

File No. 140288

Committee Item No. 3

Board Item No. 12

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date April 23, 2014

Board of Supervisors Meeting

Date April 24, 2014

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
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#### OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>MTA Resolution No. 14-031</u> |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <u>PowerPoint Presentation</u>   |
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Completed by: Linda Wong Date April 11, 2014

Completed by: L.W. Date April 24, 2014

AMENDED IN COMMITTEE

4/23/14

FILE NO. 140288

RESOLUTION NO.

1 [Lease of Real Property - North Beach Retail Associates, LLC - 2449 and 2450 Taylor Street -  
2 Initial Annual Rate \$7,920]

3 **Resolution retroactively approving a lease between North Beach Retail Associates,**  
4 **LLC, as landlord, and the City and County of San Francisco, acting by and through the**  
5 **San Francisco Municipal Transportation Agency (SFMTA), as tenant, for certain**  
6 **premises at 2449 and 2450 Taylor Street, for a ten-year term to commence retroactively**  
7 **on January 1, 2014, through December 31, 2023, with a ten-year option at an initial**  
8 **annual lease rate of \$7,920 with annual increases, for use as a SFMTA ticket sales**  
9 **room, restroom, and break room for Muni operators and other authorized Muni and City**  
10 **personnel.**

11 WHEREAS, As part of a HOPE VI funded, mixed-use public housing rehabilitation  
12 project administered by the Housing Authority at 2449 and 2450 Taylor Street, three rooms  
13 were built for the SFMTA Muni operator restroom and break room, and ticket sales room; and

14 WHEREAS, The SFMTA previously entered into a lease with North Beach Retail  
15 Associates, LLC, as Landlord, with a commencement date of December 23, 2004 for \$36,000  
16 and a nine year term, with a six year option for \$36,000, the initial term of which ended  
17 December 22, 2013; and

18 WHEREAS, To minimize legislative delay and to provide stability for the SFMTA, the  
19 SFMTA opted to negotiate a new lease with North Beach Retail Associates instead of  
20 exercising the six-year option from the previous Lease; and

21 WHEREAS, North Beach Retail Associates, LLC, is willing to lease certain premises at  
22 2449 Taylor Street and 2450 Taylor Street, for use as a SFMTA ticket sales room and a  
23 restroom and break room for Muni operators and other authorized Muni and City personnel for  
24 a ten-year term with a ten-year option to extend the term, at an initial annual base rent of  
25 \$7,920, plus an additional three percent increase every year, all on the terms and conditions

1 contained in a lease substantially in the form of the lease (Lease) on file with the Clerk of the  
2 Board of Supervisors in File No. 140288, which is hereby declared to be a part of this  
3 resolution as if set forth fully herein; and

4 WHEREAS, On February 18, 2014, the SFMTA Board of Directors approved the  
5 proposed Lease through SFMTA Board Resolution No. 14-031, and directed the Director of  
6 Transportation of the SFMTA to submit the proposed Lease to the City's Board of Supervisors  
7 and Mayor for approval; now, therefore, be it

8 RESOLVED, That the Director of Transportation of the SFMTA is hereby authorized,  
9 on behalf of the City, to execute the Lease and to take all actions under the Lease, including  
10 the exercise of the extension option and the right to exercise the early termination right  
11 described in the Lease; and, be it

12 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City  
13 with respect to the Lease are hereby approved, confirmed and ratified; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of  
15 Transportation of the SFMTA to enter into any amendments or modifications to the Lease  
16 (including without limitation, the exhibits) that the Director of Transportation determines, in  
17 consultation with the City Attorney, are in the best interest of the City, do not increase the rent  
18 or otherwise materially increase the obligations or liabilities of the City, are necessary or  
19 advisable to effectuate the purposes of the Lease or this Resolution, and are in compliance  
20 with all applicable laws, including City's Charter; and, be it

21 FURTHER RESOLVED, That the Lease shall be subject to certification as to funds by  
22 the City's Controller, pursuant to Section 3.105 of the Charter; and, be it

23 FURTHER RESOLVED, That within thirty (30) days of the Lease being fully executed  
24 by all parties the SFMTA shall provide the final Lease to the Clerk of the Board for inclusion  
25 into the official file.

**Item 3**  
**File 14-0288**

**Department:**  
San Francisco Municipal Transportation Agency

### EXECUTIVE SUMMARY

#### Legislative Objectives

The proposed resolution would approve a new lease between North Beach Retail Associates, LLC, as landlord, and San Francisco Municipal Transportation Agency (SFMTA), as tenant, for 330 square feet of space at 2449 and 2450 Taylor Street.

#### Key Points

- SFMTA has an existing lease at 2449 and 2450 Taylor Street in North Beach Place, a public housing site under the jurisdiction of the San Francisco Housing Authority. The leased site is located at the northern terminus of the Powell/Mason Cable Car line, and is used by SFMTA for a break room and restroom for Municipal Railway (Muni) staff and for Muni ticket sales.
- The initial approximately nine-year lease between SFMTA and North Beach Retail Associates was from January 1, 2004 through December 2013 with annual rent of \$4,000 and total rent over nine years of \$36,000. The lease provided an option to extend for an additional six years with annual rent of \$6,000, totaling \$36,000 over six years. According to SFMTA, SFMTA staff determined that negotiating a new lease with lower rates over the long term, rather than extending the existing lease with potentially large rent increases after the end of the six-year extension, was more cost effective.
- The proposed lease would have an initial ten-year term effective January 1, 2014 through December 31, 2023 with first year rent of \$7,920, increasing by three percent per year. The proposed lease provides one ten-year option to extend through December 31, 2033, with the same terms and conditions.
- Because the proposed lease began on January 1, 2014, the proposed resolution should be amended for retroactivity.

#### Fiscal Impact

- Total rent payments over 20 years under the proposed lease, which includes the initial ten-year term and the ten-year extension, are \$212,813. According to SFMTA, this is \$42,123 less than estimated rent payments of \$254,936 if the SFMTA were to exercise the six-year option to extend the existing lease and then enter into a market rate lease after six years.
- The estimated net present value savings over 20 years is \$13,835.

#### Recommendations

- Amend the proposed resolution for retroactivity.
- Approve the proposed resolution as amended.

## MANDATE STATEMENT/BACKGROUND

### Mandate Statement

San Francisco City Charter Section 9.118 (c) states that any lease of real property for a period of ten or more years, including options to renew, or having anticipated revenue to the City and County of one million dollars or more; the modification, amendment or termination of any lease, which when entered into was for a period of ten or more years, including options to renew, or had anticipated revenue to the City and County of one million dollars or more; and any sale or other transfer of real property owned by the City and County, shall first be approved by resolution of the Board of Supervisors.

### Background

The premises at 2449 and 2450 Taylor Street are part of North Beach Place, a mixed-use affordable housing development, under the jurisdiction of the San Francisco Housing Authority and located at the northern terminus of the Powell/Mason cable car line. The project was built in 2004 and includes three rooms that were built for the San Francisco Municipal Transportation Agency (SFMTA) to serve as a Municipal Railway (Muni) operator restroom, break room and ticket sales room, totaling 330 square feet. SFMTA, as tenant, has leased the premises from North Beach Retail Associates, LLC (North Beach Retail Associates), as landlord, since December 2004 for use by SFMTA.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new lease between North Beach Retail Associates, as landlord, and the City and County of San Francisco on behalf of the SFMTA, as tenant, for 330 square feet at 2449 and 2350 Taylor Street, as shown in Table 1 below. Because the new lease term commenced on January 1, 2014, the proposed resolution should be amended for retroactivity.

