for any obligation of City under this Lease.

#### **24.22. Counterparts**

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

#### **24.23. Effective Date**

This Lease will become effective on the date (the "Effective Date") that (a) City's Mayor and Board of Supervisors, at their sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable Laws; (b) this Lease is duly executed by Landlord and City; and (c) Landlord has provided to City the SNDA executed by Landlord and Landlord's lender with acknowledgments as required under Section 11(c). City will promptly advise Landlord upon the occurrence of subclause (a) above. If subclause (a) does not occur by June 30, 2020, Landlord may terminate this Lease upon written notice to City given at any time before City's notice that subclause (a) is satisfied.

#### **24.24. Certification by Landlord**

By executing this Lease, Landlord certifies that neither Landlord nor any of its officers or members have been suspended, disciplined, or disbarred by, or prohibited from contracting with, any federal, state, or local governmental agency. If Landlord or any of its officers or members have been suspended, disbarred, disciplined, or prohibited from contracting with any governmental agency, it will immediately notify City of that fact and the reasons for the suspension, disbarment, discipline, or prohibition together with any relevant facts or information requested by City. If there is any suspension, disbarment, discipline, or prohibition that may result in the termination or suspension of this Lease, City may terminate this Lease on written notice to Landlord. Landlord acknowledges that this certification is a material term of this Lease.

#### **24.25. Memorandum of Lease**

On the Effective Date, Landlord and City will execute the memorandum of lease in the form attached as **Exhibit E** (the “**Memorandum of Lease**”), and Landlord will cause the Memorandum of Lease to be recorded in the Official Records of the City and County of San Francisco within two (2) business days after execution (subject to extension due to Unavoidable Delay). On termination of the Purchase Option or any PSA, City will promptly execute in recordable form documents as reasonably requested by Landlord to establish that the Property is no longer subject to the option.

#### **24.26. Cooperative Drafting**

This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party will be considered the drafter of this Lease, and no presumption or rule that an ambiguity will be construed against the party drafting the clause will apply to the interpretation or enforcement of this Lease.

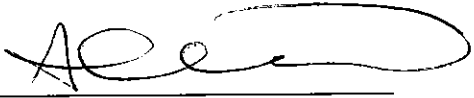
NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS CITY’S BOARD OF SUPERVISORS HAS DULY ADOPTED A RESOLUTION OR ENACTED AN ORDINANCE APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED BY THIS LEASE. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS LEASE ARE CONTINGENT ON ADOPTION OF THAT RESOLUTION OR ORDINANCE, AND THIS LEASE WILL BE NULL AND VOID UNLESS CITY’S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, AT THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION, OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT THE RESOLUTION WILL BE ADOPTED AND NO SUCH APPROVAL WILL CREATE ANY BINDING OBLIGATIONS ON CITY.

Landlord and City have executed this Lease as of the date first written above.

LANDLORD:

333 VALENCIA OWNER, L.L.C.,  
a Delaware limited liability company

By: AG Real Estate Manager, Inc.,  
a Delaware corporation, its Manager

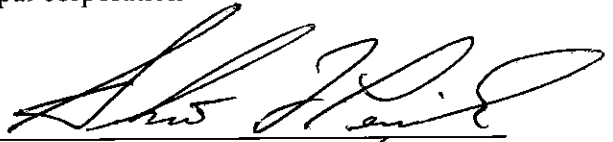
By: 

Name: Alexander Chan

Title: VICE PRESIDENT

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: 

ANDRICO Q. PENICK *8/4/20*  
Director of Property


RECOMMENDED:

---

DR. GRANT COLFAX  
Director of Public Health

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:   
Eileen Chauvet  
Deputy City Attorney



Landlord and City have executed this Lease as of the date first written above.

LANDLORD:

333 VALENCIA OWNER, L.L.C.,  
a Delaware limited liability company

By: AG Real Estate Manager, Inc.,  
a Delaware corporation, its Manager

By: 

Name: Alexander Chan

Title: VICE PRESIDENT

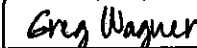
CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
ANDRICO Q. PENICK  
Director of Property

RECOMMENDED:


Designated by:



DR. GRANT COLBATH  
Director of Public Health

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:   
Eileen Chauvet  
Deputy City Attorney

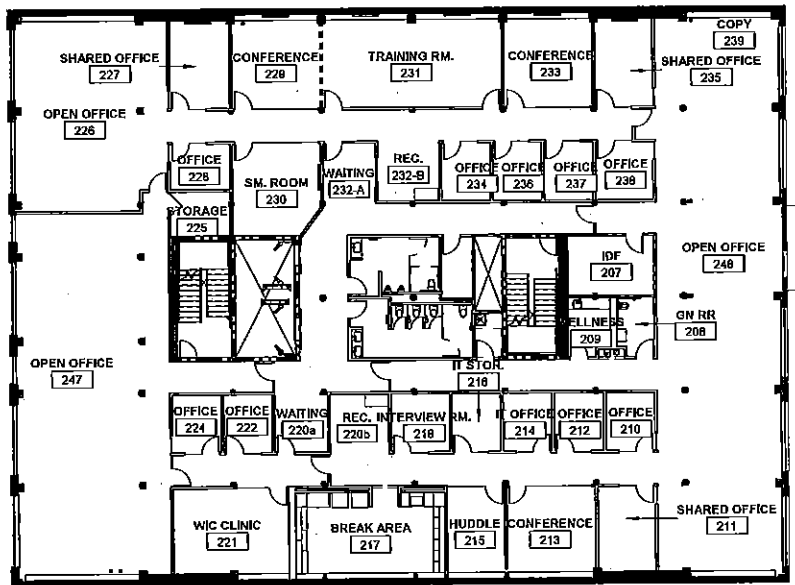
**EXHIBIT A**

**FLOOR PLANS**

CONSISTING OF 3 PAGES



Exhibit A



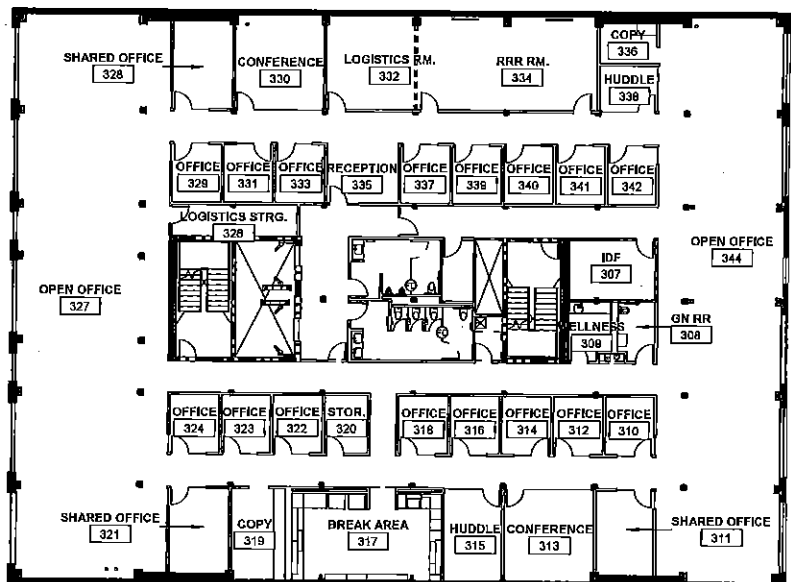
brick.

333 valencia  
 333 valencia st  
 san francisco, CA 94103



Level 2 - Space Plan  
 2020.08.25  
 PERMIT  
 www.brick-inc.com

Exhibit A



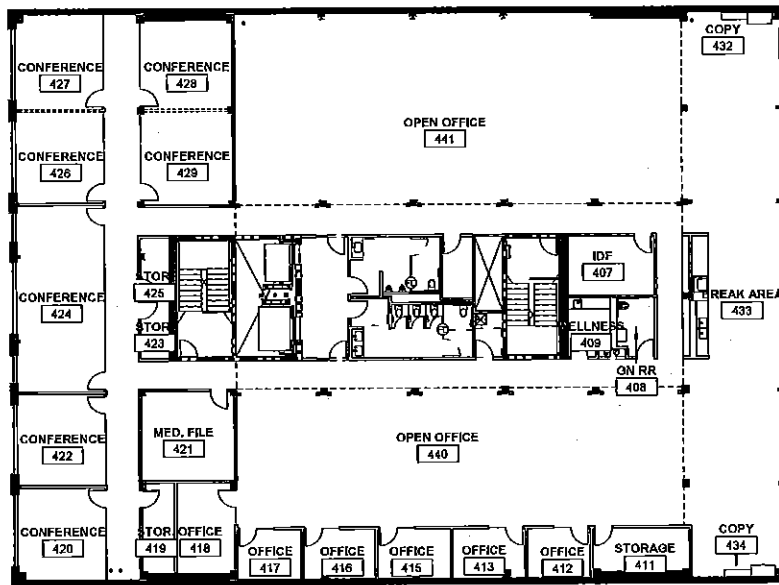
brick.

333 valencia  
 333 valencia st  
 san francisco, CA 94103



Level 3 - Space Plan  
 2020.08.25  
 PERMIT  
 www.brick-inc.com

Exhibit A



brick.

333 valencia  
333 valencia st  
san francisco, CA 94103



Level 4 - Space Plan  
2020.06.25  
PERMIT  
www.brick-inc.com

**EXHIBIT B**

**NOTICE OF COMMENCEMENT DATE**

[Date]

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

RE: Acknowledgement of Commencement Date, Lease Between 333 VALENCIA OWNER, L.L.C., a Delaware limited liability company (Landlord), and the CITY AND COUNTY OF SAN FRANCISCO (Tenant), for premises known as 333 Valencia Street in San Francisco, California.

Dear Mr. Penick:

This letter confirms that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is \_\_\_\_\_, 20\_\_.

Please acknowledge your acceptance of this letter by signing and returning a copy of this letter.

Very truly yours,

333 VALENCIA OWNER, L.L.C.,  
a Delaware limited liability company

By: AG Real Estate Manager, Inc.,  
a Delaware corporation, its Manager

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

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

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

Accepted and Agreed:

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

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

## EXHIBIT C

### BUILDING RULES AND REGULATIONS

1. Tenant must make a written request (which is subject to reasonable approval by Landlord) for any shades, curtains, or blinds to be installed on exterior windows. No awning is permitted on any part of the Premises.
2. If Tenant utilizes an outside drinking water service or any other service provided to the Premises by an outside company, the service providers will comply with Landlord's reasonable regulations for deliveries and placement and maintenance of equipment.
3. The sidewalks, halls, passages, exits, entrances, elevators, and stairways in the common areas may not be obstructed by any of Tenant's employees, invitees, contractors or representatives or used by Tenant for any purpose other than for ingress to and egress from its Premises.
4. Tenant may not alter any lock or install any new or additional locks or any bolts on any interior or exterior door of the Premises or Building without the prior written consent of Landlord.
5. The toilet rooms, toilets, urinals, wash bowls and other apparatus may not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever may be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of this rule will be borne by the tenant who, or whose employees or invitees, caused it.
6. Tenant may not overload the floor of the Premises or mark, drive nails, screw or drill into the partitions, woodwork or plaster or in any way deface the Premises or any part thereof; provided, however, that Tenant may hang on the walls of the Premises certificates, plaques, artwork, white boards and other items typically hung in office premises using nails, hooks, or other devices that are customarily used in office buildings comparable to the Building and minimize damage to walls.
7. Landlord has the right to reasonably prescribe the weight, size, and position of all safes and other heavy equipment brought into the Building. Safes or other heavy objects must, if considered necessary by Landlord, stand on a platform of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property from any cause, and all damage done to the Building by moving or maintaining any such safe or other property will be repaired at the expense of Tenant. The persons employed to move Tenant's equipment, material, furniture, or other property in or out of the Building must be acceptable to Landlord in Landlord's reasonable discretion. The moving company must be City employees or a locally recognized professional mover, whose primary business is the performing of relocation services, and must be bonded and fully insured. In no event may Tenant employ any person or company whose presence may give rise to a labor disturbance in the Building. A certificate or other verification of any third party mover's insurance must

be received and approved by Landlord before the start of any moving operations. Insurance must be sufficient in Landlord's reasonable opinion, to cover all personal liability, theft, or damage to the Building, including, but not limited to, floor coverings, doors, walls, elevators, and stairs. All moving operations must be conducted at such times and in such a manner as Landlord may direct, in Landlord's commercially reasonable discretion.

8. Tenant will not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness, as indicated in reasonable detail by Landlord.
9. Tenant may not use, keep, or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner reasonably offensive or reasonably objectionable to Landlord or other occupants of the Building by reason of noise, odors, and/or vibrations, or interfere in any way with other tenants or those having business therein. In no event may Tenant keep, use, or permit to be used in the Premises or the Building any guns, firearm, explosive devices, or ammunition.
10. Except in areas constructed for kitchen purposes in accordance with the provisions of the Lease, no cooking may be done or permitted by Tenant in the Premises, nor may the Premises be used for the storage of merchandise, for washing clothes, for lodging, or for any improper, objectionable, or immoral purposes. Notwithstanding the foregoing, however, Tenant may maintain and use microwave ovens and equipment for brewing coffee, tea, hot chocolate and similar beverages, provided that Tenant will (i) prevent the emission of any food or cooking odor from leaving the Premises, (ii) dispose of all food-related waste in designated receptacles, (iii) maintain and use such areas solely for Tenant's employees and business invitees, not as public facilities, and (iv) keep the Premises free of vermin and other pest infestation.
11. Tenant may not use or keep in the Premises or the Building any kerosene, gasoline, or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Landlord.
12. Upon the expiration or earlier termination of the Lease, Tenant will deliver to Landlord the keys of offices, rooms, and toilet rooms that have been furnished by Landlord to Tenant and any copies of such keys which Tenant has made. If Tenant has lost any keys furnished by Landlord, Tenant will pay Landlord for such keys.
13. Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who acts in violation of any of the rules and regulations of the Building. Persons must identify themselves to Landlord upon request, and show reasonable identification. Landlord will in no case be liable for damages for any error with regard to exclusion from the Building of any person. In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Building during the continuance of the same by closing the doors or otherwise, for the safety of the tenants and protection of property in the Building.

- 14.* Tenant is be responsible for insuring that the doors of the Building are closed and securely locked before leaving the Building and must observe strict care and caution that all water faucets or water apparatus are entirely shut off before Tenant or Tenant's employees leave the Building, and that all electricity, gas or air is likewise carefully shut off, so as to prevent waste or damage.
- 15.* Employees of Landlord will not perform any work or do anything outside of their regular duties unless under special instructions from Landlord.
- 16.* No vending machine or similar machines may be installed, maintained, or operated upon the Premises without the prior written consent of Landlord, which will not be unreasonably withheld, conditioned, or delayed.
- 17.* Tenant will close and keep locked all entrance and exit doors of the Building on Saturdays, Sundays, and legal holidays during such further hours as Landlord may deem advisable for the adequate protection of the Building and the property of its tenants.
- 18.* Tenant may not use in any space or in the public halls of the Building, any hand trucks except those equipped with rubber tires and rubber side guards.
- 19.* Except where otherwise required by Law, Tenant may only bring animals onto the Property in accordance with the attached Schedule C-1, and a reasonable number of fish in bowls holding less than two (2) gallons of water each.
- 20.* Tenant will inform its employees and invitees of the applicable provisions of these rules and regulations. Tenant must comply with Landlord's requests to inform Tenant's employees of items of importance to the Landlord.

## SCHEDULE C-1

### TENANT PETS

Tenant's employees will have the right to bring Tenant Pets into the Premises (and no other animals other than certified or trained service animals or support animals where required by Laws) at any time, subject to applicable Laws and Landlord's reasonable written regulations (as the same may be prepared and reasonably amended from time to time) regarding pets in the Building, including, without limitation, those regarding animal waste, noise, animal behavior and limitations on the use of Common Areas.