Under the initial nine-year lease between SFMTA and North Beach Retail Associates, which expired on December 22, 2013, the rent was \$4,000 per year, totaling \$36,000 for nine years. The lease included one six-year option to extend for an additional \$36,000 for six years, or \$6,000 per year. However, SFMTA decided not to exercise that option. According to Kerstin Magary, Senior Manager, SFMTA Real Estate Section, SFMTA staff compared similar lease rates of nearby sites as well as other SFMTA leases in other parts of the City and determined that negotiating a new lease, rather than extending the existing lease, was more cost effective (see Fiscal Impact Section below).

The SFMTA entered into a new ten-year lease with one ten-year option with North Beach Retail Associates, effective January 1, 2014, which was subsequently approved by the SFMTA Board of Directors through SFMTA Board Resolution No. 14-031.

The following table summarizes the major terms of the proposed lease:

**Table 1: Summary of the Major Lease Terms**

Square footage leased	330 square feet
Lease Term	Ten (10) years, commencing on January 1, 2014 through December 31, 2023
Option to Extend	Ten (10) years, commencing on January 1, 2024 through December 31, 2033
First Year Rent	\$7,920 (monthly rent of \$660)
Rent per Square Foot per Month	\$2.00
Rent Increases	3 percent per year of the agreement

**Additional lease terms**

Permitted Use – 2449 Taylor Street will provide SFMTA with a break room and restroom for Muni operators. 2450 Taylor Street will house the Muni ticket sales venue. The total square feet for 2449 and 2450 Taylor Street is 330.

Utilities – Landlord will be responsible for paying for water and sewer service. SFMTA will be responsible for electricity, refuse collection, and telephone service. There will not be any gas service at the premises.

Maintenance and repairs – Landlord is obligated for repairs to the roof, foundation, structural elements of the building, and systems and equipment that are shared with other leasable space. SFMTA will be responsible for maintenance and repairs to the premises as well as provide its own janitorial services.

Resident hiring – SFMTA acknowledges that the landlord under the proposed lease will encourage employment of qualified residents of the project, though SFMTA does not have an obligation to hire any individual (specifically including residents of the project). SFMTA agrees to notify the San Francisco Housing Authority of all openings in entry-level positions at the premises.

All of the above provisions in the proposed lease are the same provisions included in the existing lease.

**FISCAL IMPACT**

Under the proposed lease, SFMTA will pay \$7,920 in first year rent (\$660 per month), which is \$1,920 or 32 percent more than the \$6,000 in annual rent which the SFMTA would have otherwise paid under the existing lease's option to extend. According to the SFMTA staff report to the SFMTA Board of Directors, although entering into a new lease rather than exercising the six-year option to extend the existing lease results in increased costs of \$15,230 over six years<sup>1</sup>,

the SFMTA staff determined that over the 20 year term of the new lease (10 year initial term and 10 year extension), SFMTA will save lease costs. According to Ms. Magary, SFMTA estimates that by entering into the proposed 10-year lease with one additional 10-year option, instead of exercising the six-year option under the existing lease, the net present value savings to SFMTA over the 20-year lease would be \$13,835, as shown in table 2 below. The Budget and Legislative Analyst concurs with the calculation of savings conducted by the SFMTA.

<b>Table 2: Comparative Rents per Lease Term</b>					
	<b>Original Lease Rent Amount</b>		<b>New Lease Rent Amount</b>		<b>(Increase)/ Savings</b>
	<b>Rent per Square Foot per Year<sup>2</sup></b>	<b>Total</b>	<b>Rent per Square Foot per Year</b>	<b>Total</b>	
<b>Lease Year</b>					
1	\$1.52	*\$6,000	\$2.00	\$7,920	(\$1,920)
2	1.52	*6,000	2.06	8,158	(2,158)
3	1.52	*6,000	2.12	8,402	(2,402)
4	1.52	*6,000	2.19	8,654	(2,654)
5	1.52	*6,000	2.25	8,914	(2,914)
6	1.52	*6,000	2.32	9,181	(3,181)
7	3.24	12,814	2.39	9,457	3,357
8	3.33	13,198	2.46	9,741	3,457
9	3.43	13,594	2.53	10,033	3,561
10	3.54	14,002	2.61	10,334	3,668
11	3.64	14,422	2.69	10,644	3,778
12	3.75	14,854	2.77	10,963	3,891
13	3.86	15,300	2.85	11,292	4,008
14	3.98	15,759	2.94	11,631	4,128
15	4.10	16,232	3.03	11,980	4,252
16	4.22	16,719	3.12	12,339	4,380
17	4.35	17,220	3.21	12,709	4,511
18	4.48	17,737	3.31	13,091	4,646
19	4.61	18,269	3.40	13,483	4,786
20	4.75	18,817	3.51	13,888	4,929
<b>Total Estimated</b>		\$254,936		\$212,813	\$42,123
<b>Net Present Value</b>		\$129,163		\$115,327	\$13,835

\* Rent paid under six-year option to extend under the existing lease.

<sup>1</sup> Under the six-year option to extend the existing lease, the rent is \$6,000 per year for six years, totaling \$36,000, while under the new lease, the rent is \$7,920 in the first year, increasing by 3 percent per year, resulting in total rent over six years of \$51,230, an increase of \$15,230.

<sup>2</sup> According to the SFMTA staff report to the SFMTA Board of Directors, rents of comparable properties in the neighborhood ranged from \$1.63 to \$4.41 per square foot per month with a mean rent of \$3.05 per square foot per month.

## RECOMMENDATIONS

1. Amend the proposed resolution to provide for retroactivity to January 1, 2014.
2. Approve the proposed resolution as amended.





**SFMTA**  
Municipal  
Transportation  
Agency

Edwin M. Lee, *Mayor*

Tom Nolan, *Chairman*

Malcolm Heinicke, *Director*

Joél Ramos, *Director*

Edward D. Reiskin, *Director of Transportation*

Cheryl Brinkman, *Vice-Chairman*

Jerry Lee, *Director*

Cristina Rubke, *Director*

**March 20, 2014**

**Honorable Board of Supervisors  
City and County of San Francisco  
1 Carlton B. Goodlett Place, Rm 244  
San Francisco, California 94102**

***RE: Lease of Real Property for the SFMTA  
2449 and 2450 Taylor Street, San Francisco, California***

**Dear Board Members:**

Attached for your consideration is a Resolution authorizing a Lease between North Beach Retail Associates, LLC, as landlord, and the City and County of San Francisco (City), acting by and through the SFMTA, as tenant, for certain premises at 2449 Taylor Street and 2450 Taylor Street (Premises), for use as a SFMTA ticket sales office and a rest room and break room for Muni operators and other authorized Muni and City personnel. The Lease has an initial 10-year term, commencing upon full execution of the agreement, and includes an initial annual lease rate of \$7,920 with annual increases, plus a ten-year extension option.

### **Background**

The SFMTA has 76 transit lines with 146 terminals all over San Francisco and into Daly City. Many routes are long, and can take up to 85 minutes one-way. Muni transit service is provided by 2,200 operators, including 600 female operators. Operators need decent, safe and sanitary restrooms, without having to leave their scheduled route. The SFMTA has a variety of solutions to provide restrooms for operators and other field staff, including 21 permanent restrooms, 17 temporary portables, 23 licenses, leases and use permits, and 28 free restrooms open to the public. The SFMTA also has the Operator Convenience Station Project to install prefabricated restrooms in three phases in 28 locations in San Francisco. The first seven units at six locations have been approved by the City and installations are pending.

There have been Muni operator and ticket sales facilities at the end of the Powell Street cable car line for many years. Currently there are three rooms in the North Beach Housing buildings at 2449 Taylor Street and 2450 Taylor Street (Premises) which consist of a SFMTA ticket sales room and a restroom and break room for Muni operators and other authorized Muni and City personnel. These three rooms were built in 2003 as part of a HOPE VI public housing replacement project administered by the Housing Authority. This block of Taylor Street is also the location of the northern terminus in Fisherman's Wharf for the Powell Street cable car line, and where people queue to ride the Powell Street cable car line, so ticket sales are essential at this location.

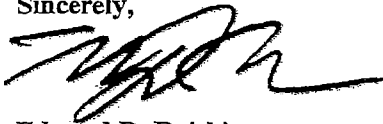
SFMTA initially entered into a lease with North Beach Retail Associates, LLC, Landlord, on December 23, 2004. The initial lease had a nine year term for \$36,000 (commencing December 23, 2004 and terminating December 22, 2013) and included a six-year option to extend for \$36,000.

**Recommendation**

The SFMTA requests that the San Francisco Board of Supervisors authorize the SFMTA to enter into a lease agreement between North Beach Retail Associates, LLC, as landlord, and the City and County of San Francisco (City), acting by and through the SFMTA, as tenant, for certain premises at 2449 Taylor Street and 2450 Taylor Street (Premises), for use as a SFMTA ticket sales room and a restroom and break room for Muni operators and other authorized Muni and City personnel, with an initial 10-year term that commences on the full execution of the Lease at an initial annual lease rate of \$7,920 with annual increases plus a ten-year extension option.

If you have any questions regarding this matter, please contact Kerstin Magary of my staff at 701-4323.

Sincerely,



**Edward D. Reiskin**  
**Director of Transportation**

cc: Sonali Bose, SFMTA Chief Financial Officer and Director of IT  
Kerstin Magary, SFMTA Senior Manager of Real Estate

### **Lease Terms**

SFMTA staff weighed the advantages of exercising the six-year option or negotiating a new lease, and after market due diligence and comparison of approval requirements, opted to negotiate a new lease. The proposed lease includes a ten-year lease with an additional ten-year option to extend, at a lease rate of \$2.00 per square foot for 330 square feet in Year 1, increasing by three percent annually thereafter through the term of the lease.

The proposed lease includes rent payable to the Landlord at \$7,920 for the first year with a three percent rent increase annually. The prior nine-year lease required an up-front payment to the Landlord of \$36,000, which amounted to a per square foot rate of \$1.01. If the six-year extension option had been exercised, the monthly per square rent would have been \$1.52. The SFMTA considered this option, but decided it was in SFMTA's interest to negotiate a longer term lease for these essential facilities in order to insure facilities at this location and to lock in the lease rates for the long term. In the new lease, staff negotiated a lease rate of \$2.00 per square foot (\$660 per month), for the first year, and a three percent increase per year after Year 1. SFMTA performed a comparative lease rate analysis with other sites in the vicinity, and also compared this proposed rent to other Muni operator restroom licenses, leases and use permits that SFMTA has with private businesses and institutions elsewhere in the City. Rents in the neighborhood ranged from \$1.63 to \$4.41, with the mean of all collected comps at \$3.05 per square foot. At \$2.00 per square foot, the proposed rent is below the mean rent for the area. SFMTA operator restroom licenses, leases and use permit rents range from \$124 to \$620, and many of these are shared restrooms inside of small businesses, and none provide a break room or ticket sales room.

### **Funding Impact**

The proposed lease rate of \$2.00 per square foot plus three percent annual increase represents an estimated \$15,225.30 increase in rent costs over the six-year option term contained in the initial lease. The risk of rise in rents over the next twenty years, in a rapidly expanding market, is minimized by the ten year term with ten year option, locking in lease rate to 2034, which provides budget stability for the SFMTA over and above the term of the previous lease.

### **Alternatives Considered**

Other options include exercising the six-year extension option in the initial lease, or seeking a different site for the Muni operator restroom and ticket sales room. Due to the short term, the extension option was not exercised because over the long run it was not as financially beneficial. Staff also looked for other operator restroom alternatives in the neighborhood but did not find viable alternatives to the subject site.

### **SFMTA Board of Directors' Approval**

The SFMTA Board of Directors adopted and authorized this Lease through its Resolution 14-031 at its February 18, 2014 meeting.



**LEASE**  
**NORTH BEACH PLACE**  
**SAN FRANCISCO, CALIFORNIA**  
**BASIC LEASE INFORMATION**

**Date:** January 1, 2014

**Tenant:** City and County of San Francisco, acting by and through its Municipal Transportation Agency ("SFMTA")

**Premises (Section 1.1):** That certain premises located at 2449 Taylor Street and 2450 Taylor Street, in the west and east blocks, respectively, of the North Beach Place retail area, as shown by diagram on Exhibit A attached to the Lease.

**Commencement Date (Section 2.2):** January 1, 2014

**Expiration Date (Section 2.2):** December 31, 2023

**Expiration Options (Section 24):** One (1) Ten (10) Year Option on same terms as Initial Term

**Rent (Section 3.1):** \$660.00 per month for months 1-12. Rent shall be adjusted annually, on the anniversary of the Commencement Date, by an increase of 3% of the rent paid during the previous year.

**Permitted Use (Section 5.1):** The portion of the Premises at 2449 Taylor Street shall be used as a break room and restroom for employees of Tenant working as Muni operators and other authorized Muni and City personnel and the portion of the Premises at 2450 Taylor Street shall be used for Muni ticket sales.

**Utilities (Section 6.1):** Landlord shall provide water and sewer. The Premises shall be separately metered for electricity, which shall be contracted and paid for by Tenant. There shall be no gas service.

**Landlord's Address (Section 23):** North Beach Retail Associates LLC, a California limited liability company  
c/o The John Stewart Company  
1388 Sutter Street, 11<sup>th</sup> Floor  
San Francisco, CA 94109  
Attn: Anna Chun

**Main Landlord Contact:** Anna Chun  
(415) 345-4400

**Tenant's Address (Section 23):** San Francisco Municipal Transportation Agency  
Senior Manager, Real Estate Section  
Finance and Information Technology Division  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103-1547

and to

Office of the City Attorney  
1390 Market Street, Suite 700  
San Francisco, CA 94102-4682  
Attn: Transportation Team

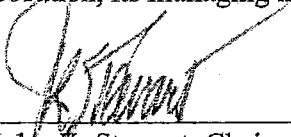
**Main Tenant Contact:** Finance and Information Technology Division  
Senior Manager  
Real Estate Section  
SFMTA  
1 South Van Ness Ave. 8<sup>th</sup> Floor  
San Francisco, CA 94103  
(415) 701-4323

The foregoing Basic Lease Information is incorporated in and made a part of the Lease to which it is attached. If there is any conflict between the Basic Lease Information and the Lease, the Lease shall control.

**LANDLORD:**

**NORTH BEACH RETAIL ASSOCIATES  
LLC**, a California limited liability company

By: John Stewart Company, a California  
Corporation, its managing member

By:   
John K. Stewart, Chairman

**TENANT:**

**CITY AND COUNTY OF SAN  
FRANCISCO** acting by and through its  
**MUNICIPAL TRANSPORTATION  
AGENCY**, a municipal corporation

By: \_\_\_\_\_  
Edward T. Reiskin  
Director of Transportation

**APPROVED AS TO FORM:**

DENNIS J. HERRERA, City Attorney

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

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Exhibits A & B – Description of the Premises and Plans and Specifications for Leasehold Improvements

Exhibit C – Project Rules and Regulations for Nonresidential Tenants

Exhibit D – Rent Payments Schedule

**LEASE  
NORTH BEACH PLACE  
SAN FRANCISCO, CALIFORNIA**

**THIS LEASE**, made as of January 1, 2014, by and between **NORTH BEACH RETAIL ASSOCIATES LLC**, a California limited liability company ("**Landlord**"), and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, acting by and through its **MUNICIPAL TRANSPORTATION AGENCY** ("SFMTA" or "**Tenant**").