"**Tenant Pets**" means non-aggressive, fully domesticated, fully-vaccinated (including vaccines for rabies, distemper, hepatitis, para-influenza, parvovirus and Bordetella for dogs) and properly licensed dogs and cats that are: (A) the personal pets of the employees of Tenant; and (B) first reviewed and approved by Tenant's office manager as being house trained and non-aggressive. Landlord will at all times have the right (but not the responsibility), in its reasonable discretion, to deny or revoke "Tenant Pet" status with respect to any animals that, in Landlord's good-faith judgment, may injure a person or pet, or otherwise not comply with the terms of this Lease. Tenant Pets must be on a leash or in a carrier while in any area in and about the Building outside of the Premises. Tenant Pets may not be brought to the Building if such animal has fleas or ticks, is dirty, is ill or contracts a disease that could potentially threaten the health or wellbeing of any other animal, or any tenant, occupant and/or invitee of the Building (which diseases may include, but shall not be limited to, rabies, leptospirosis and Lyme disease). Tenant will not permit any objectionable pet-related odors and/or sounds to emanate from the Premises, and in no event may Tenant Pets be at the Building overnight or unsupervised. Tenant will ensure that Tenant Pets are taken away from the Building at regular times to allow defecation or urination at places other than the Property, except as provided below. Any bodily waste generated by Tenant Pets in or about the Property will be promptly removed and disposed of in trash receptacles inside the Premises and any areas of the Property affected by such waste must be cleaned and otherwise sanitized by Tenant in a manner satisfactory to Landlord (in Landlord's reasonable discretion), at Tenant's sole cost and expense. Tenant Pets may not be permitted to defecate or urinate at the Premises, Building and/or Property except where Tenant creates a designated pet relief area, and then only on that area, which must be cleaned and disinfected regularly by Tenant. Tenant will be responsible to replace any carpet or flooring that is damaged in connection with Tenant Pets, and "reasonable wear and tear" will not include any damage related to the presence of Tenant Pets. Tenant will be responsible for any pest control required in the Building or on the Property in connection with Tenant Pets, and will regularly remove dog drool from walls and doors in the Building or Premises, as needed. Tenant will be responsible for any damages, claims, or liabilities related to the presence of Tenant Pets on the Property. To the extent there are more than a *de minimis* number of Tenant Pets in the Premises, Landlord will not be responsible for temperatures in the Premises that are higher than otherwise required under the Lease due to the presence of such Tenant Pets. To the extent Landlord incurs additional maintenance and repair costs in connection with Tenant Pets, such costs will be borne by Tenant.



## EXHIBIT D

### WORK LETTER

*(333 Valencia Street, San Francisco)*

This Work Letter is part of the Lease dated as of June 30, 2020 (the “Lease”), executed concurrently with this Work Letter, by and between 333 VALENCIA OWNER, L.L.C., a Delaware limited liability company, as Landlord, and the City and County of San Francisco, as Tenant, covering the Premises, as defined in the Lease. All terms that are capitalized but not defined in this Work Letter have the same meanings given to them in the Lease.

Landlord, at Landlord’s sole cost, will (i) complete the Premises to a warm shell condition (including earthquake, fire, and life safety for the base, core, and shell of the Premises), (ii) retain the LEED consultant, and (iii) pay all costs for the LEED certification (“**Base Building Work**”). Landlord, at City’s sole cost and expense (except as otherwise specifically set forth below), and through Landlord’s general contractor (the “**Contractor**”), will construct, furnish, and install in the Premises the improvements shown on the Construction Documents finally approved by City under Paragraph 1 below (the “**Leasehold Improvements**” and the construction, furnishing and installation of the Leasehold Improvements, the “**Leasehold Improvement Work**”), in accordance with the provisions of this letter. The current Contractor is Pankow Corporation, the current Architect is Brick Architecture & Interiors Inc., and the current Engineer is A.G.E. Consulting, Inc.; each of Contractor, Architect and Engineer are approved by City. Landlord may not change the Contractor, Architect, or Engineer without the prior written consent of City, which will not unreasonably withhold or delay.

#### 1. Plans and Specifications

a. Schematic Design Documents. City and Landlord approve the schematic design plans for the Leasehold Improvement Work dated 3/13/2020, prepared by Landlord’s architect (“**Architect**”) (the “**Schematic Design Documents**”) and City acknowledges the Schematic Design Documents are in accordance with the program requirements; provided, however, that approval will not limit Landlord’s obligations under this Work Letter or the Lease.

b. Design Development Documents. City and Landlord approve the plans and specifications dated 6/3/2020, prepared by the Architect and Landlord’s qualified and licensed engineer (the “**Engineer**”) expanding in greater detail the representations of the Schematic Design Documents and fixing and describing the size and character of the Leasehold Improvements (the “**Design Development Documents**”). City acknowledges the Design Development Documents are in accordance with the program requirements and the Schematic Design Documents.

c. Construction Documents. Based on the Design Development Documents and any further adjustments approved by City, on or before 8/10/2020, Landlord will cause its Architect and Engineer to prepare and submit to City for its approval final plans, specifications, and working drawings for the Leasehold Improvements, setting forth in detail all aspects of the design, function, and construction of the Leasehold Improvements, in form sufficient for bidding of all elements of construction, and in conformity with all of the requirements of this Work Letter

(collectively, the “**Construction Documents**”). The Construction Documents are subject to approval by City in accordance with Paragraph 1.e below.

d. Design in Accordance with City’s Requirements. City has prepared and submitted to Landlord program documents that outline City’s space requirements for the Premises. Landlord’s Architect has designed the Premises and prepared all plans and specifications, including the Design Development Documents and will prepare the Construction Documents, in conformity with the program documents. Landlord’s Architect will consult and hold periodic meetings with City and its architectural consultants and space planners in the preparation of the Construction Documents. City will be available as needed for such meetings as reasonably determined by Landlord.

e. City’s Approval of Plans, Landlord Change Orders. The Construction Documents and any Landlord Change Orders (defined in Paragraph 1.g.ii below) are subject to approval by City, which approval will not be unreasonably withheld or delayed, in accordance with the following procedure. After Landlord submits the Construction Documents or proposed Landlord Change Order to City, City will have (i) ten (10) business days for initial Construction Documents and Landlord Change Orders that will cost \$25,000 or more, and (ii) three (3) business days with respect to revised Construction Documents and Landlord Change orders costing less than \$25,000, to notify Landlord of its disapproval any element of any of them and of the revisions consistent with the Design Development Documents and this Work Letter that City reasonably requires in order to approve. As soon as reasonably possible, but not later than five (5) days after receipt of City’s disapproval notice, Landlord will submit to City documents incorporating the required revisions. The revisions will be subject to City’s approval, which will not be unreasonably withheld or delayed. If City disapproves of any portion of the revisions, then City will notify Landlord within 3-business days together with the changes City reasonably requires in order to approve. This process will continue until City approves the Construction Documents or Landlord Change Orders, or Construction Budget revisions, as applicable. City’s failure to timely respond in the manner required under this Paragraph 1.e, will be a Tenant Delay.

f. Payment for Plans. Landlord will initially pay the costs of preparing the Construction Documents; however, such costs will be payable by City in accordance with this Work Letter. Landlord will provide City evidence of the costs by invoices and other substantiation as City may reasonably require.

g. Changes to Approved Construction Documents.

i. City Change Orders. If following its approval of the Construction Documents, City requests any change, addition, or alteration thereto relating to the design or specifications of the Leasehold Improvement Work (“**City Change Order**”), Landlord will cause the Architect or Engineer, as applicable, to prepare plans and specifications for the change, addition, or alteration. As soon as reasonably practicable based on the scope of the City Change Order, Landlord will notify City of the cost that would be incurred resulting from the proposed City Change Order and any delay in the anticipated date of Substantial Completion that would result from the City Change Order. If City approves the cost of the City Change Order within three (3) business days of receipt from Landlord, then Landlord’s Contractor will proceed with the City Change Order as soon as reasonably practicable, and the Construction Budget will be



Landlord: Representative — Steve Wolmark, swolmark@murrayhillpartners.com  
Phone: 510.984.3867  
Alternate — Matthew Friedman, matthew@mifriedman.com  
Phone: 510.290.3580

Each party may at any time and from time to time change its Representative or Alternate by written notice to the other party; provided, however, that any delay that results from a party's a voluntary change (e.g., a change other than as a result of a person's death, illness, or termination of employment) will be a Tenant Delay or Landlord Delay, as applicable. Each party's Representative or Alternate must be available during ordinary business hours so that questions and problems may be quickly resolved and so that the Leasehold Improvements may be completed economically and in accordance with the Construction Schedule. All approvals made by City's Representative or Alternate must be made in writing.

## 2. Permits

a. Responsibility for Obtaining Permits. Landlord is responsible for obtaining all governmental permits and approvals required to commence and complete the Leasehold Improvement Work, and promptly on receipt of any permit or approval, Landlord will deliver copies it to City. Landlord will use commercially reasonable to obtain all needed approvals and permits on or before August 6, 2020 (subject to Unavoidable Delay and Tenant Delay). Landlord is responsible for calling for all inspections required by City's Bureau of Building Inspection. City (acting in its proprietary capacity and not as regulator) will cooperate to facilitate issuance of required permits and approvals to the extent necessary or appropriate.

b. No approval by City or any of its Agents of the pricing plans, Construction Documents, or completion of Leasehold Improvement Work for purposes of this Lease will be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises, and nothing herein will limit Landlord's obligations to obtain all such approvals.

## 3. Construction

a. Construction of Leasehold Improvements. After City's approval of the Construction Documents, and receipt of required permits, Landlord will cause the Leasehold Improvements to be constructed and installed in a good and professional manner in accordance with sound building practice and in conformity with the Construction Documents, as revised by any approved Change Orders, and the terms of this Work Letter. City will not have any obligation for any work except as provided in this Work Letter.

b. Construction Schedule. Landlord will commence construction of the Leasehold Improvements within three (3) business days after approval of all required permits for construction in accordance with the approved Construction Documents, subject to Unavoidable Delays and Tenant Delays, and will diligently pursue construction to completion, all in accordance with the construction schedule attached as Schedule D-2 to this Work Letter (as amended from time to time, the "**Construction Schedule**").

c. Status Reports; Inspections. Landlord will keep City apprised of the status of permit approval and the progress of construction. Landlord or its Contractor will furnish City with weekly reports on construction. From time to time during the design and construction of the Leasehold Improvements, after reasonable advance oral or written notice to Landlord, City may enter the Premises at reasonable times to inspect the Premises, and City will use commercially reasonable efforts not to materially interfere with the construction. Landlord or its Representative may accompany City during any inspection. Any such entry is at City's sole risk and City will Indemnify Landlord with respect to any Claims related thereto in accordance with the Lease.

d. General Conditions. The performance of all Leasehold Improvement Work by Landlord is subject to the following terms and conditions:

i. All of the Leasehold Improvement Work must be performed in compliance with all Laws bearing on construction of the Leasehold Improvements;

ii. Without limiting the foregoing, the construction of the Leasehold Improvements must comply with all requirements of the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable Laws intended to provide equal accessibility for persons with disabilities (collectively, "**Disabled Access Laws**"); and

iii. Landlord and its Contractor are responsible for all required insurance at no cost to City.

e. Cooperation. City will cooperate at all times with Landlord in bringing about the timely completion of the Leasehold Improvements. Except as otherwise expressly provided herein, City will be required to provide approvals, responses, and information requested by Landlord or Contractor by email to City's Representative or Alternate within three (3) business days of request by Landlord's Representative or Alternate. It will be considered a Tenant Delay if City fails to respond to requests for approval within the time periods set forth in this Work Letter. Landlord and City will make commercially reasonable efforts to resolve any and all disputes arising out of the construction of the Leasehold Improvements in a manner that will allow work to proceed expeditiously.

f. Telecommunications, Data and Computer Cabling Installation Work to be Performed by Landlord.

i. The Leasehold Improvement Work will include construction of server room(s), including power supply, reasonably necessary for the City's telecommunications, data, and computer facilities and equipment, as provided for in approved Construction Drawings. As part of the Leasehold Improvement Work and in compliance with **Schedule D-1** to this Work Letter and City's data and computer cabling specifications and requirements included in **Schedule D-1** ("**City Data Specs**"), Landlord or its consultants and contractors will perform surveys and develop plans and specifications for the installation of telecommunications, data, and computer cabling for City's occupancy of the Premises. City or its contractor, at City's cost, will be responsible for providing telecommunications, data, and computer cabling up to the point where it is stubbed out in the Building's core area. Beyond that point, Landlord will be responsible for

installing the cabling to service points on each floor, as provided in the City Data Specs, as part of the Leasehold Improvement Work. City, at its expense, will be responsible for providing cabling from the service points to workstations. Landlord will cause Contractor to cooperate reasonably with City and its consultants, contractors, and subcontractors during all surveying work and the installation of the telecommunications, data, and computer cabling. The foregoing obligation will include an obligation to give City and its consultants, contractors, and subcontractors access and entry to the Premises and sufficient opportunity and time during each work day without separate charge, to enable the installation of City's telecommunications, data, and computer cabling to the Building's core area and to install work stations. That access must include reasonable access to the elevators in the Building (i) on a non-exclusive basis during normal business hours and (ii) on an exclusive basis after hours as reasonably needed from time to time. If, despite Landlord's and Contractor's good faith cooperation, Substantial Completion of the Leasehold Improvements is delayed by such access and entry, that delay will be a Tenant Delay. Landlord understands that the conduit for the telecommunications, data, and computer cabling will be included in the Construction Documents and installed by Contractor.

ii. As part of Leasehold Improvement Work, Landlord will provide cabling and conduit to any Exterior Antennas (as defined in Section 7.1(b) of the Lease) and telecommunications equipment indicated by City in City Data Specs, at City's sole cost, and any procurement and installation of Exterior Antennas will be completed by City in accordance with the Construction Schedule and Section 7.1(b) of the Lease.

g. Asbestos Related Work. If City, its consultants, contractors or subcontractors encounter any asbestos containing materials ("ACM") in the Building in connection with the installation of City's telecommunications, data, and computer cabling, Landlord will be responsible for all legally required work or other work necessary relating to the proper containment, abatement, removal, and disposal of the ACM and all costs related to the ACM. In no event will any of those costs be deducted from the Allowance or otherwise be City's responsibility. Any delay due to the presence of unknown ACM in the Building will be considered a Landlord Delay (defined below).

h. Construction Improvements that Disturb or Remove Exterior Paint. Lease Section 6.2 is incorporated by this reference.