**1. LEASE OF PREMISES**

1.1 Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term and subject to the covenants hereinafter set forth, to all of which Landlord and Tenant hereby agree, certain space (the "**Premises**") shown on the site plan attached hereto as Exhibit A. The Premises is part of a mixed use retail and residential project commonly known as North Beach Place (the "**Project**") located at Bay and Taylor Streets, San Francisco, California. Each building in which each portion of the Premises is located is hereinafter referred to as a "**Building**". Landlord owns a ground leasehold interest in the real property on which a portion of the Project (including the Premises) is located, pursuant to that certain Ground Lease Agreement (Residential) (the "**Ground Lease**") dated December 1, 2002 between Landlord and the Housing Authority of the City and County of San Francisco ("**Ground Lessor**"). The portion of the Project leased by Landlord under the Ground Lease, together with all improvements now or hereafter constructed thereon is hereinafter referred to as the "**Residential Project**". Tenant shall have the nonexclusive right in common with other tenants of the Project to use the common areas at the Main entrance at Taylor Street for pedestrian access to and from the Premises.

**2. DELIVERY OF PREMISES AND TERM**

2.1 Delivery of Premises. Landlord shall complete the work described in Section 8.1 as the "Leasehold Improvements" and deliver the Premises to Tenant. The parties anticipate that the work will be substantially completed and the Premises will be delivered to Tenant on or about the Commencement Date shown on the Basic Lease Information. If Landlord shall for any reason fail to substantially complete the Leasehold Improvements and deliver the Premises to Tenant by the Commencement Date, then this Lease shall not be void or voidable, Landlord shall have no liability for such delayed delivery, and Landlord shall substantially complete the Leasehold Improvements and deliver the Premises to Tenant as soon as reasonably possible thereafter, and the Commencement Date shall occur upon the date of delivery. In no event shall the Expiration Date be extended as a result of such delayed delivery.

2.2 Term. The term of this Lease shall begin on the Commencement Date (as the same may be extended as set forth above) and shall end on the Expiration Date, as such date may be extended pursuant to Section 24, unless earlier terminated pursuant to the provisions of this Lease.



**2.3 Condition of Premises.** Except as expressly provided in this Lease, Landlord shall deliver possession of the Premises to Tenant, and Tenant shall accept the same, in its "AS IS" condition. By entry of the Premises hereunder, Tenant shall be deemed to have accepted the Premises in the condition in which Landlord is obligated to deliver the Premises, subject to completion of punchlist items as set forth in Section 8.1. Tenant acknowledges and agrees that Landlord has no obligation and has made no promise to alter, remodel, improve, or repair the Premises, or any part thereof, or to repair, bring into compliance with applicable laws, or improve any condition existing in the Premises as of the Commencement Date except as expressly set forth in this Lease. Tenant agrees that neither Landlord nor any of Landlord's employees or agents has made any representation or warranty as to the present or future suitability or fitness of the Premises or the Residential Project for the conduct of Tenant's particular business.

### **3. RENT**

**3.1 Rent.** Within ten (10) days of the Commencement Date, Tenant shall pay Landlord, as rent, the sum of Six Hundred Sixty Dollars (\$660.00) ("Rent") per month. Rent is based on 330 s.f (see Exhibit A&B) at \$2.00 s.f/ month = \$660.00 month. Rent shall be paid the first day of each month. Rent shall be adjusted annually, on the anniversary of the Commencement Date, by an increase of three percent (3%) of the rent paid during the previous year as set forth in the Rent payment schedule attached hereto as "Exhibit D".

**3.2 Reimbursement of Extraordinary Expenses.** Tenant shall reimburse Landlord for any expenses incurred by Landlord in the ownership and operation of the Building or the Residential Project resulting from Tenant's particular use of the Premises such as additional insurance or security costs resulting from strikes or labor disturbances or resulting from acts or behavior of Tenant's customers; provided, however, that no such payment shall be due under this Section 3.2 until thirty (30) days after written request for reimbursement delivered to Tenant by Landlord itemizing such expense(s) and the reason(s) such expense(s) was/were incurred, together with supporting invoices or other documentation reasonably evidencing such expenses.

### **4. OTHER TAXES PAYABLE BY TENANT**

Tenant shall pay prior to delinquency all taxes, assessments, license fees, charges or other governmental impositions assessed against or levied or imposed upon Tenant's business operations, or upon Tenant's leasehold interest, or Tenant's fixtures, furnishings, equipment and personal property located in the Premises. Whenever possible, Tenant shall cause all such items to be assessed and billed separately from the property of Landlord. In the event any such items shall be assessed and billed with the property of Landlord, Tenant shall pay Landlord its share of such taxes, charges or other governmental impositions within thirty (30) days after Landlord delivers a statement and a copy of the assessment or other documentation showing the amount of such impositions applicable to Tenant's property. Tenant shall pay any rent tax or sales tax, service tax, transfer tax or value added tax, or any other applicable tax on the Rent or services herein or otherwise respecting this Lease.

## 5. USE

5.1 Permitted Use. The Premises shall be used solely for the purposes specified in the Basic Lease Information (the "**Permitted Use**"). Tenant shall not use or permit the Premises to be used for any purpose other than the Permitted Use without Landlord's prior written consent, which consent may be withheld by Landlord in its sole and absolute discretion.

5.2 Continuous Operation. Tenant shall keep and maintain the Premises fully fixtured, stocked and staffed for the efficient serving of its customers and shall carry on its business in a manner comparable to other similar municipal facilities, diligently and continually at the Premises throughout the term of this Lease. Notwithstanding the foregoing, Tenant shall not be in violation of this Section 5.2 for any interruption in operation of the Premises of ninety (90) days or less so long as Tenant has not abandoned the Premises within the meaning of California Civil Code Section 1951.3.

5.3 Operating Covenants. As further consideration to Landlord to enter into this Lease, Tenant covenants and agrees as follows: (i) Tenant shall not conduct or permit to be conducted in the Premises any sale by auction, or any fire, distress or bankruptcy sale; (ii) Tenant shall not place or install in the Premises or permit the use in the Premises of any video games, pinball machines or other devices or equipment for amusement or recreation, or any vending machines, newspaper racks, cigarette vending machines or other coin-operated devices, provided, however, that Tenant may have a television, radio, computer and/or vending machines in the break room for the exclusive use of Tenant's employees; (iii) Tenant shall not store, display or sell goods or merchandise outside the boundaries of the Premises, nor shall Tenant place or permit portable signs or any other objects or devices to be stored or to remain outside such boundaries, nor shall Tenant solicit in any manner in any other portion of the Building beyond the Premises, provided that Tenant may display brochures about its services in a rack immediately outside the ticket booth so long as the size and design of such rack is approved by Landlord, which approval shall not unreasonably be withheld or delayed, and so long as such rack does not impede pedestrian traffic or access to the public restroom located near the Premises, and so long as such rack does not violate any rule, law or regulation of the City and County of San Francisco.; (iv) The visual appearance of the interior of the Premises from the surrounding exterior area shall be clean, visually attractive and open, and in keeping with operation of other similar municipal facilities; and (v) Tenant shall conduct its business to minimize noise in and about the Premises. In addition, Tenant shall not operate or lease (or permit to be operated or leased) any portion of the Premises for adult entertainment or the sale of alcoholic beverages, firearms, adult books or adult videos. Tenant shall not do or permit to be done in, on or about the Premises, nor bring or keep or permit to be brought or kept therein, anything which is prohibited by or will in any way conflict with any law, ordinance, rule, regulation or order now in force or which may hereafter be enacted, or which is prohibited by any insurance policy carried by Landlord for the Residential Project, or which will in any way increase the existing rate of, or cause a cancellation of, or affect any insurance for the Residential Project. Tenant shall comply with all applicable federal, state and local reporting and disclosure requirements applicable to its business operations in the Premises. Tenant shall not do or permit anything to be done in or about the Premises which will unreasonably obstruct or interfere with the rights of Landlord or other tenants of the Project, or injure or annoy them. Tenant shall not

cause, maintain or permit any nuisance in, on or about the Premises or commit or suffer to be committed any waste in, on or about the Premises.