#### 4. Payment for Work; Allowance

a. Accessibility Improvements. Through its approved Contractor, Landlord will furnish and install all improvements that are required to bring the Common Areas serving the Premises, including the lobbies, corridors, drinking fountains, elevators, elevator vestibules, stairs, stair vestibules, restrooms, and signage in all those areas, into full compliance with all Disabled Access Laws. All costs of that work will be performed at Landlord's sole cost and expense, and will not be deducted from the Allowance (defined below).

b. Allowance; Construction Costs; Landlord's Oversight Fee. Except as provided in Paragraph 4.a above, City will be responsible for all Construction Costs, subject to Landlord's contribution of an allowance of Two Million Six Hundred Fifty-Three Thousand Seven Hundred Forty Dollars (\$2,653,740) (the "Allowance"). Any portion of the Allowance not used

by City will be credited against Base Rent next due under the Lease within ninety (90) days following the Commencement Date. “**Construction Costs**” means all costs and fees in connection with constructing and installing the Leasehold Improvements, including (A) space planning, architectural, engineering, and design professional work and fees related thereto, all required governmental and quasi-governmental permits, Landlord’s Oversight Fee, all costs of preparing the space plans, Schematic Design Documents, Design Development Documents and Construction Documents, and (B) labor and materials costs, construction costs, contractors’ overhead and profit, insurance, performance and payment bonds, but in no event will Construction Costs include any overhead or other general expenses of Landlord, any charges for parking or and charges for use of elevators. All Base Building Work, including, but not limited to, base, core, shell, earthquake, fire, and life safety work, will be completed by Landlord at Landlord’s sole cost, and no portion of the Allowance may be used for Base Building Work. “**Landlord’s Oversight Fee**” is be an amount equal to four percent (4%) of the total Construction Costs.

c. City’s Approval of Costs. The costs of the Leasehold Improvement Work are set forth in the Construction Budget, which includes (i) sufficient contingency reserves to address unknown and unexpected elements inherent in any construction and (ii) Landlord’s Oversight Fee. The initial City-approved construction budget is attached as **Schedule D-3** (as amended from time to time, the “**Construction Budget**”). If the Leasehold Improvements cannot be completed in strict conformity with the most recently approved Construction Budget, Landlord must immediately submit to City for its approval a revised construction budget and identify to City changes in line items and the reasons for the changes. City will approve or disapprove any Construction Budget revisions in its reasonable judgment within ten (10) business days after submission where the proposed cost increase is in excess of \$25,000 and otherwise within five (5) business days. The most recently approved Construction Budget will supersede all previously approved budgets. Where City disapproves of an increase in the Construction Budget, it will submit a City Change Order that allows the Leasehold Improvements to be completed without exceeding the Construction Budget, which must be submitted within three (3) business days following its disapproval.

d. Progress Payments. From time to time, but no more frequently than every than once every thirty (30) days, Landlord will deliver to City an application for payment in accordance with the Paragraph and Paragraph 4.e below. Provided that the conditions set forth in Paragraph 4.e below regarding documentation of costs have been met, City will make monthly progress payments for the cost of the Leasehold Improvement Work in the amount of City’s Share of the requested payment. City will disburse each progress payment on or about the tenth (10th) day of each month following the month in which the application for payment was received. “**City’s Share**” means a fraction, where the numerator is the aggregated Construction Costs as shown the Construction Budget that exceed the Allowance, and the denominator is the aggregated Construction Costs as shown in the Construction Budget. At least ten (10) days before each progress payment is due, Landlord will submit to City an itemized application for payment for work completed in accordance with the approved Construction Budget. The applications may not include requests for payment of amounts Landlord does not intend to pay to Contractor because of a dispute or otherwise. Landlord will promptly apply all of City’s progress payments to the payment of the invoice or invoices to which the payment relates (or, where Landlord has advanced payment to the Architect, Engineer, Contractor, or otherwise in connection with Construction Costs (including for Landlord’s Oversight Fee), in repayment of Landlord). If Landlord does not

timely submit an application or the application is materially incomplete or incorrect, City will promptly notify Landlord and the date the progress payment will be due from City will be extended for each day the complete, correct application is late.

e. Required Documentation of Costs. Each application for payment under Paragraph 4.d, must include (i) copies of all invoices received by Landlord from Contractor in connection with the construction of the Leasehold Improvements, (ii) satisfactory evidence of payment of the invoices, including lien waivers that meet the requirements of California Civil Code section 8124 and in the form required by California Civil Code sections 8132 or 8134, as applicable, and be executed by each subcontractor and material supplier having a claim in excess of \$10,000 and intended to be paid out of the particular disbursement and covering all labor, services, equipment, and materials performed or supplied by the particular subcontractor or material supplier since the last previous disbursement (collectively, "Lien Waivers"), and (iii) any additional supporting data that substantiates the Contractor's right to payment as City may reasonably require, such as copies of requisitions from subcontractors and material suppliers.

f. Payment of Retention. Landlord will withhold a ten percent (10%) retainage with respect to Contractor, which will be paid upon Substantial Completion and completion of all punchlist items.

g. Payment of Retention. City will pay its share of the ten percent (10%) retainage on: (i) Substantial Completion (as defined below) of the Leasehold Improvements and completion of all punchlist items; and (ii) delivery of unconditional Lien Waivers from Contractor and each subcontractor and material supplier having a claim in excess of \$10,000 on final payment that meet the requirements of California Civil Code section 8124 and be in the form required by California Civil Code section 8138, together with any other proof City may reasonably require that all of the costs and expenses of the Leasehold Improvements have been paid.

h. No Waiver of Conditions. Any waiver by City of a condition of payment must be expressly made by City in writing. If City makes a payment before fulfillment of one or more required conditions, that payment alone will not be a waiver of the conditions, and City reserves the right to require their fulfillment before making any subsequent payments. If all conditions are not satisfied, City, acting in its reasonable judgment, may make payment as to certain items or categories of costs and not others.

i. City's Cure Right. Provided that City has paid all amounts due under this Paragraph 4, if Landlord does not make timely payment to Contractor or any of its subcontractors or material suppliers of any undisputed amount, after thirty (30) days written notice to Landlord and Landlord's failure to cure or indicate to City that Landlord disputes such claim, City may, but will not be obligated to, advance City's funds directly to the Contractor or its subcontractors or material suppliers to pay the cost of the Leasehold Improvements, and Landlord will reimburse City for the advance immediately on demand, with interest at a rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by Law.



## 5. Substantial Completion

a. Construction Schedule. Landlord will use commercially reasonable efforts to complete the Leasehold Improvement Work on or before the Estimated Commencement Date. In no event may construction of the Leasehold Improvements be Substantially Completed later than the Estimated Commencement Date, except as extended by Tenant Delays and Unavoidable Delays (as defined in Paragraph 6 below). When construction progress permits, but not less than fifteen (15) days before Substantial Completion, Landlord will notify City of the date that the Leasehold Improvement Work is anticipated to be Substantially Completed in accordance with the approved Construction Documents and the provisions of the Lease and this Work Letter. Landlord will notify City when the Leasehold Improvement Work is in fact Substantially Completed and the Premises are ready for occupancy by City. Promptly after City receives Landlord's notice of substantial completion, City or its representatives will accompany Landlord or its architect on an inspection of the Premises on a mutually agreeable date.

b. Substantial Completion. The terms "Substantially Completed" and "Substantial Completion" mean (i) the Base Building Work excluding the second elevator have been completed as certified by the Architect; (ii) the Leasehold Improvements have been completed substantially in accordance with the approved Construction Documents pursuant to a completed AIA Document G704, Certificate of Substantial Completion, (iii) Landlord has procured a temporary or final certificate of occupancy of final inspection and sign-off on the job card for the Leasehold Improvements and all necessary inspections required for occupancy of the Premises and all necessary inspections required for occupancy of the Premises have been completed and signed off as approved by the appropriate governmental agencies, and has delivered evidence thereof to City (iv) Landlord and City have completed a joint walk-through of the space with the Architect, which will be take place within three (3) days of Landlord's written notice to City that the Leasehold Improvements are ready for walk through Inspection, and during which the Architect and City will compile a written punch list of items that have not yet been completed in accordance with the Construction Documents, and (v) Landlord has delivered to City keys or access cards for the Premises. Landlord will complete a three (3) day running "burn off" of the HVAC system serving the Premises following completion of all floor installations and painting to dissipate fumes and dust, and Landlord will deliver an air balance report showing any HVAC system servicing the Premises and Leasehold Improvements is operative as designed within ten (10) days after Substantial Completion. Obtaining LEED Gold Certification will not be a requirement of Substantial Completion, which must be completed within twelve (12) months of Substantial Completion. The second elevator must be completed, certified, and fully operational not later than the date that is one hundred forty-one (141) days after Substantial Completion, subject to Unavoidable Delay, and if not completed by that date then City may cause the elevator work to be completed at Landlord's expense; City will reasonably cooperate to allow Landlord to complete installation of the second elevator by such date. The date of Substantial Completion will, upon request by either party, be memorialized in writing signed by both Landlord and City. The Leasehold Improvements will be deemed Substantially Completed even though there may remain minor details that would not materially interfere with City's use. Landlord will diligently pursue to final completion all such details. Notwithstanding the foregoing, City will have the right to present to Landlord within thirty (30) days after City's acceptance of the Premises, a supplemental written punch list consisting of any incomplete or defective items that have not been finished in accordance with the Construction Documents and the terms of this Work Letter, provided that such

incomplete or defective items were not reasonably observable on the earlier walkthrough inspection of the Premises and are not the result of damage caused by City during or after move-in. Landlord will use commercially reasonable efforts to complete all defective or incomplete items identified in such punch list within thirty (30) days after the delivery of such list, or as soon thereafter as reasonably practicable. City's failure to include any item on such list will not constitute any waiver of any latent defects but each item on the list will be subject to and governed by any construction warranty period provided for in the construction contract with the general contractor for Leasehold Improvements.

## 6. Delays in Construction

a. Unavoidable Delays. "Unavoidable Delays" means any delays by reason of acts of nature; accidents; breakage; repairs; strikes, lockouts, or other labor disputes; inability to obtain (or delays in obtaining) labor or materials after using diligent and timely efforts (including due to unavailability related to COVID-19); delays related to Landlord's inability to obtain utility connections or initial utility service; enemy action; civil commotion; epidemics and related governmental orders and requirements (and private sector responses thereto); protests; riots; demonstrations; or by any other reason without fault and beyond the reasonable control of the party obligated to perform (other than purely monetary obligations between Landlord and City to pay one another as required pursuant to the Lease). If an Unavoidable Delay occurs, the party affected by the Unavoidable Delay will give prompt written notice to the other of the event causing the Unavoidable Delay and the length of the projected delay in performance, and will continue to keep the other party regularly informed of the status of the Unavoidable Delay. The time in which performance is required by either party under this Lease will be tolled during any period of Unavoidable Delay. It is the intent of the parties that where an Unavoidable Delay extends the time for performance by one party, and the other party's subsequent performance is dependent on the delayed party's performance, then each party's time for performance will be extended due to the Unavoidable Delay. For example, due to an Unavoidable Delay, City is unable to complete its initial review of the Construction Documents within ten (10) business days under Paragraph 1.e, and responds instead in twenty (20) business days. Despite both parties' diligence in the construction process, the ten (10) business day Unavoidable Delay in approving the Construction Documents results in a three (3) business day delay in the date of Substantial Completion. The three (3) business day delay would also be considered an Unavoidable Delay, not a Landlord Delay.

b. Tenant Delays. Subject to any Unavoidable Delay, City will be responsible for any delay in the construction of the Leasehold Improvements resulting solely and directly from any of the following (collectively, "Tenant Delays"): (i) City's failure to grant or withhold its consent, approve or provide reasons for disapproval, respond to requests for information, or provide requested responses within the time provided in this Work Letter, (ii) City Change Orders, including any cost or delay resulting from proposed changes that are not ultimately made, and (iii) City's delay in paying or failure to pay any amounts owed by City under this Lease, (iv) City's entry into the Premises before Substantial Completion of Leasehold Improvements, (v) the inclusion in the Construction Drawings or in any of City's selections of any so called "long lead" materials (such as carpeting or other items that are not readily available within industry standard lead times (e.g., custom made items that require time to procure beyond that customarily required for standard items, or items that are currently out of stock and will require extra time to back order); (vi) City's delay in providing information critical to the normal progression of Leasehold Improvements; and (vii) any other request, act, or omission by City or its Agents (or persons employed by such persons). In the event of a Tenant

Delay, the Commencement Date will be deemed to have occurred on the date it would have occurred but for such Tenant Delay(s), as reasonably determined by Landlord (notwithstanding that the actual date occurs later).

c. Landlord Delays. Landlord will be responsible for any delay in the construction of the Leasehold Improvements due directly to any of the following (a “**Landlord Delay**”): (i) Landlord’s or Architect’s (or their Agents’) negligence or intentional misconduct, (ii) the failure of Landlord to provide required documents or requested responses within the time provided in this Exhibit C, subject to Unavoidable Delays, (iii) Landlord Change Orders, including any delay resulting from proposed changes that are not ultimately made, and (iv) any Contractor failure to adhere to the then-current Construction Schedule, subject to extensions for Unavoidable Delays and Tenant Delays.

d. Landlord Delays; Liquidated Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE LEASE, IF LANDLORD FAILS TO ACHIEVE SUBSTANTIAL COMPLETION OF THE LEASEHOLD IMPROVEMENTS BY THE DATE THAT IS SIXTY (60) DAYS AFTER THE ESTIMATED COMMENCEMENT DATE (AS EXTENDED BY UNAVOIDABLE DELAYS AFFECTING LANDLORD OR ITS CONTRACTOR IN ACCORDANCE WITH SUBSECTION A ABOVE AND TENANT DELAYS IN ACCORDANCE WITH SUBSECTION B ABOVE), THEN LANDLORD WILL PAY TO CITY FOUR THOUSAND DOLLARS (\$4,000), FOR EACH DAY OF DELAY AS LIQUIDATED DAMAGES AND AS CITY’S SOLE AND EXCLUSIVE REMEDY EXCEPT FOR CITY’S TERMINATION RIGHTS AND RIGHT TO REIMBURSEMENT AS SET FORTH IN THE LEASE; BUT IN NO EVENT MAY LIQUIDATED DAMAGES EXCEED \$480,000. LANDLORD MAY PAY THE LIQUIDATED DAMAGES DUE TO CITY UNDER THIS SECTION IN THE FORM OF A CREDIT AGAINST RENT. THE PARTIES HAVE AGREED THAT CITY’S ACTUAL DAMAGES IN THE EVENT OF DELAY WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE AGREED ON THE SUM SPECIFIED ABOVE, AFTER NEGOTIATION, AS THEIR REASONABLE ESTIMATE OF CITY’S DAMAGES CAUSED BY THE DELAY.

Initials: Landlord AC City ASB

7. General Provisions.

a. Notices. Except as may be otherwise specifically provided in this Work Letter, any notice given under this Work Letter must be in writing and given by delivering the notice in person, by commercial courier or by sending it by first class mail, certified mail with a return receipt requested, or Express Mail, return receipt requested, with postage prepaid, and addressed to the parties as follows:

City: Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property  
Email: realestateadmin@sfgov.org and  
jeff.suess@sfgov.org

Landlord: c/o Murray Hill Partners LLC  
5821 Pinewood Road  
Oakland, CA 94611  
Attn: Steve Wolmark  
Email: [swolmark@murrayhillpartners.com](mailto:swolmark@murrayhillpartners.com)

or any other address as a party may designate to the others as its new address for notices by notice given to the others in accordance with the provisions of this paragraph. A properly addressed notice transmitted by one of the foregoing methods will be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Except for default notices, notices may also be given by email to the email address above or any other email address as may be provided from time to time, and such notice will be deemed received on the date on which a responsive email from the recipient acknowledging receipt is delivered to the sender.

**b. Landlord's Duty to Notify City.** Landlord will promptly notify City in writing of (i) any written communication that Landlord may receive from any governmental, judicial, or legal authority giving notice of any claim or assertion that the Property, Building, or Leasehold Improvements fail in any respect to comply with applicable Laws; (ii) any known material adverse change in the physical condition of the Property, including any damage suffered as a result of earthquakes; and (iii) any known default by the Contractor or any subcontractor or material supplier that is likely to impact completion of Leasehold Improvements, or any known material adverse change in the financial condition or business operations of any of them that may impact their work.

**c. Prevailing Wages and Apprentices.** Any person performing labor in the construction of the Leasehold Improvements that Landlord is obligated to provide under this Work Letter will be paid not less than the highest prevailing rate of wages and Landlord will include in any contract for construction of the Leasehold Improvements a requirement that all persons performing labor under the contract will be paid not less than the highest prevailing rate of wages for the labor performed. In connection with the construction of the Leasehold Improvements under this Work Letter, Landlord will comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Section 6.22(E) of the San Francisco Administrative Code. In addition, if the Leasehold Improvements are Covered Construction (as defined in San Francisco Administrative Code section 23.61), Landlord will pay the Prevailing Rate of Wages (as defined in San Francisco Administrative Code section 23.61), employ Apprentices (as defined in San Francisco Administrative Code section 23.61), and comply with all the provisions of Section 23.3 of the Lease, and San Francisco Administrative Code section 23.61 of the regarding the Leasehold Improvements.