5.4 Hazardous Substances. Tenant shall not bring, keep, discharge or release or permit to be brought, kept, discharged or released, in or from the Premises, the Building or the Project any toxic or hazardous substance, material or waste or any other contaminant or pollutant, other than nonreportable quantities of such substances when found in commonly used household cleansers and office supplies, and any such substances shall be used, kept, stored and disposed of in strict accordance with all applicable federal, state and local laws. Tenant shall notify Landlord immediately upon discovery of the presence, discharge or release of any hazardous or toxic substance in or around the Premises, the Building or the Project (other than the substances expressly permitted above). Upon the written request of Landlord, Tenant shall provide periodic written reports of the type and quantities of hazardous substances, materials, waste and contaminants used, stored or being disposed of by Tenant in the Premises. If Landlord in good faith determines that such substances create a risk to the health and safety of the Tenant's employees and invitees or to any other tenant or invitee of the Project, Tenant shall, upon demand by Landlord, take such remedial action, at the sole cost and expense of Tenant (including, without limitation, elimination or removal of any hazardous substances from the Premises brought, kept, discharged or released by Tenant or any contractor, agent, invitee or employee of Tenant), as Landlord deems necessary or advisable or as required by any applicable law.

5.5 Compliance with Rules. Tenant shall comply with the Project Rules And Regulations For Nonresidential Tenants ("**Rules**") as they may be promulgated or amended by Landlord from time to time. The Rules are attached hereto as Exhibit C and incorporated herein by reference. Landlord shall not be liable to Tenant for any violation of the Rules by other tenants of the Project.

5.6 Nondiscrimination. Tenant covenants by and for Tenant and Tenant's heirs, personal representatives and assigns and all persons claiming under Tenant or through Tenant that this Lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased nor shall Tenant or any person claiming under or through Tenant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased.

5.7 Resident Hiring. Tenant acknowledges that the lessor under the Ground Lease will encourage employment of qualified residents of the Project. Although Tenant shall have no obligation to hire any one or more individuals (specifically including residents of the Project), Tenant agrees to notify the San Francisco Housing Authority of all openings in entry-level positions at the Premises. Any such notice shall be given concurrently with placing advertisements in local advertising media or posting notices at the Premises. The notices will contain a job description and will state the qualifications for employment, such as education or training, needed skills and other requirements. Tenant will interview qualified applicants according to its standard procedures. Tenant reserves the right to promptly select or reject any or all applicants, based on Tenant's needs and the applicants' qualifications.

## 6. SERVICES

6.1 Utilities. Landlord shall provide water and sewer service to the Premises at no charge to Tenant. Tenant shall contract with and pay directly the utility provider for all electricity, telephone, refuse collection, and all other utility-type services furnished to Tenant or the Premises, together with all related installation or connection charges or deposits. The Premises is separately metered for electricity. There will be no gas service to the Premises.

6.2 Interruption in Services. Landlord shall not be liable in damages for (i) any interruption whatsoever in utility services which is due to fire, accident, strike, governmental authority, acts of God, or other causes beyond the reasonable control of Landlord, (ii) the limitation, curtailment, rationing or restriction on use of water, electricity, gas or any form of energy serving the Premises, the Building or the Project, whether such results from mandatory governmental restrictions or voluntary compliance with governmental guidelines, or (iii) any temporary interruption in such service which is necessary to the making of alterations, repairs, or improvements to the Building, the Residential Project or the Project or any part of either, nor shall Landlord be liable under any circumstances for consequential damages, however occurring, arising in connection with or incidental to any of the foregoing, nor, shall any such failure, interruption or curtailment relieve Tenant from the duty to pay the full amount of rent herein reserved, or constitute or be construed as a constructive or other eviction of Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future law with respect to such occurrence. Whenever it is reasonably possible to do so, Landlord shall give prior notice to Tenant of any interruption in service for which Landlord is responsible and shall use its best efforts to schedule such interruption in such a manner as to minimize the impact on Tenant's business.

6.3 Electrical Energy Use in the Premises. Tenant's use of electrical energy in the Premises shall not at any time exceed the capacity of any of the electrical panel boards, risers, transformers and other equipment serving the Premises. In order to insure that such capacity is not exceeded and to avoid any possible adverse effect upon the Building's distribution of electricity via the Building's electrical system, Tenant shall not, without Landlord's prior consent, which shall not to be unreasonably withheld, connect any trade fixtures, appliances, lighting or equipment (other than such items which do not increase Tenant's overall electrical consumption) to the electrical system serving the Premises, other than as existing on the commencement of the term of this Lease. The parties acknowledge that safety and security devices, services and programs provided by Landlord, if any, while intended to deter crime and ensure safety, may not in given instances prevent theft or other criminal acts, or ensure safety of persons or property.

6.4 Security, Safety Systems and Programs. Any security system installed by Tenant in the Premises must be compatible with any Building-wide, Residential Project-wide or Project-wide security system and shall be subject to Landlord's prior written approval and all other provisions of this Lease. The risk that any safety or security device, service or program may not be effective, or may malfunction or be circumvented by a criminal, is assumed by Tenant with respect to Tenant's property and interests, and Tenant shall obtain insurance coverage to the extent Tenant desires protection against such criminal acts and other losses. Tenant agrees to cooperate in any reasonable safety or security program developed by Landlord or required by applicable law. The parties acknowledge that safety and security devices, services and programs

provided by Landlord, if any, while intended to deter crime and ensure safety, may not in given instances prevent theft of other criminal acts, or ensure safety of persons or property.

## 7. MAINTENANCE AND REPAIRS

7.1 Landlord's Maintenance Obligations. Landlord shall maintain and repair the roof, Building foundations and other structural elements of the Buildings (other than as expressly set forth herein); any building systems or equipment serving the Premises in common with other leasable space in the Residential Project. Any damage in or to any such areas, elements or systems or any other portion of the Project, caused by Tenant or any agent, officer, employee, contractor, licensee or invitee of Tenant shall be repaired by Landlord at Tenant's expense and Tenant shall pay to Landlord, upon billing by Landlord, as additional rent, the cost of such repairs incurred by Landlord.

7.2 Tenant's Maintenance Obligation. Tenant shall, at all times during the term of this Lease and at Tenant's sole cost and expense, maintain and repair the Premises and every part thereof, including, without limitation, any doors, windows, awnings or signs, and all equipment, fixtures and improvements therein and keep all of the foregoing clean and in good order and operating condition, ordinary wear and tear and damage thereto by fire or other casualty excepted. Tenant shall also be responsible for repair of any damage to the exterior façade of the Premises. All repairs and replacements made by or on behalf of Tenant shall be made and performed at Tenant's cost and expense, by Tenant or by contractors or mechanics reasonably approved by Landlord and so that the same shall be at least equal in quality, value, character and utility to the original work or installation being repaired or replaced. Upon mutual agreement, Landlord may make any repairs or replacements required hereunder, and Tenant shall pay for the costs of such work as Additional Rent due no later than thirty (30) days after completion. Tenant hereby waives all rights under California Civil Code Section 1941 and all rights to make repairs at the expense of Landlord or in lieu thereof to vacate the Premises as provided by California Civil Code Section 1942 or any other law, statute or ordinance now or hereafter in effect. Subject to Section 19 hereof, Tenant shall, at the end of the term of this Lease, surrender to Landlord the Premises and all alterations, additions, fixtures (except for Tenant's trade fixtures) and improvements therein or thereto in the same condition as when received, ordinary wear and tear and damage thereto by fire or other casualty excepted. Without limiting the generality of the foregoing:

(a) Tenant shall maintain in a clean condition, its signs (whether within or outside of the Premises), metal work, walls, partitions, floors, doors and the interior and exterior of all windows in the Premises.