**d. Tropical Hardwood and Virgin Redwood Ban.**

Except as expressly permitted by the application of San Francisco Environment Code sections 802(b) and 803(b), neither Landlord nor any of its contractors may provide any items to City in the construction of the Leasehold Improvements or otherwise in the performance of this Lease which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

City urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood, or virgin redwood wood products.

If Landlord fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Landlord will be liable for liquidated damages for each violation in any amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed will be payable to City on demand and may be set off against any monies due to Landlord from any contract with City.

e. Days; Incorporation of Schedules. Unless otherwise provided in this Work Letter, all periods specified by a number of days will refer to business days. Saturdays, Sundays, and recognized City holidays will not constitute business days. Schedules D-1, D-2, and D-3 attached to this Work Letter, are made a part of this Work Letter by this reference.

f. Approvals. City is entering into this Work Letter in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary in this Work Letter or the Lease, no approval by City of the plans for the Leasehold Improvements (including the Design Development Documents or Construction Documents or Change Orders), completion of the Leasehold Improvement Work or any other approvals by City under this Work Letter or the Lease will be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises. All approvals or other determinations of City as tenant under this Work Letter or the Lease may be made by City's Director of Property and City's Representative or Alternate, unless otherwise specified.

8. Time of the Essence. Time is of the essence with respect to all provisions of this Work Letter where definite time for performance is specified, including the date for Substantial Completion.

*Signatures Appear on Following Page*

The parties have executed this Work Letter as of the date of the Lease.

**LANDLORD:** 333 VALENCIA OWNER, L.L.C.,  
a Delaware limited liability company

By: AG Real Estate Manager, Inc.,  
a Delaware corporation, its Manager

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

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

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

**CITY:** CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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


ANDRICO Q. PENICK  
Director of Property

RECOMMENDED:

\_\_\_\_\_  
Dr. Grant Colfax  
Director, Department of Public Health

APPROVED AS TO FORM:

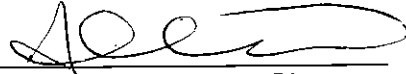
DENNIS J. HERRERA, City Attorney

By:   
Eileen Chauvet  
Deputy City Attorney

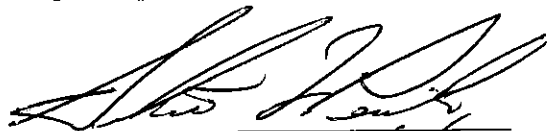
The parties have executed this Work Letter as of the date of the Lease.

**LANDLORD:** 333 VALENCIA OWNER, L.L.C.,  
a Delaware limited liability company

By: AG Real Estate Manager, Inc.,  
a Delaware corporation, its Manager

By:   
Name: Alexander Chan  
Title: VICE PRESIDENT

**CITY:** CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation


By:   
ANDRICO Q. PENICK *8/4/20*  
Director of Property

RECOMMENDED:

\_\_\_\_\_  
Dr. Grant Colfax  
Director, Department of Public Health

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:   
Eileen Chauvet  
Deputy City Attorney

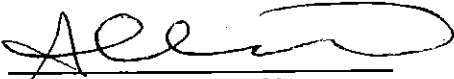




The parties have executed this Work Letter as of the date of the Lease.

**LANDLORD:** 333 VALENCIA OWNER, L.L.C.,  
a Delaware limited liability company

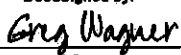
By: AG Real Estate Manager, Inc.,  
a Delaware corporation, its Manager

By:   
Name: Alexander Chan  
Title: VICE PRESIDENT

**CITY:** CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation


By: \_\_\_\_\_  
ANDRICO Q. PENICK  
Director of Property

RECOMMENDED:

DocuSigned by:  
  
\_\_\_\_\_  
Dr. Grant ~~100762752040F...~~  
Director, Department of Public Health

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:   
Eileen Chauvet  
Deputy City Attorney

City urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood, or virgin redwood wood products.

If Landlord fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Landlord will be liable for liquidated damages for each violation in any amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed will be payable to City on demand and may be set off against any monies due to Landlord from any contract with City.

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f. Approvals. City is entering into this Work Letter in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary in this Work Letter or the Lease, no approval by City of the plans for the Leasehold Improvements (including the Design Development Documents or Construction Documents or Change Orders), completion of the Leasehold Improvement Work or any other approvals by City under this Work Letter or the Lease will be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises. All approvals or other determinations of City as tenant under this Work Letter or the Lease may be made by City's Director of Property and City's Representative or Alternate, unless otherwise specified.

8. Time of the Essence. Time is of the essence with respect to all provisions of this Work Letter where definite time for performance is specified, including the date for Substantial Completion.

*Signatures Appear on Following Page*

**Schedule D-1**

**City's Data and Computer Cabling Specifications and Requirements**



## **DT New Building and Moves Recommendations**

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## Fiber

### General Recommendations

1. DT Project Management Office working with the DT Outside Wiring Team will assess potential sites for Fiber connectivity prior to lease/purchase or construction/renovation activities.
2. DT will provide the cost estimate to connect the building to City Fiber (preferred) or using an outside contractor for install.
3. Adequate space in the Main Point of Entry (MPoE) room to install a fiber box. Boxes are typically 30 inches high, 30 inches wide, and 20 inches deep and require 3 feet of clearance.

### Space and cost savings opportunities

1. DT Outside Wiring can assess feasibility and cost for potential new locations and inform DPW and Real Estate staff of possible issues with connectivity during location selection process

## Inside Wiring

### General Recommendations

1. In buildings without drop ceilings, provide cable trays for cabling throughout the floors.
2. Conduit between floors will be required for fiber connectivity to the network rooms, typical 3" – 4" diameter.
3. CAT6a cables
4. Drawings – should specify number of wire drops per floor and include wiring for wireless access points.

## Network

### General Recommendations

#### Number of racks:

1. Up to 40 desks (2 ports per desk) or 80 desks (1 port per desk) – Small two post rack accommodation
2. Up to 160 desks (2 ports per desk) or 320 desks (1 port per desk) – Large enclosed cabinet accommodation
3. Additional desks – Add one cabinet for every 160 desks (2 ports per desk) or 320 desks (1 port per desk)

#### Cooling

1. DT requires forced air cooling in all network rooms. Optimal temperature range to maintain equipment for the best possible lifespan is 68 to 75 degrees. Equipment can operate at 75-80 degrees; however, increased heat will progressively degrade the equipment faster, shorten life span, and may cause operating problems.
2. Newer power over ethernet switches generate more heat than previous models
3. DT will provide equipment list with maximum total power consumption for mechanical engineer's use.

## Wireless Access

1. DT provides wireless connectivity using #SFWiFi with a VPN connection to access City resources
2. As part of the upgrade to the network program, future security enhancements will allow for changes in connectivity for a more seamless user experience
3. DT will create a wireless connectivity heat map assessment using Ekahau, an industry standard tool for determining WiFi coverage
4. DT Inside Wiring staff can be contracted to mount access points. Access points are powered via Ethernet cable, so no additional power outlets needs for WiFi

## Servers

DT recommends Departments migrate all on-premise servers to the City Data Center to gain the following benefits:

1. Disaster recovery and high availability – Automatic backups at Rancho Cordova Data center
2. Physical security – Armed Sheriff deputies guarding the DEM Data Center
3. Resiliency – DEM is designed to be seismically resilient
4. Cost savings – Departments do not have to refresh their equipment or maintenance contracts
5. Data Separation and Control – Departments manage and control access to data their instances down to the individual user level
6. Cybersecurity – The City Data Center architecture has enterprise level tools for cybersecurity monitoring, management, and incident response

## Space and cost savings opportunities

1. We recommend 1 data port per user. This reduces the network equipment and network racks/cabinets in IDFs and MDFs. A single port can be used for a computer and a Voip phone.
2. Migrate servers onto shared City Data Center Infrastructure. Do not bring Departments physical servers into new sites. This reduces the amount of equipment and racks/cabinets in IDFs and MDFs saving space and reducing the size of cooling and power for these rooms.
3. Exception – Network video recorder (NVR) servers should remain on site due to bandwidth requirements for streaming multiple video sources

## Telephony

### General Recommendations

1. DT recommends all Departments moving into office space with new or upgraded networks to use the new Cisco Voice over Internet Protocol (VoIP) system
2. DT is currently piloting soft phones, and in the coming year may recommend departments go with soft phones whenever handsets are not absolutely needed
  - a. Soft phone client works on laptops and mobile devices such as cell phones or tablets
3. In areas where there is controlled access, DT recommends common area phones such as the Cisco 3905
4. Analog fax lines for multi-function devices can be accommodated with the Cisco VoIP system
  - a. Gateways for 2 lines, 4 lines, or 24 lines can be installed in the Network rack. A count from Departments broken out by floor is needed to determine the exact bill of materials

### Space and cost savings opportunities

1. When approved for Citywide use, Soft Phones could be a huge cost saver as the physical handsets cost approx. \$200 per unit and do not require space on the desk.

2. The Cisco VoIP system connects through the network equipment and does not require any on-site servers.

## Physical Spaces / Architectural Design

### General Recommendations

#### Drawings

1. Low – Voltage: Indicate number of wire drops per floor, mapped to ports/Jacks on the walls. Wire drops should include wires for the wireless access point (WAPs) devices.
2. MPoE – Site/Civil drawings to indicate fiber route from outside to inside termination box at the MPoE
3. Network rooms – should indicate rack elevations for the network equipment as well as distances around the racks.

#### Network Rooms

1. Typically, one per floor with cooling.
2. Conduits minimum 3" conduits running through the network rooms to and from the MPoE

#### Rack/Cabinet Dimensions

1. Large enclosed cabinet dimension – 43 Inches Deep, 24 inches wide, 89 inches tall. (Most installations)
2. 72 inch height – used for installations up to 40 desks (2 ports per desk) or 80 desks (1 ports per desk)
3. 42 inch height - used for small installations up to 20 desks (2 ports per desk) or 40 desks (1 port per desk)
4. Small two post rack – 24 inches deep, 19 inches wide, options for 42 or 72 inches tall

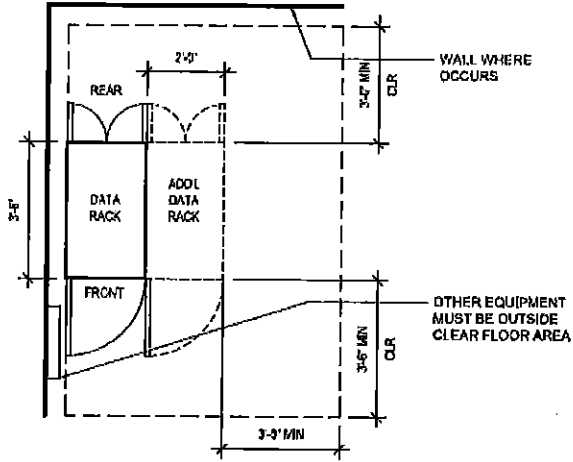
#### Cooling and Power

Calculations for heat/cooling and power are required as part of network design.

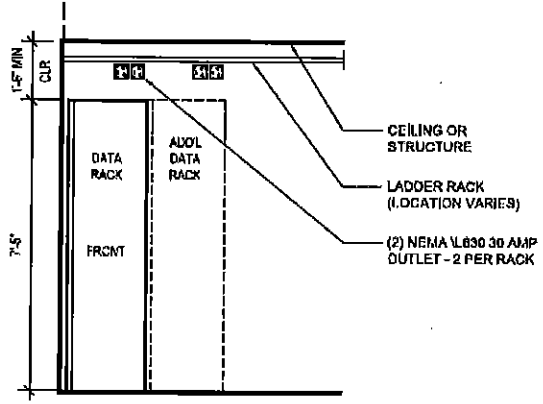
#### Required Clearances

1. Provide 3'-0" (3'-6" preferred) clearance in the front of the Network rack.
2. Provide 3'-0" clearance at back of racks and on one side.

**NOTE:**  
 1. PROVIDE MIN 1 DATA RACK. NUMBER OF DATA RACKS DETERMINED BY DT



○ **PLAN VIEW**  
 SCALE: 1/8" = 1'-0"



○ **ELEVATION VIEW**  
 SCALE: 1/8" = 1'-0"



## Recommended Equipment

### Power

1. 2 Dedicated 30-amp power receptacles per rack
2. L630 208V receptacles NEMA twist lock
3. 4 Power distribution units per rack

### Two post rack

1. [https://www.chatsworth.com/en-us/documents/data-sheets/55053\\_datasheet-pdf.pdf](https://www.chatsworth.com/en-us/documents/data-sheets/55053_datasheet-pdf.pdf)

### Four Post Rack

1. <https://www.anixter.com/en-us/products/15251-715/CHATSWORTH-PRODUCTS-INC-%28CPI%29/Racks/p/454881>

### Cabinets

1. Drawings - [https://download.schneider-electric.com/files?p\\_enDocType=CAD&p\\_File\\_Name=ASTE-6BFNZ7\\_R6\\_EN.pdf&p\\_Doc\\_Ref=APC\\_ASTE-6BFNZ7\\_EN](https://download.schneider-electric.com/files?p_enDocType=CAD&p_File_Name=ASTE-6BFNZ7_R6_EN.pdf&p_Doc_Ref=APC_ASTE-6BFNZ7_EN)
2. Website [https://www.schneider-electric.com/en/product/AR2144BLK\\_APC/netshelter-vx-seismic-42u-enclosure-w-sides-black/](https://www.schneider-electric.com/en/product/AR2144BLK_APC/netshelter-vx-seismic-42u-enclosure-w-sides-black/)

### Wireless Access Points

1. C9130AXI-B <https://www.cdw.com/product/cisco-catalyst-9130ax-series/5831887>

### Cisco Switches

1. 9400 series data sheet <https://www.cisco.com/c/en/us/products/switches/catalyst-9400-series-switches/index.html>
  - a. 9407 (Medium deployment up to 160-180 people)
    - i. <https://www.cisco.com/c/en/us/support/switches/catalyst-9407r-switch/model.html>
    - ii. Data sheet - [https://www.cisco.com/c/en/us/products/collateral/switches/catalyst-9400-series-switches/data\\_sheet-c78-739053.html](https://www.cisco.com/c/en/us/products/collateral/switches/catalyst-9400-series-switches/data_sheet-c78-739053.html)
  - b. 9410r (Large deployments up to 275 people)
    - i. <https://www.cisco.com/c/en/us/support/switches/catalyst-9410r-switch/model.html>
    - ii. Data Sheet - [https://www.cisco.com/c/en/us/products/collateral/switches/catalyst-9400-series-switches/data\\_sheet-c78-739053.html](https://www.cisco.com/c/en/us/products/collateral/switches/catalyst-9400-series-switches/data_sheet-c78-739053.html)
2. Cisco 9500Q24
  - a. Needed to connect sites to the City Fiber Wan, logically sits above the 9400 or 9348 switches in the MDF where the main network room is. If there are multiple departments in one building we will buy 2 for the building MDF, then place 1 in the primary network room for each individual department.

- b. <https://www.cisco.com/c/en/us/products/switches/catalyst-9500-series-switches/index.html>
    - c. Data sheet [https://www.cisco.com/c/en/us/products/collateral/switches/catalyst-9500-series-switches/data\\_sheet-c78-738978.html](https://www.cisco.com/c/en/us/products/collateral/switches/catalyst-9500-series-switches/data_sheet-c78-738978.html)
  3. 9348 (Small deployments, up to 30-35 people Can stack two on top of each other for up to 60-70 if needed)
    - a. <https://www.cisco.com/c/en/us/products/switches/nexus-9348gc-fxp-switch/index.html>
    - b. Data sheet - <https://www.cisco.com/c/en/us/products/collateral/switches/nexus-9000-series-switches/datasheet-c78-742284.html>

#### Patch Panels

- a. [https://www.anixter.com/en\\_mx/product-detail.M2000-48-COMMSCOPE-SYSTIMAX-SOLUTIONS.PS-Copper%2BBlocks%2Band%2BPatch%2BPanels.BZ-323248.html](https://www.anixter.com/en_mx/product-detail.M2000-48-COMMSCOPE-SYSTIMAX-SOLUTIONS.PS-Copper%2BBlocks%2Band%2BPatch%2BPanels.BZ-323248.html)

#### Ladder Rack

- a. [https://www.anixter.com/en\\_us/products/10250-712/CHATSWORTH-PRODUCTS-INC-%28CPI%29/Cable-Runway/p/164166](https://www.anixter.com/en_us/products/10250-712/CHATSWORTH-PRODUCTS-INC-%28CPI%29/Cable-Runway/p/164166)

#### Cable raceways

1. Mesh - various sizes made by this manufacturer is what we order  
[http://www.cooperindustries.com/content/dam/public/bline/Resources/Library/catalogs/cable\\_tray\\_systems/all\\_products/Flextray.pdf](http://www.cooperindustries.com/content/dam/public/bline/Resources/Library/catalogs/cable_tray_systems/all_products/Flextray.pdf)

**Schedule D-2**  
**Construction Schedule**













**Schedule D-3**  
**Construction Budget**

Schedule D-3 Construction Budget

333 Valencia, L.L.C.  
 333 Valencia Street, San Francisco, CA  
 CCSF DPH Floors 2-4 Project Budget

Date Updated: 7/3/2020

Premises RSF	44,229
--------------	--------

MHP Account Code	Account Description	100% DD Budget w. V/E (7/3/2020)	Revised Budget/RSF	Budget Notes
<b>1-00-000 ACQUISITION AND DILIGENCE COSTS</b>				
<b>SUBTOTAL ACQUISITION AND DILIGENCE COSTS</b> \$ - \$ -				
<b>2-00-000 ENTITLEMENTS</b>				
2-01-001	Legal	\$ 20,000	\$ 0.45	
2-02-001	Permit Expeditor	\$ 15,000	\$ 0.34	Increase by \$10K from concept budget
2-03-001	Environmental Regulatory Compliance	\$ -	\$ -	
2-04-001	City Application Fee	\$ 10,000	\$ 0.23	
<b>SUBTOTAL ENTITLEMENTS</b> \$ 45,000 \$ 1.02				
<b>3-00-000 DIRECT COSTS</b>				
3-01-001	General Requirements	\$ 633,470	\$ 14.32	Pankow 100%DD Budget w/VE (5/22/20)
3-02-001	Existing Conditions	\$ 17,945	\$ 0.41	Pankow 100%DD Budget w/VE (5/22/20)
3-03-001	Concrete	\$ -	\$ -	Pankow 100%DD Budget w/VE (5/22/20)
3-06-001	Wood, Plastics, and Composites	\$ 186,226	\$ 4.21	Pankow 100%DD Budget w/VE (5/22/20)
3-08-001	Openings	\$ 452,555	\$ 10.23	Pankow 100%DD Budget w/VE (5/22/20)
3-09-001	Finishes	\$ 1,437,781	\$ 32.51	Pankow 100%DD Budget w/VE (5/22/20)
3-10-001	Specialties	\$ 40,063	\$ 0.91	Pankow 100%DD Budget w/VE (5/22/20)
3-12-001	Furnishings	\$ 27,054	\$ 0.61	Pankow 100%DD Budget w/VE (5/22/20)
3-21-001	Fire Suppression	\$ 63,303	\$ 1.43	Pankow 100%DD Budget w/VE (5/22/20)
3-22-001	Plumbing	\$ 135,000	\$ 3.05	Pankow 100%DD Budget w/VE (5/22/20)
3-23-001	Heating, Ventilation, and Air Conditioning	\$ 1,622,000	\$ 36.67	Pankow 100%DD Budget w/VE (5/22/20)
3-26-001	Electrical	\$ 1,567,729	\$ 35.45	Pankow 100%DD Budget w/VE (5/22/20)
3-27-001	Communications	\$ -	\$ -	Carried in owner direct cost section
3-28-001	Electronic Safety and Security	\$ 30,000	\$ 0.68	Pankow 100%DD Budget w/VE (5/22/20); security carried in owner direct cost section
3-50-001	Pre-Construction Services	\$ 28,590	\$ 0.65	Per Pankow proposal (3/13/20)
3-53-001	General Contractor Fee	\$ 276,397	\$ 6.25	Pankow 100%DD Budget w/VE (5/22/20), 4%
3-54-001	Contractor Insurance	\$ 134,744	\$ 3.05	Pankow 100%DD Budget w/VE (5/22/20)
3-55-001	Contractor Bonds	\$ 69,723	\$ 1.58	Pankow 100%DD Budget w/VE (5/22/20)
3-56-001	Gross Receipts Tax	\$ 8,636	\$ 0.20	Pankow 100%DD Budget w/VE (5/22/20)
3-57-001	Contractor's Contingency	\$ 207,298	\$ 4.69	Pankow 100%DD Budget w/VE (5/22/20), 5%
<b>SUBTOTAL DIRECT COSTS CONTRACTOR</b> \$ 6,938,514 \$ 156.88				
3-60-001	FF+E	\$ -	\$ -	
3-60-002	Tel Data	\$ 307,309	\$ 6.95	Allowance; ownership will contract directly with vendor
3-60-003	Security	\$ 380,972	\$ 8.61	Per Basil Price email (5/11/20); ownership will contract directly with vendor
3-60-004	A/V	\$ 284,050	\$ 6.42	Allowance; ownership will contract directly with vendor
3-61-001	Escalation Allowance	\$ -	\$ -	0.00% of total direct contractor + PPL costs
3-62-001	Tenant's Contingency	\$ 163,127	\$ 3.69	2.06% of total direct contractor + PPL costs
<b>SUBTOTAL DIRECT COSTS OWNER</b> \$ 1,135,458 \$ 25.67				
<b>4-00-000 INDIRECT COSTS - CONSULTANTS</b>				
4-01-001	Architect	\$ 270,720	\$ 6.12	Per Brick proposal (3/9/20)
4-02-001	Structural Engineer	\$ 4,000	\$ 0.09	Per Mar proposal (4/3/20) for evaluation of file storage room
4-03-004	MEP Engineer	\$ 151,668	\$ 3.43	Per AGE proposals (3/2/20 and 3/26/20)
4-07-001	Environmental Consultant	\$ 19,800	\$ 0.45	Per Argento Graham proposal (5/19/20) for IAQ; required for LEED
4-08-003	Acoustic/Vibration Engineer	\$ 12,500	\$ 0.28	Per TRECOM proposal (4/21/20)
4-14-001	Construction Manager	\$ 50,000	\$ 1.13	City owner's rep; allowance per Jeff Suss on 5/22/2020
4-23-001	LEED/Green Building Consultant	\$ 80,413	\$ 1.82	Per Argento Graham proposal (3/12/20)
4-27-001	Space Planning Consultant	\$ 12,000	\$ 0.27	Per Brick ASA #2 (T+M)
4-28-001	Telecom Consultant	\$ 48,500	\$ 1.10	Per TRECOM proposal (4/21/20); includes A/V
4-30-001	Consultant Reimbursables	\$ 12,000	\$ 0.27	Owner allowance (includes \$7K per AGE proposals)
<b>SUBTOTAL INDIRECT COSTS - CONSULTANTS</b> \$ 661,601 \$ 14.96				
<b>5-00-000 OTHER INDIRECT COSTS/CONSTRUCTION</b>				
5-01-001	Permit/Plan Check Fees	\$ 96,747	\$ 2.19	1.5% of direct costs less GC fee, contingency, insurance, bonds and taxes
5-03-001	Testing and Special Inspection	\$ 7,410	\$ 0.17	Per AME proposal (5/19/20) for file room structural analysis
5-06-002	Project Management Fee (Tenant Improvement)	\$ 349,423	\$ 7.90	4% of direct and consultant costs
5-20-001	Indirect Cost Contingency	\$ -	\$ -	0.00% of IC excluding PM fees
<b>SUBTOTAL OTHER INDIRECT COSTS/CONSTRUCTIO</b> \$ 453,580 \$ 10.26				
<b>TOTAL PROJECT COSTS</b> \$ 9,234,153 \$ 208.78				
<b>COSTS PAID BY OWNER</b>				
	LEED/Green Building Consultant	\$ 80,413	\$ 1.82	
<b>TOTAL COSTS PAID BY OWNER</b> \$ 80,413 \$ 1.82				
<b>TOTAL TENANT PROJECT COSTS</b> \$ 9,153,740 \$ 206.96				
	Tenant Improvement Allowance	\$ (2,653,740)	\$ (60.00)	
<b>NET TENANT PROJECT COSTS</b> \$ 6,500,000 \$ 146.96				

**EXHIBIT E**

**FORM OF MEMORANDUM OF LEASE**

RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:

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

Exempt from recording fees under Government Code  
Section 27383.

Documentary Transfer Tax: NONE – Exempt under San  
Francisco Business and Tax Regulations Code Section  
1105

Address: 333 Valencia Street  
APN: 3547/017

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

**MEMORANDUM OF LEASE**

This Memorandum of Lease ("**Memorandum**"), dated for reference purposes as of \_\_\_\_\_, 2020, is by and between 333 VALENCIA OWNER, L.L.C., a Delaware limited liability company ("**Landlord**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**").

**Recitals**

A. Landlord and City have entered into that certain Lease, dated \_\_\_\_\_, 2020 (the "**Lease**"), under which Landlord leased to City and City leased from Landlord the real property more particularly described in the attached **Exhibit A** (the "**Property**") and granted City the right to purchase the Property under certain circumstances (the "**Purchase Option**").

B. Landlord and City desire to execute this Memorandum to provide constructive notice of the Lease and the Purchase Option to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Term.** Under the terms of the Lease, Landlord leased the Property to City for a term commencing on the date Landlord delivers possession of the Property to City as set forth in the Lease. The Term of the Lease will expire on the date that is fifteen (15) years after the Commencement Date (as defined in the Lease), subject to one option to extend (subject to the

terms and conditions of the Lease) for the Term for ten (10) years, unless earlier terminated in accordance with the terms of the Lease.

2. Lease Terms. Landlord leases the Premises to City on the terms and conditions of the Lease, which are incorporated into this Memorandum by reference as if they were fully set forth in this Memorandum; the rights and obligations of Landlord and Tenant are contained in the Lease. This Memorandum does not and will not be deemed to modify, alter, or amend the Lease in any way. If any conflict exists between the terms of the Lease and this Memorandum, the terms of the Lease will govern. Except as otherwise defined in this Memorandum, capitalized terms have the meanings given them in the Lease.

3. Purchase Option. Any transfer of title to the Property under the Purchase Option must occur no later than the end of the thirteenth (13<sup>th</sup>) month following the Effective Date, after which time the Purchase Option is of no further force and effect.

4. Successors and Assigns. This Memorandum and the Lease bind and will inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, to the provisions of the Lease.

IN WITNESS WHEREOF, Landlord and City have executed this Memorandum of Lease as of the day and year first written above.

LANDLORD:

333 VALENCIA OWNER, L.L.C.,  
a Delaware limited liability company

By: AG Real Estate Manager, Inc.,  
a Delaware corporation, its Manager

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

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

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation,

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

ANDRICO Q. PENICK  
Director of Property

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California                    )  
  ) ss  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be  
the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me  
that he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)





**EXHIBIT A**  
**TO MEMORANDUM OF LEASE**

**Legal Description of Property**



**EXHIBIT F**

**Form of PSA**

AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE

by and between

\_\_\_\_\_,  
as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Buyer

For the purchase and sale of

333 Valencia Street  
San Francisco, California

[REFERENCE DATE]

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LIST OF EXHIBITS

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- EXHIBIT B — Form of Grant Deed
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- EXHIBIT E — Form of Assignment of Leases
- EXHIBIT F — Form of Tenant Estoppel Certificate
- EXHIBIT G — Form of Bill of Sale

**AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE**  
(333 Valencia Street, San Francisco)

THIS AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE (this "Agreement") dated for reference purposes only as of \_\_\_\_\_, 20\_\_ is by and between \_\_\_\_\_, a \_\_\_\_\_ ("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 Office Lease dated as of \_\_\_\_\_, 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 the Property on \_\_\_\_\_, \_\_\_\_\_ (the "Effective Date") as provided in Section 22 of the Lease and Seller and City acknowledge that this Agreement is effective as of the Effective Date in accordance with Section 22 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 333 Valencia Post Street, Assessor's Parcel Number 3547/017 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 four-story building containing approximately 55,407 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");

(d) all personal property owned by Seller located on or in and used in connection with the Land or Improvements as of the date of this Agreement and as of the Closing Date (as defined in Section 6.2 [Closing Date]) including, without limitation, those items described in schedule 1 to that attached Exhibit G (the "Personal Property"), subject to depletions, replacements or additions thereto in the ordinary course of business; and

(e) any intangible personal property owned by Seller and used in the ownership, use or operation of the Land, Improvements, or Personal Property, including, without limitation, all warranties and trade names now used in connection with the Land or Improvements, and, to the extent expressly approved by City pursuant to this Agreement, any contract rights or other agreements or rights relating to the use and operation of the Land, Improvements or Personal Property or any of the foregoing (collectively, the "Intangible Property").

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

## 2. PURCHASE PRICE

### 2.1 Purchase Price

The total purchase price for the Property is Fifty Six Million Dollars (\$56,000,000), plus Construction Costs (as defined in the Exhibit D to the Lease) in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) as of the Effective Date, plus any additional Construction Costs incurred by Seller between the Effective Date and Closing, as determined by Seller and reasonably acceptable to City (the "Purchase Price"); provided that the total Construction Costs may not exceed Two Million Six Hundred Fifty-Three Thousand Seven Hundred Forty Dollars (\$2,653,740). Any dispute as to Purchase Price shall be resolved as provided in Section 22.1 of the Lease. *[NTD: complete as provided in Section 22.2 of the Lease]*

### 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 adjusted under Article 7 [Expenses and Taxes], and reduced by any credits due City under this Agreement or the Lease and increased by any credits due Seller under this Agreement or the Lease.

(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. 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.

(c) Seller acknowledges and agrees that if Seller fails at Closing to deliver to Escrow the documents required under Sections 6.3(f) and 6.3(g) [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**

(a) 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 B (the "**Deed**"), subject to the Accepted Conditions of Title (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 the Lease, any City subleases, and the tenants under the Assumed Leases), and all other exceptions, liens, and encumbrances (other than mechanics' liens in connection with ongoing construction on the Property) except solely for the Accepted Conditions of Title under subsection (b) below. 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 by providing a commercially reasonable form of mechanics' lien certification to the Title Company to allow City to obtain the Title Policy in the form required under this Agreement, but, if, despite Seller's cooperation, Title Company does not deliver the Title Policy free of exceptions for mechanic's liens in a form reasonably acceptable to City, then Seller will not be in default under this Agreement. The parties recognize that there is ongoing construction on the Property and, at Closing, title may reflect the interests of contractors or subcontractors if the construction is not complete.