(b) Tenant shall provide its own janitorial service for the Premises and for the sidewalk area outside the Premises. Tenant shall store all refuse and other waste materials within the Premises in a location which is not visible to customers and shall cause such refuse and waste materials to be removed from the Premises daily to such location in the Project and in such a manner as may be designated from time to time by Landlord. Tenant shall not place or discard waste materials in any part of the Project, except in the designated collection area.

(c) Tenant shall cause to be maintained in good operating condition and repair all heat, ventilating and air conditioning equipment installed in the Premises. If Landlord so elects, Tenant shall retain the services of Landlord or a maintenance company retained by Landlord to perform maintenance of Tenant's heating, ventilating and air conditioning equipment and shall reimburse Landlord for the costs thereof upon demand.

(d) Tenant shall maintain all electrical and plumbing pipes, lines, outlets, fixtures, and other utility installation in the Premises. Tenant shall also maintain any and all sanitary waste lines and facilities within the Premises and beyond the Premises to the point of intersection with common waste lines.

(e) Tenant shall retain the services of a licensed pest control contractor to maintain the Premises free of rodents, roaches and other vermin.

7.3 Glass Repair and Maintenance. As soon as practicable and in any event within fifteen (15) days after any exterior glass in the Premises is broken or cracked, including a so-called "bull's eye" break in the glass, Tenant shall, at its sole cost and expense, replace such glass with glass of the same kind and quality, and, as may be necessary or desirable in connection with such replacement, repair or replace the frames for such glass. In the event that Tenant shall fail to so replace such glass and, if necessary, repair or replace such frames within said fifteen (15) day period, Landlord may at any time thereafter replace such glass and, if necessary, replace or repair such frames on Tenant's behalf and Tenant shall promptly pay to Landlord the reasonable cost incurred by Landlord in so doing. In addition, Tenant, at Tenant's expense, shall clean the interior of all windows and the interior and exterior of all doors (including in each case the frames therefor) of the Premises and the perimeter walls thereof whenever, in the reasonable judgment of Landlord, it is necessary. Upon mutual agreement, Landlord may make any repairs or replacements required hereunder, and Tenant shall pay for the costs of such work as Additional Rent due no later than thirty (30) days after completion.

## 8. ALTERATIONS

8.1 Initial Tenant Improvements. The initial improvements to the Premises shall be made in accordance with this Section 8.1.

Landlord, through its general contractor approved by Tenant, shall construct the Premises, perform the work and make the installations in the Premises, at Landlord's cost, pursuant to the plans and specifications described on **Exhibit B** hereto (the "**Leasehold Improvements**"). In addition, upon substantial completion of the Premises and after Tenant has accepted delivery thereof, Landlord shall remove the existing Muni Operator restroom and passenger shelter, and the adjacent sidewalks. The Landlord shall install new sidewalks pursuant to Department of Public Works requirements. The Leasehold Improvements and the other work to be performed by Landlord hereunder are referred to collectively as "**Landlord's Work**".

In conducting the removal work, Landlord shall use commercially reasonable efforts to leave undamaged and in place the existing electrical service conduit that provides electrical service to the existing bathroom and shelter.

Landlord shall secure and pay for any building and other permits and approvals, government fees, licenses and inspections necessary for the proper performance and completion of Landlord's Work. Tenant will cooperate with Landlord in its efforts to obtain such permits and approvals. Landlord shall provide copies to Tenant promptly following receipt thereof. Landlord shall be responsible for arranging for all inspections required by Tenant's Bureau of Building Inspection. Landlord shall comply with and give notices required by all laws, rules, regulations, ordinances, building restrictions and lawful orders of public authorities bearing on the Landlord's Work. Without limiting the foregoing, construction of the Leasehold Improvements shall comply with all applicable disabled access laws, including, without limitation, the requirements of the Americans with Disabilities Act of 1990, Title 24 of the California Code of Regulations (or its successor) and Tenant's requirements for program accessibility. Landlord shall pay prevailing wages in connection with construction of the Leasehold Improvement Work as further provided in Section 22.23 (Prevailing Wages), below, and shall not use tropical hardwood wood products, virgin redwood wood products as further provided in Section 22.25 (Tropical Hardwood and Virgin Redwood Ban), below.

The Leasehold Improvements shall be deemed to be "substantially completed" for purposes of this Lease when they have been sufficiently completed so that Tenant can occupy the Premises and conduct its business for its intended uses in the reasonable judgment of Tenant, through its Director of Transportation or his designee. The Leasehold Improvements shall be deemed substantially completed and shall be approved by Tenant even though there may remain minor details that would not interfere with Tenant's use ("punch list items"). Tenant shall deliver to Landlord a list of punch list items within 30 days after Tenant's acceptance of the Premises, and Landlord shall diligently pursue to completion all such items. No approval by Tenant or any of its Agents of the completion of the Leasehold Improvements for purposes of this Lease shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises, and nothing herein shall limit Landlord's obligations to obtain all such approvals.

Landlord and Tenant acknowledge that Landlord shall complete the Leasehold Improvements exclusive of the installation of telecommunications, data and computer cabling facilities and equipment. Tenant, at Tenant's sole cost and expense, shall be responsible for installing such facilities and equipment, provided that Landlord shall furnish access to Tenant and its consultants and contractors to the main telephone service serving the Premises for which access is needed for proper installation of all such facilities and equipment including, but not limited to, wiring. Tenant shall have the right to enter the Premises at reasonable times during the course of the Leasehold Improvements work in order to install such facilities and equipment. Tenant and Landlord shall use their good faith efforts to coordinate any such activities to allow the Leasehold Improvements and the installation of such facilities and equipment to be completed in a timely and cost-effective manner.

8.2 Subsequent Improvements. Tenant shall not make any alterations, additions or improvements in or to the Premises or any part thereof, or attach any fixtures or equipment thereto, without Landlord's prior written consent, which consent, except as hereinafter provided, shall not be unreasonably withheld or delayed. All alterations, additions and improvements, if any, made by Tenant in or to the Premises shall be made at Tenant's sole cost and expense, shall be consistent with the retail use of the Premises, shall not adversely affect the utility of the Premises for future tenants, shall not affect in any way the structural, exterior or roof elements of

the Building or the mechanical, electrical, plumbing or life safety systems of the Building or cause or result in Landlord being required by law to make additional alterations, additions or improvements to the building described in Section 8.2(b) below or any portion thereof, and shall otherwise be done in compliance with all of the following:

(a) No such work shall proceed without Landlord's prior written approval of (i) Tenant's work by Tenant or by Tenant's contractor(s); (ii) certificates of insurance from a company or companies approved by Landlord, furnished to Landlord by Tenant's contractor for the insurance described in 8.2(b); (iii) adequate financial assurances in form and substance reasonably requested by Landlord securing the lien-free completion of the intended work, and (iv) detailed plans and specifications for such work, prepared by a licensed architect and engineer approved in writing by Landlord.