(i) Within five (5) business days after the Effective Date, 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) City will advise Seller, before the end of the Due Diligence Period, what exceptions to title, if any, City is willing to accept (the "**Accepted Conditions of Title**"). 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) 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 or that all objectionable exceptions will be cured on or before the Closing; or (ii) Seller elects not to cause any exceptions to be removed; or (iii) which of the objectionable exceptions Seller has removed or 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 does not timely respond or gives notice under clause (ii) or (iii), City will have ten (10) business days to elect to proceed with the purchase (in which case any exceptions Seller did not agree to remove will be Permitted Exceptions) or terminate this Agreement. If City fails to give Seller notice of its election within such ten (10) days, City will be deemed to have elected to terminate this Agreement. If Seller gives notice pursuant to clause (i) or (iii) and fails to remove the objectionable exceptions that Seller agreed to remove from title before the Closing Date, 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. At Seller's option, upon notice to City, the Closing Date may be postponed for up to thirty (30) days to allow Seller to remove title exception where additional time is

reasonably required, provided, that City will receive a credit at closing for the amount of Base Rent paid to Landlord under the Lease for that period.

### 3.3 Assignment of Intangibles

At the Closing Seller will transfer title to the Intangible Property by such instruments as City may reasonably determine necessary, in forms reasonably acceptable to Seller, including, without limitation, an assignment of Intangible Property in the form attached hereto as Exhibit D (the "Assignment of Intangible Property").

### 3.4 Assignment of Leases

At the Closing Seller will assign and City will assume the following first floor leases *[NTD: insert description of leases to tenants other than City or its subtenants* / (the "Assumed Leases") by an assignment of leases in the form attached hereto as Exhibit E (the "Assignment of Leases").

## 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, at City's sole cost. City may perform invasive or destructive testing, each of which will be considered an "Alteration" under the Lease requiring Landlord'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 Effective Date. The period for completion of all City's investigations will expire sixty (60) days after the Effective Date (the "Due Diligence Period"), subject to the terms and conditions provided in this Agreement. City may terminate this Agreement 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 its exercise of the Purchase Option and this Agreement 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 (i) within ten (10) business days after the Effective Date, the following documents related to the Property, all to the extent such documents exist, have not previously been delivered to City under the Lease, are currently in effect (or have surviving provisions) 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: 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; leases; service contracts; utility contracts; maintenance contracts; employment contracts, management contracts; other contracts or agreements related to the Property; 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; soils and geotechnical reports; and any other contracts or documents of significance to the Property that City may request in writing on the Effective Date (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 that is in the possession or reasonable control of Seller (collectively, the "**Other Information**"). If Seller fails to deliver all of the Documents and Other Information within the applicable ten (10) business day delivery period (the "**Delivery Period**"), then provided City provides Seller with a written list of the missing Documents and Other Information within five (5) business days following expiration of the applicable Delivery Period, the expiration of the Due Diligence Period will be extended by the number of days after the end of the Delivery Period until Seller delivers the items in City's written list to City; provided, however, that such extension will not be effective and Seller will not be responsible for any delays related to its inability to obtain Documents or Other Information from third parties so long as Seller has made commercially reasonable efforts to obtain them.

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 (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 or revoke this Agreement on account thereof.

(c) Seller discloses to City that natural hazards described in the following California code sections 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.

(d) 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 (d) 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.

(e) 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**"). Seller makes no representation or warranty that all contracts will be assignable by their terms, but will make good faith efforts to accommodate City's requests. At or before the Closing, Seller will terminate any contracts or agreements not to be assumed by City, without liability to City. All material, contractor, architect, engineer, and similar contracts related to ongoing construction pursuant to the Lease or Assumed Leases will be deemed Assumed Contracts, which City will assume at Closing.

(f) If this Agreement is terminated for any reason other than Seller's default and Seller, at Seller's option, requests any copies of reports relating to the Property provided to City by third parties that are not privileged ("**City Reports**"), then City will deliver copies of the requested City Reports to Seller, without any warranty of any kind, via email 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, the City will provide them at Seller's cost as soon as reasonably practicable. City's obligation to deliver the City Reports will survive any termination of this Agreements.

## 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) or any other tenant or occupant of the Property in violation of its lease, or standard annual governmental encumbrances such as for taxes;

(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 under 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) Seller has obtained and delivered to City, before the Closing Date, tenant estoppel certificates in form and substance reasonably satisfactory to City from any and all tenants under the Assumed Leases. The Tenant estoppel certificates must be substantially in the form attached as Exhibit F and will be dated no earlier than thirty (30) days before the Closing Date.

(f) 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].

(g) The Board of Supervisors, in its sole discretion has enacted a resolution or an ordinance approving, adopting, and authorizing this Agreement and the transactions, and, if applicable, including the issuance, delivery and sale of the certificates of participation to finance the transaction, contemplated under this Agreement and the Mayor has approved the resolution or ordinance, in the Mayor's sole discretion.

(h) Seller has delivered the items described in Section 0 [Seller's Delivery of Documents] below on or before the Closing.

(i) 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(i) 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(f) 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 documents 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 and City will receive a credit against the Purchase Price for the amount of Rent City pays to Seller as Landlord under the Lease for each day of Seller's extension of the Closing Date.

#### **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 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, not to exceed One Hundred Thousand Dollars (\$100,000), 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 costs and expenses incurred under this Agreement not to exceed 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 will 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 ninety (90) 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 Landlord for the actual out-of-pocket costs of Additional Charges (excluding any management or administrative fees or other in-house costs otherwise charged by Landlord) paid by Landlord between the date that the Closing Date would have occurred but for Seller's default and the actual Closing Date.

## 5.6 City Failure to Obtain Approvals or Default

If this Agreement is terminated due to (i) failure of any issuance, sale, and delivery of certificates of participation; (ii) failure to obtain a resolution or an ordinance approving, adopting, and authorizing this Agreement and the Closing; or (iii) City's default under this Agreement, and City will pay Seller within thirty (30) days of demand for all actual out-of-pocket costs, expenses, and fees Landlord 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.

## 6. ESCROW AND CLOSING

### 6.1 Opening of Escrow

On or about the Effective 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") must occur on or before the date that is ninety (90) days after the Effective Date (the "Outside Closing Date"), time being of the essence. 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 Chicago Title Company located at One Embarcadero Center Suite 250, San Francisco, California 94111, 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 Seller or Seller's lender or Agents, Seller at its option, in its sole discretion, may elect to extend the Outside Closing Date or terminate this Agreement 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. If Seller extends the Closing Date, then City will receive a credit against the Purchase Price for the amount of Base Rent City pays to Seller as Landlord under the Lease for each day of Seller's extension of the Closing Date.

### 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 Leases, Assumed Contracts, and any other items relating to the ownership or operation of the Property not previously delivered to City;
- (c) two (2) executed originals of the Assignment of Leases;
- (d) two (2) executed originals of Assignment of Intangibles;
- (e) an executed bill of sale conveying the Personal Property to City in the form attached as Exhibit G;
- (f) 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;
- (g) a properly executed California Franchise Tax Board Form 590 or 593, as appropriate;
- (h) such resolutions, authorizations, or other entity documents or agreements relating to Seller and its members/partners as City or 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;
- (i) a closing statement in form and content satisfactory to Seller; and
- (j) 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) two (2) originals of the Assignment of Leases executed by City's Director of Property;
- (c) two originals of the Assignment of Intangibles executed by City's Director of Property;



- (d) a closing statement in form and content satisfactory to City; and
- (e) the Purchase Price, as provided in Article 2 above.

## **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. If City acquires the Property pursuant to this Agreement, all Base Rent delivered by City to Landlord for periods after the Closing Date will be apportioned as of the Closing Date.

#### **(b) Assumed Contracts**

To the extent charges under the Assumed Contracts are not already paid for by City as Additional Services under the Lease, amounts payable under any Assumed Contracts will be apportioned as of the Closing Date.

#### **(c) Assumed Leases**

##### **(i) Rent**

Base rent under the Assumed Leases will be apportioned as of the Closing Date, and where such rent has not been paid to Seller, the amount owed will be apportioned as of the

Closing Date. With respect to any base rent arrearage arising under the Assumed Leases, after the Closing, City will pay to Seller any base rent actually collected that is applicable to the period before the Closing Date; provided, however, that all rent collected by City will be applied first to all unpaid rent accruing on and after the Closing Date, and then to unpaid base rent accruing before the Closing Date. City will not be obligated to take any steps to recover any base rent arrearage; however, Seller will be permitted to pursue recovery of amounts owed Seller.

**(ii) Leasing Costs**

Seller will pay all leasing commissions and tenant improvement costs accrued in connection with any Assumed Leases executed on or before the Closing (including, without limitation, leasing commissions attributable to expansion or extension options that are not exercised until after the Closing). City will be entitled to a credit against the Purchase Price for the total sum of all unapplied security deposits held by Seller on behalf of tenants under any Assumed Leases, as well as for any unapplied tenant improvements allowances, free rent, operating expense abatements, or other unexpired concessions under any Assumed Leases to the extent they apply to any period after the Closing.

**(iii) Other Tenant Charges**

Where the Assumed Leases contain tenant obligations for taxes, common area expenses, operating expenses or additional charges of any other nature, and where Seller has collected any portion thereof in excess of amounts owed by Seller for such items for the period before the Closing Date, there will be an adjustment and credit given to City on the Closing Date for such excess amounts collected. City will apply all such excess amounts to the charges owed by City for such items for the period after the Closing Date and, if required by the Assumed Leases, will rebate or credit tenants with any remainder. If it is determined that the amount collected during Seller's ownership period exceeded expenses incurred during the same period by more than the amount previously credited to City at Closing, then Seller will promptly pay the deficiency to City. If Seller determines before Closing that the amount collected during Seller's ownership period was insufficient to cover expenses incurred during the same period, and Seller has the express right to collect the shortfall under the Assumed Leases, then City will send an invoice to the tenants under the Assumed Leases for the amount of the shortfall and, upon collection, City will promptly pay the deficiency attributable to the pre-Closing period to Seller. City will not have any other obligation to recover any shortfalls; however, Seller will be permitted to pursue recovery of amounts owed Seller.

**(d) Proration Schedule**

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 nine (9) months after the Closing Date. If no reconciliation of the estimated proration in subparagraphs (c)(ii) and (c)(iii) occurs within nine (9) months after the Closing Date, then the estimated prorations will be deemed final.

## **7.2 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.

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

General real estate taxes payable for the tax year prior to year of Closing and all prior years will be paid by Seller at or before the Closing. General real estate taxes payable for the tax year of the Closing will be prorated through Escrow by Seller and City as of the Closing Date. At or before the Closing, Seller will pay the full amount of any special assessments against the Property, including, without limitation, interest payable thereon, applicable to the period before the Closing Date.

## **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 Assumed Leases are and at the time of Closing will be true, correct and complete copies of such documents and at the time of Closing will be in full force and effect, without default by (or notice of default to) any party. 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 Assumed Leases.

(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 no easements, 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 actual knowledge, there are no ongoing disputes with regard to the location of any fence or other monument of the Property's boundary nor any claims or actions involving the location of any fence or 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 City pursuant to the Lease.

(f) Seller is a [ ] duly organized and validly existing under the laws of the State of [ ] and is 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 ability 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; (vi) does not have any such petition described in clause (v) 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 (other than pursuant to the Assumed Contracts, Assumed Leases, and the Lease) and Seller will cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Property prior to the time of Closing (other than in connection with Assumed Contracts relating to ongoing construction). There are no obligations in connection with the Property that will be binding upon City after Closing except for matters that are set forth in the Approved Condition of Title, Assumed Contracts and Assumed Leases.

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

(l) Provided the Seller is 333 VALENCIA OWNER, L.L.C.: (A) 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 Steven Wolmark, without any duty of independent investigation or inquiry. Seller represents and warrants the foregoing named individual is the person most likely to have actual knowledge of the Property; (B) actual knowledge will not be deemed to exist merely by assertion by City of a claim that the foregoing person should have known of such facts or circumstances, if such person did not have actual knowledge thereof; (C) City acknowledges that the individual named above is 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 individual to City; and (D) City covenants that it will bring no action of any kind against such individual 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 One Million Dollars (\$1,000,000) ("**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 (as defined in Section 8.4) 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 (as defined in Section 11.5), 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 will 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 Jeff Sues, Senior Real Property Officer for the City's Real Estate Division obtains actual knowledge before the Closing that any of Seller's Warranties was untrue when made in any material respect, and City elects to close the transaction contemplated by this Agreement, then City will be deemed to have waived its rights to recover damages from Seller following Closing, unless the parties agree otherwise in a written agreement. City represents and warrants the Jeff Sues is the person who will be primarily responsible for overseeing completion of the City's due diligence and otherwise in connection with the sale of this Property, and the City's employee most likely to have actual knowledge of matters related to the Property.

## 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.

#### **8.4 As Is Sale; 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 will 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 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, 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 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 DOCUMENTS AND OTHER INFORMATION WITH RESPECT TO THE PROPERTY; (VIII) THE DIMENSIONS OF THE PROPERTY OR THE ACCURACY OF ANY FLOOR PLANS, SQUARE FOOTAGE, LEASE ABSTRACTS, SKETCHES, OR 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 THE 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 (INCLUDING UNDER THE ASSUMED LEASES AND ASSUMED CONTRACTS) 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) THIS SECTION 8.4 WILL SURVIVE THE CLOSING.

(g) "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.

## 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 rescind its exercise of the Purchase Option (and terminate this Agreement) or proceed with the Closing and 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 ten percent (10%) of the Purchase Price. 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 rescind its exercise of the Purchase Option and to terminate this Agreement. If the exercise of the Purchase Option is rescinded, 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 [City's 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 in its entirety, or (2) rescind its exercise of the Purchase Option terminate this Agreement only as to that portion of the Property subject to condemnation proceedings (in which case there will be an equitable adjustment to the Purchase Price), or (iii) 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 Landlord. City's failure to deliver its notice within the thirty (30) day period will be deemed City's election terminate this Agreement in its entirety. If the Agreement is terminated in its entirety or in part under this subsection, then City and Landlord will each be released from all obligations under this Agreement pertaining to that portion of the Property affected by the rescission.

## **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 Assumed Leases.

# **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 Effective Date, Seller may not enter into any lease, contract, or any amendment thereof, or waive any rights of Seller under any Assumed Lease or Assumed Contract (each, a "New Contract"), without in each instance obtaining City's prior written consent. City agrees that it will not unreasonably withhold or delay consent to any New Contract. If City does not respond to Seller's request for consent to a New Contract within five (5) business days, and the New Contract is cancelable as of the Closing, then City will be deemed to approve of the New Contract. The foregoing will not apply with respect to Seller's obligations as landlord under any leases to provide services and repair, replace and maintain the Property, or in connection with ongoing construction at the Property, provided that Seller will promptly advise City thereof and any such contract or amendment will be terminable as of Closing absent City 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 Leases or 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, will survive the execution and delivery of the Deed and the Closing, or, to the extent the context requires, beyond any termination of this Agreement for a period of six (6) months after the Closing Date (the "**Survival Period**"), at which time such representations and warranties will 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 the Lease, 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 the Lease, 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 Execution; Counterparts**

As provided in Section 22 of the Lease, City and/or Seller may elect to execute this Agreement for its preference or convenience, but the failure of either party to execute this Agreement will not affect the effectiveness or binding nature of this Agreement. 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 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]*

Subject to Section 11.15 (Execution; Counterparts), the parties have duly executed this Agreement as of the respective dates written below.

SELLER:

\_\_\_\_\_

a \_\_\_\_\_

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

ANDRICO Q. PENICK  
Director of Property

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

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

[NAME OF DEPUTY]  
Deputy City Attorney

**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

All that certain real property located in the County of San Francisco, State of California, described as follows:

**[LEGAL DESCRIPTION TO COME FROM PRELIMINARY REPORT]**

**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,  
\_\_\_\_\_, a \_\_\_\_\_, hereby grants to  
the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the real property  
located in the City and County of San Francisco, State of California, described on Exhibit A  
attached hereto and made a part hereof (the "Property").

TOGETHER WITH any and all rights, privileges and easements incidental or  
appurtenant to the Property, including, without limitation, any and all minerals, oil, gas, and  
other hydrocarbon substances on and under the Property, as well as any and all development  
rights, air rights, water, water rights, riparian rights and water stock relating to the Property, and  
any and all easements, rights-of-way, or other appurtenances used in connection with the  
beneficial use and enjoyment of the Land and all of Grantor's right, title, and interest in and to  
any and all roads and alleys adjoining or servicing the Property.

*[SIGNATURES ON FOLLOWING PAGE]*



Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a \_\_\_\_\_

\_\_\_\_\_,  
NAME By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_,  
NAME By: \_\_\_\_\_

Its: \_\_\_\_\_

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California             )  
  ) ss  
County of San Francisco     )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

---

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property located at \_\_\_\_\_ 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: \_\_\_\_\_

\_\_\_\_\_  
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 \_\_\_\_\_

\_\_\_\_\_, a \_\_\_\_\_  
("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:

[Insert Seller Signature Block]

**EXHIBIT D**

**ASSIGNMENT OF  
WARRANTIES AND GUARANTIES  
AND OTHER INTANGIBLE PROPERTY**

THIS ASSIGNMENT is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("Assignor"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Assignee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date (as defined below), Assignor hereby assigns and transfers to Assignee and Assignee hereby accepts from Assignor all of Assignor's right, title, claim and interest in and under:

A. all transferable warranties and guaranties, if any, made by or received from any third party with respect to any building, building component, structure, system, fixture, machinery, equipment, or material situated on, contained in any building or other improvement situated on, or comprising a part of any building or other improvement situated on, any part of that certain real property described in Exhibit A attached hereto including, without limitation, those warranties and guaranties listed in Schedule 1 attached hereto (collectively, "Warranties"); and

B. any transferable Intangible Property (as defined in that certain Agreement of Purchase and Sale of Real Estate dated as of \_\_\_\_\_, 20\_\_\_, between Assignor and Assignee (or Assignee's predecessor in interest) (the "Purchase Agreement").

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. Assignor hereby agrees to indemnify Assignee against and hold Assignee harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), originating prior to the Effective Date (as defined below) and arising out of the owner's obligations under the Service Contracts.

2. Effective as of the Effective Date (as defined below), Assignee hereby agrees to indemnify Assignor against and hold Assignor harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), originating on or subsequent to the Effective Date (as defined below) and arising out of the owner's obligations under the Service Contracts.

3. In the event of any litigation between Assignor and Assignee arising out of this Assignment, the losing party will pay the prevailing party's costs and expenses of such litigation, including, without limitation, attorneys' fees.

4. This Assignment will be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

5. This Assignment is governed by and will be construed in accordance with the laws of the State of California.

6. For purposes of this Assignment, the "Effective Date" is the date of the Closing (as defined in the Purchase Agreement).

7. This Assignment 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.

*[SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first written above.

ASSIGNOR:

a \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]

Its: \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]

Its: \_\_\_\_\_

ASSIGNEE:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
ANDRICO Q. PENICK  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
[DEPUTY'S NAME]  
Deputy City Attorney

## EXHIBIT E

### ASSIGNMENT AND ASSUMPTION OF LEASES

THIS ASSIGNMENT AND ASSUMPTION OF LEASES (this "Assignment") is made and entered into as of this \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("Assignor"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Assignee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is acknowledged, effective as of the Effective Date (as defined below), Assignor assigns and transfers to Assignee all of Assignor's right, title, claim and interest in and under certain leases executed with respect to that certain real property commonly known as 333 Valencia Street, San Francisco (the "Property") as more fully described in Schedule 1 attached hereto (collectively, the "Leases").

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. Assignor represents and warrants that as of the Effective Date (as defined below), the attached Schedule 1 includes all of the Leases and occupancy agreements affecting any of the Property. As of the Effective Date, Assignor is not a party to any assignments of or agreements to assign the Leases to any other party.
2. Assignor will indemnify Assignee against and hold Assignee harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), for claims arising under the Leases before the Effective Date.
3. Assignee will indemnify Assignor against and hold Assignor harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), arising out of landlord's obligations under the Leases from and after the Effective Date, including responsibility for the payment of any security deposits.
4. Assignor represents and warrants that as of the Effective Date, Assignor has credited to Assignee or transferred to Assignee all security deposits (if any) and any interest thereon accrued as of the Effective Date (if any) under the Leases.
5. In the event of any litigation between Assignor and Assignee arising out of this Assignment, the losing party will pay the prevailing party's costs and expenses of such litigation, including, without limitation, attorneys' fees.
6. This Assignment will be binding on and inure to the benefit of the parties above, their heirs, executors, administrators, successors in interest and assigns.
7. This Assignment is governed by and construed in accordance with the laws of the State of California.
8. For purposes of this Assignment, the "Effective Date" is the date of the Closing (as defined in the Purchase Agreement).
9. This Assignment 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.



*[SIGNATURES ON FOLLOWING PAGE]*

Assignor and Assignee have executed this Assignment as of the day and year first written above.

ASSIGNOR:

a \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]

Its: \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]

Its: \_\_\_\_\_

ASSIGNEE:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
[DEPUTY'S NAME]  
Deputy City Attorney

**EXHIBIT F**

**TENANT'S ESTOPPEL CERTIFICATE**

DATE: \_\_\_\_\_

TENANT: \_\_\_\_\_  
\_\_\_\_\_

PREMISES: \_\_\_\_\_  
\_\_\_\_\_

LEASE DATE: \_\_\_\_\_

COMMENCEMENT DATE: \_\_\_\_\_

EXPIRATION DATE: \_\_\_\_\_

TERM IN MONTHS: \_\_\_\_\_

DATE RENT AND OPERATING EXPENSE  
PARKING: \_\_\_\_\_

PAYMENTS ARE DUE: \_\_\_\_\_

OPTIONS: Check if you have any of these  
options or rights, and provide details in  
Sections 5 or 9 below.

\_\_\_\_\_ Extension Option  
\_\_\_\_\_ Termination Option  
\_\_\_\_\_ Expansion Option  
\_\_\_\_\_ Purchase Option

CURRENT MONTHLY PAYMENTS: \_\_\_\_\_

BASE RENTAL: \_\_\_\_\_

TAXES: \_\_\_\_\_

OP. EXP. CAP: \_\_\_\_\_

\_\_\_\_\_ Check here if you have rental escalations and provide details in Section 6 below:

SECURITY DEPOSIT: \_\_\_\_\_

THE UNDERSIGNED, AS TENANT OF THE ABOVE REFERENCED PREMISES  
("PREMISES") UNDER THE LEASE DATED AS OF THE ABOVE-REFERENCED LEASE  
DATE, BETWEEN \_\_\_\_\_  
("LANDLORD") AND TENANT, CERTIFIES, REPRESENTS AND WARRANTS TO THE

CITY AND COUNTY OF SAN FRANCISCO ("CITY"), AND ITS ASSIGNEES, AS  
FOLLOWS:

1. Accuracy. All of the information specified above and elsewhere in this Certificate is accurate as of the date hereof.
2. Lease. The copy of the Lease attached as Exhibit A is a true and correct copy of the Lease. The Lease is valid and in full force and effect. The Lease contains all of the understandings and agreements between Landlord and Tenant and has not been amended, supplemented or changed by letter agreement or otherwise, except as follows (if none, indicate so by writing "NONE" below):
3. Premises. The Premises consist of \_\_\_\_\_, and Tenant does not have any options to expand the Premises except as follows (if none, indicate so by writing "NONE" below):
4. Acceptance of Premises. Tenant has accepted possession of the Premises and is currently occupying the Premises. There are no unreimbursed expenses due Tenant including, but not limited to, capital expense reimbursements.
5. Lease Term. The term of the Lease commenced and will expire on the dates specified above, subject to the following options to renew or rights to terminate the Lease (if none, indicate so by writing "NONE" below):
6. Rental Escalations. The current monthly base rental specified above is subject to the following escalation adjustments (if none, indicate so by writing "NONE" below):
7. No Defaults/Claims. Neither Tenant nor, to Tenant's knowledge, Landlord is in default under any terms of the Lease nor, to Tenant's knowledge, has any event occurred which with the passage of time (after notice, if any, required under the Lease) would become an event of default under the Lease. Tenant has no claims, counterclaims, defenses, or setoffs against Landlord arising from the Lease, nor is Tenant entitled to any concession, rebate, allowance, or free rent for any period after this certification. Tenant has no complaints or disputes with Landlord regarding the overall operation and maintenance of the property within which the Premises are located (the "Property"), or otherwise.
8. No Advance Payments. No rent has been paid in advance by Tenant except for the current month's rent and estimated operating expenses and taxes.
9. No Purchase Rights. Tenant has no option to purchase, or right of first refusal to purchase, the Premises, the Property or any interest therein (if none, indicate so by writing "NONE" below):
10. Notification by Tenant. From the date of this Certificate and continuing until \_\_\_\_\_, Tenant agrees to notify City immediately of the occurrence of any event or the discovery of any fact that would make any representation contained in this Certificate inaccurate as of the date hereof or as of any future date.
11. No Sublease/Assignment. Tenant has not entered into any sublease, assignment or any other agreement transferring any of its interest in the Lease or the Premises, except as follows: \_\_\_\_\_.

12. No Notice. Tenant has not received notice of any assignment, hypothecation, mortgage, or pledge of Landlord's interest in the Lease or the rents or other payments payable thereunder, except those listed below (if none, indicate so by writing "NONE" below):

13. Hazardous Materials. Tenant has not used, treated, stored, disposed of, or released any Hazardous Materials on or about the Premises or the Property, other than small amounts of typical products and cleaning supplies allowed under its Lease, which were stored and used in the compliance with applicable laws and regulations. Tenant does not have any permits, registrations or identification numbers issued by the United States Environmental Protection Agency or by any state, county, municipal or administrative agencies with respect to its operation on the Premises, except for any stated below, and except as stated below no such governmental permits, registrations or identification numbers are required with respect to Tenant's operations on the Premises. For the purposes hereof, the term "Hazardous Material" will mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids, and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

14. Reliance. Tenant recognizes and acknowledges it is making these representations to City with the intent that City, and any of its assigns, will fully rely on Tenant's representations.

15. Binding. The provisions hereof will be binding upon and inure to the benefit of the successors, assigns, personal representatives and heirs of Tenant and City.

16. Due Execution and Authorization. The undersigned, and the person(s) executing this Certificate on behalf of the undersigned, represent and warrant that they are duly authorized to execute this Certificate on behalf of Tenant and to bind Tenant hereto.

EXECUTED BY TENANT ON THE DATE FIRST WRITTEN ABOVE.

By:

\_\_\_\_\_  
[NAME]

\_\_\_\_\_  
[TITLE]

By:

\_\_\_\_\_  
[NAME]

\_\_\_\_\_  
[TITLE]

**EXHIBIT G**

**BILL OF SALE**

For good and valuable consideration the receipt of which is acknowledged,  
\_\_\_\_\_, a \_\_\_\_\_  
("Seller"), does hereby sell, transfer and convey to the CITY AND COUNTY OF  
SAN FRANCISCO, a municipal corporation ("Buyer"), all personal property owned by Seller  
and located on or in and used in connection with the Land and Improvements (as such terms are  
defined in that certain Agreement of Purchase and Sale of Real Estate dated as of  
\_\_\_\_\_, 20\_\_\_\_, between Seller and Buyer (or Buyer's predecessor in interest),  
including, without limitation, those items described in Schedule 1 attached hereto (the "Personal  
Property").

Seller represents and warrants to Buyer that Seller is the lawful owner of the Personal  
Property, that the Personal Property is free and clear of all encumbrances, and that Seller has  
good right to sell the Personal Property and will defend the title thereto unto Buyer, its  
successors and assigns, against the claims and demands of all persons whomsoever, except as  
otherwise indicated in Schedule 1.

EXCEPT AS SET FORTH ABOVE, SELLER HAS MADE NO AFFIRMATION OF FACT OR PROMISE  
RELATING TO THE PERSONAL PROPERTY THAT HAS BECOME ANY BASIS OF THIS BARGAIN, AND  
FURTHER, SELLER HAS MADE NO AFFIRMATION OF FACT OR PROMISE RELATING TO THE PERSONAL  
PROPERTY THAT WOULD CONFORM TO ANY SUCH AFFIRMATION OR PROMISE. SELLER DISCLAIMS  
ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE WHATEVER WITH RESPECT TO THE  
PERSONAL PROPERTY. THE PERSONAL PROPERTY IS TRANSFERRED ON AN "AS IS" BASIS.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SELLER:

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]

Its: \_\_\_\_\_

**EXHIBIT G**

**Form of SNDA**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

[Lender]  
10100 Santa Monica Blvd., Suite 1000  
Los Angeles, CA 90067  
Attn: Servicing

---

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (the “**Agreement**”) is dated as of \_\_\_\_\_, 2020, among [Lender] , a Delaware limited liability company (together with its successors and/or assigns, “**Lender**”), City and County of San Francisco, a California municipal corporation (“**Tenant**”), and 333 Valencia Owner, L.L.C., a Delaware limited liability company (“**Landlord**”).

RECITALS

A. Tenant is the tenant under a certain lease (as amended, the “**Lease**”) and other documents listed on Exhibit A attached hereto with Landlord of premises described in the Lease (the “**Premises**”) located in a certain building located at 333 Valencia Street, San Francisco and more particularly described in Exhibit B attached hereto and made a part hereof (such building, including the Premises, is referred to as the “**Property**”).

B. This Agreement is being entered into in connection with a deed of trust loan (the “**Loan**”) made by Lender to Landlord, and secured by, among other things, a first priority deed of trust on and of the Property (the “**Deed of Trust**”), which was recorded on \_\_\_\_\_ as Document Number \_\_\_\_\_ by the San Francisco Assessor-Recorder in the Official Records of San Francisco County.

C. Tenant acknowledges that Lender will rely on this Agreement.

AGREEMENT

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Tenant agrees that the Lease is and shall be subject and subordinate to the Deed of Trust and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements, and extensions of the secured

obligations and the Deed of Trust, to the full extent of all amounts secured by the Deed of Trust from time to time. Said subordination is to have the same force and effect as if the Deed of Trust and such renewals, modifications, consolidations, replacements and extensions thereof had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any notice thereof.

2. Lender agrees that, if the Lender exercises any of its rights under the Deed of Trust, including an entry by Lender pursuant to the Deed of Trust or a foreclosure of the Deed of Trust, Lender shall not disturb Tenant's right of quiet possession of the Premises under the terms of the Lease so long as Tenant is not then in default after notice thereof and expiration of any applicable cure period of any term, covenant, or condition of the Lease.

3. Tenant agrees that, in the event of a foreclosure of the Deed of Trust by Lender or the acceptance of a deed in lieu of foreclosure by Lender or any other succession of Lender to fee ownership, Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods that have been or are later exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease.

4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

(a) liable for any act or omission of any prior Landlord (including, without limitation, the then defaulting Landlord), except for those acts or omissions that existed as of the date Lender takes title to the Property; provided that Lender shall not be liable for any damages or other claims that Tenant may have with respect to any period of time prior to the date that Lender acquires the Property, or

(b) bound by any payment of rent or additional rent that Tenant paid more than one month in advance of the due date under the Lease to any prior Landlord (including, without limitation, the then defaulting Landlord), or

(c) bound by any obligation to make any payment to Tenant that was required to be made before the time Lender succeeded to any prior Landlord's interest, or

(d) accountable for any monies deposited with any prior Landlord (including security deposits), except to the extent such monies are actually received by Lender.

5. Tenant acknowledges that, notwithstanding any provision in this Agreement to the contrary, the terms of the Deed of Trust (and other loan documents) govern with respect to the disposition of any insurance proceeds or eminent domain awards.