(b) Tenant's Contractors shall carry (a) workers compensation insurance covering all of their employees in the statutory amount, (b) employer's liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence, and (c) comprehensive general liability insurance of at least Three Million Dollars (\$3,000,000) combined single limit for bodily injury, death, or property damage; and the policies therefor shall cover Landlord and Tenant as additional insured. Builder's all risk insurance coverage shall be carried by Tenant, in amounts sufficient to cover the guaranteed maximum price of Tenant's Work. All insurance carriers hereunder shall be rated at least A and VIII in Best's Insurance Guide. Tenant shall deliver to Landlord certificates for all such insurance required to be carried by it (or Tenant's Contractors) under this Paragraph 2(g) before the commencement of Tenant's Work, or before any equipment used in connection with Tenant's Work is moved onto the Building or Premises. All policies of insurance required hereunder must require that the carrier give the Landlord and Tenant twenty (20) days advance written notice of any cancellation or reduction in the amounts of insurance.

(c) All such work shall be done strictly in accordance with the plans approved by Landlord and otherwise in conformity with a valid building permit and/or all other permits or licenses when and where required, copies of which shall be furnished to Landlord before the work is commenced, and with any work not acceptable to any governmental authority or agency having or exercising jurisdiction over such work, or not reasonably satisfactory to Landlord, being promptly replaced and corrected at Tenant's expense. Landlord's approval or consent to any such work shall not impose any liability upon the Landlord.

(d) Tenant shall immediately reimburse Landlord for any expense incurred by Landlord by reason of any faulty work done by Tenant or Tenant's contractors, or by reason of inadequate cleanup.

(e) Tenant shall be responsible for any alterations, additions or improvements required by law to be made by Landlord to or in the Premises or the building in which the Premises is located as a result of Tenant's proposed alterations, additions or improvements.

(f) Tenant or its contractors will in no event be allowed to make plumbing, mechanical or electrical improvements to the Premises which adversely affect the



Building or any structural modification to the Building without first obtaining Landlord's consent, which Landlord can in its sole and absolute discretion deny.

(g) All work by Tenant shall be scheduled through Landlord and shall be diligently and continuously pursued from the date of its commencement through its completion.

(h) Upon completion of any alterations, additions or improvements in or to the Premises by Tenant, Tenant shall, at its sole cost and expense, promptly provide Landlord with updated "record" drawings of all such alterations and improvements.

8.3 No Liens. Tenant shall give written notice to Landlord of the date on which construction of any work will be commenced at least ten (10) days prior to such date. Tenant shall keep the Premises and the Project free from mechanics', material men's and all other liens arising out of any work performed, labor supplied, materials furnished or other obligations incurred by Tenant. Landlord shall have the right to post and keep posted on the Premises any notices that may be provided by law or which Landlord may deem to be proper for the protection of Landlord, the Premises and the Project from such liens. Tenant shall promptly and fully pay and discharge all claims on which any such lien could be based, and in case of any such lien attaching or notice of any lien, Tenant covenants and agrees to cause it to be immediately released and removed of record. Notwithstanding anything to the contrary set forth in this Lease, in the event that such lien is not released and removed by bond or otherwise within five (5) days after written notice of such lien is delivered by Landlord to Tenant, Landlord may, without waiving its rights and remedies based upon such breach by Tenant and without releasing Tenant from any of its obligations, immediately take all action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by Landlord in connection with such lien shall be deemed additional rent under this Lease and shall immediately be due and payable by Tenant.

## 9. INDEMNIFICATION AND RELEASE OF LANDLORD

9.1 Limitation of Landlord's Liability. Landlord shall not be liable to Tenant, and Tenant hereby waives any and all claims against Landlord, for any damage to or loss or theft of any property or for any bodily or personal injury, illness or death of any person in, on or about the Premises, the Building or the Project, from any cause whatsoever, except to the extent caused by the gross negligence or willful misconduct of Landlord. In addition, in no event shall Landlord be liable for any consequential or punitive damages (including, but not limited to, damage or injury to persons, property and the conduct of Tenant's business and any loss of revenue therefrom). In addition to the foregoing limitations of liability set forth above, Tenant acknowledges and agrees that in the event it shall have any claim against Landlord arising out of or related to this Lease, Tenant's sole and exclusive recourse shall be against the interest of Landlord in the Project, and Tenant hereby releases and waives any and all rights to assert any claim against, or obtain any damages from, the partners, members, directors and officers of Landlord or any persons or entities constituting or representing Landlord.

9.2 Indemnification. SFMTA shall indemnify, defend and hold harmless ("Indemnify") Landlord and its Agents from and against any and all claims, costs and expenses, including, without limitation, reasonable attorneys' fees, (collectively, "Claims"), incurred as a result of (a) SFMTA's use of the Premises, (b) any default by SFMTA in the performance of any of its material obligations under this Lease, or (c) any negligent acts or omissions of SFMTA or its Agents in, on or about the Premises or the Property; provided, however, SFMTA shall 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 by reason of any Claim Indemnified by SFMTA hereunder, SFMTA may, at its sole option, elect to defend such Claim by attorneys in Office of the City Attorney, by other attorneys selected by SFMTA, or both. SFMTA shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. SFMTA's obligations under this Section shall survive the termination of the Lease. This Section 9.2 shall survive the termination of this Lease with respect to any damage, bodily or personal injury, illness or death occurring prior to such termination. The indemnification provisions of this Article 9 are in addition to and shall not detract from, or impair, the indemnification obligations of Tenant under any other provisions of this Lease.

## 10. INSURANCE

10.1 Tenant's Self Insurance. Landlord acknowledges that Tenant maintains a program of self-insurance and agrees that Tenant shall not be required to carry any insurance with respect to this Lease. Tenant assumes the risk of damage to any of Tenant's Personal Property, except for damage caused by Landlord or its Agents.

10.2 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, Landlord and Tenant each hereby waives any right of recovery against the other for any loss or damage sustained with respect to the Building or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of the other, to the extent such loss or damage is covered by insurance which Landlord is required to purchase under this Lease or is otherwise actually recovered from valid and collectible insurance covering the Landlord, and with respect to the Tenant, to the extent such loss or damage is of the type which is covered by Tenant's program of self insurance or which would be covered by all-risk property insurance of the type customarily carried by retail tenants in San Francisco. Landlord agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Building or the Premises; provided, Landlord's failure to do so shall not affect the above waiver.

## 11. COMPLIANCE WITH LEGAL REQUIREMENTS

Tenant shall, at Tenant's sole cost and expense, promptly comply with all laws, ordinances, rules, regulations, orders and other requirements of any government or public authority now in force or which may hereafter be in force, including, without limitation, all relevant laws, ordinances, rules, regulations and orders dealing with the use, transport, storage

and disposal of asbestos, petroleum products and hazardous substances, materials and waste which are or may become regulated by any local government authority, the State of California or the United States of America, the federal Americans With Disabilities Act as it affects Tenant's operations and employees in the Premises, with all requirements of any board of fire underwriters or other similar body now or hereafter constituted, with the conditions of any certificate of occupancy of the building in which the Premises is located or any recorded instrument encumbering the Residential Project (copies of which are provided to Tenant), and with all directives issued pursuant to any law by any governmental agency or officer, insofar as any thereof relate to or are required by the condition (including any condition preexisting the delivery of the Premises to Tenant), use or occupancy of the Premises, or the operation, use or maintenance of any personal property, fixtures, machinery, equipment or improvements in the Premises, whether now in effect or enacted in the future and whether or not now foreseeable, but Tenant shall not be required to make structural changes unless structural changes are related to or required by Tenant's acts or use of the Premises or by improvements made by or for Tenant.