6. Tenant agrees to give to Lender copies of all notices of Landlord default under the Lease in the same manner as, and whenever, Tenant gives any such notice of default to Landlord. Lender shall have the right to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and for such purpose Tenant hereby grants Lender such additional period of time as may be reasonable to enable Lender to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing



to be remedied, any such default, not to exceed an additional sixty (60) days. Tenant shall accept performance by Lender of any term, covenant, condition, or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. If the nature of the default is such that Tenant's use of the Premises is not materially impaired, no Landlord default under the Lease shall exist or shall be deemed to exist (i) as long as Lender, in good faith, shall have commenced to cure such default within the above referenced time period and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure, or (ii) if either possession of the Premises is required in order to cure such default, or such default is not susceptible of being cured by Lender, then as long as Lender, in good faith, has notified Tenant that Lender intends to institute proceedings under the Deed of Trust, and, within thirty (30) days thereafter such proceedings are instituted and prosecuted with reasonable diligence. In the event of the termination of the Lease by reason of any default thereunder by Landlord, upon Lender's cure of the Landlord default that caused such termination and Lender's written request, given within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to Lender or its designee or nominee a new lease of the Premises for the remainder of the term of the Lease upon all of the terms, covenants and conditions of the Lease. Lender shall have the right, without Tenant's consent, to foreclose the Deed of Trust or to accept a deed in lieu of foreclosure of the Deed of Trust or to exercise any other remedies under the Deed of Trust.

7. Tenant hereby consents to the assignment of leases and rents from Landlord to Lender under the Deed of Trust in connection with the Loan. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in said assignments, and Lender has no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignments or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing or unless Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee becomes, the fee owner of the Premises. Tenant agrees that upon receipt of a written notice from Lender of a default by Landlord under the Loan, Tenant will thereafter, if requested by Lender, pay rent to Lender in accordance with the terms of the Lease. Lender acknowledges Section 4.11 of the Lease, including that Lender must be a City vendor in order for City to make payments to Lender. City will not be in default under the Lease or this Agreement if payments are delayed because Lender has not been qualified as a City vendor. Landlord will treat all payments of rent paid by Tenant to Lender in accordance with this Agreement as rent timely paid under the Lease in compliance with all terms of the Lease.

8. Tenant and Landlord acknowledge and agree that the Agreement does not modify or amend any provisions of the documents evidencing and securing the Loan (the "**Loan Documents**"). By way of example only (a) if the Loan Documents prohibit assignments of the tenant's interest in a lease without Lender's consent, then Landlord must obtain Lender's consent or (b) if the Loan Documents prohibit modifications of the Lease without Lender's consent, then Landlord must obtain Lender's consent. In addition, if Tenant acquires the Property under Section 22 of the Lease, then Landlord will cause the Loan to be paid in full at the closing of Tenant's acquisition.

9. The term "**Lender**" includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors

and assigns, and the terms “**Tenant**” and “**Landlord**” include any successor and assign of the named Tenant and Landlord herein, respectively; provided, however, that such reference to Tenant’s or Landlord’s successors and assigns shall not be construed as Lender’s consent to any assignment or other transfer by Tenant or Landlord.

10. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.

11. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought. This Agreement may be executed in counterparts. This Agreement shall be construed in accordance with the laws of the state of California. The person executing this Agreement on behalf of Tenant is authorized by Tenant to do so and execution hereof is the binding act of Tenant enforceable against Tenant.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

Witness the execution hereof as of the date first above written.

LENDER:

[LENDER] ,  
a Delaware limited liability company

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

TENANT:

CITY AND COUNTY OF SAN FRANCISCO,  
a California municipal corporation

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

Approved as to Form  
DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

LANDLORD:

333 VALENCIA OWNER, L.L.C.,  
a Delaware limited liability company

By: AG Real Estate Manager, Inc.,  
a Delaware corporation, its Manager

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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Signature \_\_\_\_\_

(Seal)

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STATE OF \_\_\_\_\_ )  
 ) Ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

<p>A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.</p>
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STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) Ss

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

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STATE OF \_\_\_\_\_ )  
 ) Ss  
COUNTY OF \_\_\_\_\_ )

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I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public



**EXHIBIT "A" TO SNDA**  
**LIST OF LEASE DOCUMENTS**

**EXHIBIT "B" TO SNDA**  
**DESCRIPTION OF LAND**

**EXHIBIT H**

**STANDARDS FOR JANITORIAL SERVICE**

333 Valencia Street, San Francisco

**I. SPECIFICATION OF SERVICES TO BE PERFORMED - SCOPE OF WORK**

- A.** Landlord's janitorial contractor (its "Contractor") will furnish all labor, materials, and equipment required to perform exterior and interior janitorial service five days a week, Monday through Friday, excluding holidays, at the above location in accordance with these specifications:
- B.** All windows and glass broken by Landlord's Contractor will be replaced at no cost to City.
- C.** Landlord's Contractor must, at all times, maintain adequate staffing that meets these specifications. All employees must wear uniforms (See Section II). City may request Landlord to remove any janitor from the Premises at any time it desires and for any reason whatsoever, and an immediate replacement will be provided. All written notices are to be submitted to:

Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: 333 Valencia St.  
Fax No.: (415) 552-9216

Department of Public Health  
Attention: Director  
101 Grove St.  
San Francisco, CA 94102

- D.** All services must be performed after 5:00 p.m.
- E.** All employees of Landlord's Contractor must be fully trained and experienced in the custodial service trade.
- F.** Landlord will assign space in the Building to Contractor to store supplies and equipment. Supplies and equipment must be neatly stored only in the areas provided by Landlord. No supplies or equipment may be stored in the Premises without City's prior approval.
- G.** City's Recycling Program includes recycling materials from offices in the Building. Bins for recyclable materials can be obtained from City.

- H. On or before the Commencement Date, Landlord's Contractor will provide a schedule for all periodic services specified in this Exhibit.
- I. Janitorial Service Specifications for Offices and Common Areas.
  - 1. Nightly Services
    - a. Turn off all lights as soon as possible each night.
    - b. Vacuum all carpets. Move electric cords to prevent damage to the corner bead.
    - c. Dust mop all resilient and composition floors with treated dust mops. Damp mop to remove spills and water stains as required.
    - d. Spot clean any stains on carpet.
    - e. Dust all desks and office furniture with treated dust cloths.
    - f. Papers and folders on desks are not to be moved.
    - g. Sanitize all telephone receivers.
    - h. Empty all waste paper baskets and other trash containers and remove all trash from floors to the designated trash areas. Sort and put ALL RECYCLABLE MATERIAL into bins provided by City.
    - i. Remove fingerprints, dirt smudges, graffiti, etc., from all doors, frames, glass partitions, windows, light switches, and walls.
    - j. Return chairs and waste baskets to proper positions.
    - k. Clean, sanitize, and polish drinking fountains.
    - l. Monitor any interior public planters and remove extraneous items.
    - m. Dust and remove debris from all metal door thresholds.
    - n. Wipe clean smudged brightwork.
    - o. Spot clean resilient and composition floors as required.
    - p. Service all walk-off mats as required.
    - q. Close all window coverings.
    - r. Check for burned out lights and replace from building stock (to be supplied by Landlord).

**2. Weekly Services**

- a. Dust all low reach areas including chair rungs, structural and furniture ledges, baseboards, window sills, door louvers, wood paneling, molding, etc.
- b. Dust inside of all door jambs.
- c. Clean and polish all metal door thresholds.
- d. Wipe clean and polish all brightwork
- e. Sweep the service stairwell.
- f. Damp mop all vinyl bases.
- g. Edge all carpeted areas.

**3. Monthly Services**

- a. Dust all high reach areas including tops of door, frames, structural and furniture ledges, air conditioning diffusers and return grilles, tops of partitions, picture frames, etc.
- b. Vacuum upholstered furniture.
- c. Move all plastic carpet protectors and thoroughly vacuum under and around all desks and office furniture.
- d. Clean and buff all building standard resilient and/or composite flooring.

**4. Quarterly Services**

- a. Shower-scrub or otherwise recondition all resilient or composition flooring to provide a level of appearance equivalent to a completely refinished floor.
- b. Wash all chair pads.

**5. Semi-Annual Services**

- a. Vacuum all window coverings.
- b. Dust light diffusers.

**6. Annual Services**

- a.** Shampoo carpets in offices (schedule to be approved in advance), using products and methods recommended by manufacturer and/or carpet installation contractor.

**J. Rest Room Service Specifications**

**1. Daily Service**

- a.** Re-stock all rest rooms with supplies from the Landlord's stock, including paper towels, toilet tissue, seat covers, and hand soap, as required.
- b.** Re-stock all sanitary napkin and tampon dispensers from Contractor's stock, as required.
- c.** Wash and polish all mirrors, dispensers, faucets, flushometers, and brightwork with non-scratch disinfectant cleaner. Wipe dry all sinks.
- d.** Wash and sanitize all toilets, toilet seats, urinals, and sinks with non-scratch disinfectant cleaner.
- e.** Remove stains, scale toilets, urinals, and sinks, as required.
- f.** Mop all rest room floors with disinfectant, germicidal solution, include scrubbing of all base, inside corners, and hard-to-reach areas.
- g.** Empty and sanitize all waste and sanitary napkin and tampon receptacles.
- h.** Remove all rest room trash.
- i.** Spot clean fingerprints, marks and graffiti from walls, partitions, glass, aluminum, and light switches as required.
- j.** Check for burned out lights and replace from building stock (supplied by Landlord).
- k.** Ventilate rest rooms.

**2. Weekly Services**

- a.** Dust all low reach and high reach areas, including structural ledges, mirror tops, partition tops and edges, air conditioning diffusers, and return air grilles.

**3. Monthly Services**

- a.** Wipe down all walls and metal partitions. Partitions must be left clean and not streaked after this work.
- b.** Clean all ventilation grilles.
- c.** Dust all doors and door jambs.

**4. Quarterly Services**

- a.** Thoroughly clean and reseal all ceramic tile floors, using approved sealers.

**K. Main Floor Elevator Lobbies and Public Corridors Specifications**

**1. Nightly Services**

- a.** Spot clean all glass including low partitions and the corridor side of all windows and glass doors to City's Premises and other tenants' premises.
- b.** Spot clean all chrome brightwork including swinging door hardware, kick plates, base partition tops, handrails, waste paper receptacles, planters, elevator call button plates, hose cabinets, and visible hardware on the corridor side of tenant entry doors.
- c.** Thoroughly clean all door saddles of dirt and debris.
- d.** Empty, clean, and sanitize all waste paper baskets and refuse receptacles as required.
- e.** Vacuum and spot clean all carpets as necessary.
- f.** Spot clean all elevator doors and frames.

**L. Exterior Structure and Grounds Services Specifications**

**1. Daily Service**

- a.** Spot clean accumulations of dirt, papers, and leaves in all corner areas where winds tend to cause collections of debris.
- b.** Spot clean all exterior glass at building entrances.
- c.** Lift nap on all entry walk-off mats as necessary with a heavy bristle brush and vacuum.

- d. Empty all waste receptacles and remove trash to designated trash areas.
      - e. Clean sidewalk, steps, and landscaped area, walks and benches; including gum removal.
    - 2. Monthly Weekend Services
      - a. Steam clean exterior sidewalk and walk way areas.
- M. Carpet Cleaning
  - 1. Provide spot cleaning to tenant space as necessary and shampoo carpets in tenant office space and any common areas once each year (exact schedule to be approved in advance by City).
- N. Window Cleaning
  - 1. All work to be performed in accordance with generally accepted industry standards.
  - 2. Proper safety standards are to be maintained at all times, including use of proper warning signs and clean up of water in compliance with all City, State, and Federal laws (including OSHA).
  - 3. Window cleaning standards are to include clean up of water, wipe down of adjacent window mullions and ledges to prevent streaking, spotting, and excessive runoff.
  - 4. When necessary, drop cloths are to be used to prevent damage to floors and adjacent surfaces.
  - 5. Interior and exterior window washing will be scheduled immediately before the Lease Commencement Date. Interior glass will be cleaned not less than once per year. Exterior glass will be cleaned as needed, but not less than once every six months, including May of each year.
  - 6. Contractor will notify City for specific scheduling of window washing one week before scheduled cleaning.
  - 7. Contractor will be responsible for removing paint and putty etc. from both glass and plastic windows.
  - 8. Exterior surfaces of windows are not to be washed when it is raining.
  - 9. The words "window" and "light" as used in this Exhibit are synonymous and are to be construed to mean any pane of glass or glass substitute.



## **II. UNIFORMS**

- A.** Janitors must wear their uniforms whenever on duty.
- B.** All personnel, including the coordinator and supervisors, must be uniformed. All personnel must have a visible company name, logo, badge, etc., on their uniform.

## **III. EMPLOYEE SAFETY**

Landlord's Contractor will accept responsibility for determining that all necessary safeguards for protection of Contractor's employees are available or will be furnished. All work performed must conform to CAL-OSHA standards.

## **IV. SUPPLIES**

Landlord or its Contractor will supply floor wax, wax stripper, and other expendable supplies required for daily cleaning and maintenance, as well as janitorial supplies such as hand soap, paper hand towels, paper toilet tissue, paper seat covers, and deodorants. Furthermore, Landlord or its Contractor will supply all equipment including ladders, vacuum cleaners, extractors, floor machines, mops, and buckets.

## **V. APPROVAL OF PRODUCTS**

City will have the right to prohibit the use of any product proposed or being used by Landlord's Contractor should City deem the product to be unsafe or harmful to those items being cleaned or to City's staff. In this regard, Landlord must provide on request a complete list of products to be used in the course of this Lease, together with Material Safety Data Sheets for each cleaning chemical.

## **VI. DISPOSITION OF REFUSE**

All trash and refuse collected by the custodians will be deposited in a debris box as designated by the Landlord. (Landlord will pay for debris box service).

## **VII. MAINTENANCE PROBLEMS**

Employees of Landlord's Contractor will note maintenance problems (such as broken glass, light bulbs missing or burned out, inoperative fixtures, etc.) and report them to Landlord. Any problem that prevents performance must be noted in the log (Section VIII) before the end of the shift. Contractor will not claim, and City will not entertain, any claim that those problems prevented Contractor's performance if the claim is not entered in the log.

## **VIII. JANITORIAL LOG**

Landlord's Contractor will provide, and City will keep, a janitorial log noting any deficiencies in performance, special problems, or instructions. Landlord's Contractor will check the log daily, as arranged with City, and correct any deficiencies in service within

twenty-four (24) hours of the log entry. Contractor will initial and date each entry when deficiency has been corrected.

**IX. EMERGENCY CONTACT**

Landlord's Contractor will provide City with an emergency telephone number where Contractor may be reached at any time during normal business hours (Monday – Friday, 8:00 a.m. – 5:00 p.m.). Contractor must respond to emergency calls relating to deficiency of service by correcting the deficiency within two hours after receipt of the call.

**X. PERFORMANCE**

Landlord and its Contractor will guarantee that workmanship required for the performance of this Lease will be in accordance with the highest level of workmanship and accomplished according to the highest professional standards. The determination as to the adequacy of performance will be made by City or its Director of Property. Contractor or Contractor's agent must be available at reasonable intervals during regular business hours as requested by City, to participate in inspection walk throughs. Contractor will supervise all janitors during all shifts.

**XI. VERIFICATION OF SERVICE**

City may provide, install, or establish a system of sign off slips, service receipts, or room service sign off cards. Landlord's Contractor will faithfully comply with same by initialing, dating, and indicating time that service was completed. It is agreed that no service has been completed unless signed off by Contractor and countersigned by City if said system so requires.

**XII. HOLIDAY SCHEDULE FOR CITY**

New Year's Day  
Martin Luther King Day  
President's Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veteran's Day  
Thanksgiving Day  
Friday after Thanksgiving Day  
Christmas Day

**EXHIBIT I**

**STANDARDS FOR SECURITY SERVICE**

Landlord will furnish security services as follows:

**SECURITY GUARDS:**

The number of security guards in the lobby of the Building from 8 a.m. to 5 p.m., Monday through Friday (except holidays), and during such other times as City reasonably requests in writing.