## 12. ASSIGNMENT OR SUBLEASE

12.1 No Transfers. Tenant acknowledges that Landlord has entered into this Lease based on the unique nature of Tenant and Tenant's use of the Premises. Tenant shall not, without the prior written consent of Landlord, which may be withheld by Landlord in its sole and absolute discretion, assign, transfer, pledge, encumber, hypothecate or permit any lien to attach to this Lease or any interest herein, by operation of law or otherwise, or enter into any sublease, license occupancy or use agreement for all or any portion of the Premises.

## 13. RIGHTS RESERVED BY LANDLORD

Landlord reserves the right to control the Premises, the Building and the Project (which rights may be exercised without subjecting Landlord to claims for constructive eviction, abatement of Rent, damages or other claims of any kind), including, without limitation, the rights set forth below. In the exercise of its rights under this Article 13, Landlord shall make commercially reasonable efforts to minimize any interference with Tenant's use of the Premises.

13.1 Entry by Landlord. Landlord shall have the right to enter the Premises with reasonable verbal or written notice, which in no event shall be less than 24 hours (except in the case of an emergency), at any time to (a) inspect the Premises, (b) exhibit the Premises to prospective purchasers, lenders or tenants, (c) determine whether Tenant is performing all of Tenant's obligations, (d) supply any services to be provided by Landlord, (e) post notices of nonresponsibility, and (f) make any repairs to the Premises, or make any repairs to any adjoining space or utility services, or make any repairs, alterations or improvements to any other portion of the Building or the Residential Project. Tenant waives all claims for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry. Landlord shall at all times have a key to unlock all doors in or to the Premises (excluding Tenant's safes, vaults and similar security areas designated in a written notice delivered by Tenant to Landlord) and Landlord shall have the right to use any and all means which Landlord may deem proper to open

such doors in an emergency to obtain entry to the Premises. Any entry to the Premises obtained by Landlord by any of such means shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

13.2 Limitations of Access. To limit or prevent access to the Premises, the Building or the Project, or otherwise take such action or preventive measures deemed necessary by Landlord for the safety of tenants or other occupants or licensees of the Project, the Building or the Premises or the protection of the Project, the Building or the Premises and other property located thereon or therein, in case of fire, structural deficiency, earthquake, invasion, insurrection, riot, civil disorder, public excitement or other dangerous condition, or threat thereof.

13.3 Changes. Landlord shall have the right to: (i) change the name of the Project or the street address of the Premises or the Building; (ii) install and maintain signs on the exterior of the Building and/or the Project; (iii) to decorate and make alterations, additions and improvements, structural or otherwise, in or to the Project, the Building or any part thereof, and any adjacent building, structure, parking facility, land, street or alley (including, without limitation, changes and reductions in parking facilities, landscaped areas, driveways, roads and other public areas and the installation of signs, kiosks, planters, sculptures, displays, and other structures, facilities, amenities and features therein, and changes for the purpose of connection with or entrance into the Premises, the Building or the Project or use of the Project in conjunction with any adjoining or adjacent building or buildings, now existing or hereafter constructed). In connection with such matters, or with any other repairs, maintenance, improvements or alterations in or about the Premises, the Building or the Project, Landlord may erect scaffolding and other structures reasonably required, and during such operations may enter upon the Premises and take into and upon or through the Premises all materials required to make such repairs, maintenance, alterations or improvements, and may close public entry ways or other public areas. Notwithstanding the foregoing, Landlord shall provide advance notice of not less than 48 hours to Tenant of any such entry of the Premises.

#### 14. EVENTS OF DEFAULT AND REMEDIES

14.1 Event of Default. The occurrence of any one or more of the following events ("**Event of Default**") shall constitute a breach of this Lease by Tenant:

(a) Tenant fails to pay Rent or any amount of money or charge payable by Tenant hereunder as and when such amount or charge becomes due and payable and such failure continues for more than thirty (30) days after Landlord gives written notice to Tenant; or

(b) Any assignment, subletting or transfer in violation of the terms of this Lease, or the taking of any action leading to, or the actual dissolution or liquidation of Tenant, if Tenant is other than an individual; or

(c) Tenant fails to perform or breaches any other agreement or covenant of this Lease to be performed or observed by Tenant as and when performance or

observance is due and such failure or breach continues for more than thirty (30) days after Landlord gives written notice thereof to Tenant; provided, however, that if, by the nature of such agreement or covenant, such failure or breach cannot reasonably be cured within such period of thirty (30) days, an Event of Default shall not exist as long as Tenant commences with due diligence and dispatch the curing of such failure or breach within such period of thirty (30) days and having so commenced, thereafter prosecutes with diligence and dispatch and completes the curing of such failure or breach within ninety (90) days after Landlord's notice; or

(d) Tenant (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors, relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Tenant or of any substantial part of Tenant's property, or (v) takes action for the purpose of any of the foregoing; or

(e) A court or government authority enters an order, and such order is not vacated within thirty (30) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Tenant or with respect to any substantial part of Tenant's property, or (ii) constituting an order for relief or approving a petition, for relief or reorganization or arrangement, or any other petition in bankruptcy, or for liquidation, or to take advantage of any bankruptcy, insolvency or other debtors, relief law of any jurisdiction or (iii) ordering the dissolution, winding up or liquidation of Tenant; or

(f) This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within thirty (30) days; or

(g) Tenant abandons the Premises (within the meaning of California Civil Code Section 1951.3).

#### 14.2 Remedies

(a) If an Event of Default occurs, Landlord shall have the right at any time to give a written termination notice to Tenant and, on the date specified in such notice, Tenant's right to possession shall terminate and this Lease shall terminate. Upon such termination, Landlord shall have the right to recover from Tenant all sums owed by Tenant to Landlord and all other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform all of Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

(b) Even though Tenant has breached this Lease, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to enforce all its rights and remedies under this Lease, as set forth in California Civil Code Section 1951.4. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's

interest under this Lease shall not constitute a termination of Tenant's right to possession unless written notice of termination is given by Landlord to Tenant.

(c) The remedies provided for in this Lease are in addition to all other remedies available to Landlord at law or in equity by statute or otherwise.

14.3 Landlord's Right to Cure. All agreements and covenants to be performed or observed by Tenant under this Lease shall be at Tenant's sole cost and expense and without any abatement of rent. If Tenant fails to pay any sum of money to be paid by Tenant or to perform any other act to be performed by Tenant under this Lease, Landlord shall have the right, but shall not be obligated, and without waiving or releasing Tenant from any obligations of Tenant, to make any such payment or to perform any such other, act on behalf of Tenant in accordance with this Lease. All sums so paid by Landlord and all necessary incidental costs shall be deemed additional rent hereunder and shall be payable by Tenant to Landlord on demand, together with interest on all such sums from the date of expenditure by Landlord to the date of repayment by Tenant at the maximum annual interest rate allowed by law for business loans (not primarily for, personal, family or household purposes) not exempt from the usury law at the date of expenditure or, if there is no such maximum annual interest rate, at the rate of ten percent (10%) per annum. Landlord shall have, in addition to all other rights and remedies of Landlord, the same rights and remedies in the event of the nonpayment of such sums plus interest by Tenant as in the case of default by Tenant in the payment of rent.

14.4 Disposition of Tenant's Property. If Tenant abandons or surrenders the Premises, or is dispossessed by process of law or otherwise, any movable furniture, equipment, trade fixtures or personal property belonging to Tenant and left in the Premises shall be deemed to be abandoned, at the option of Landlord, and Landlord shall have the right to sell or otherwise dispose of such personal property in any commercially reasonable manner.

## 15. DAMAGE OR DESTRUCTION

15.1 Casualty; Restoration. In the event the Premises or any portion of the Building is damaged by fire or other insured casualty, Landlord shall diligently repair the same to the extent possible with the insurance proceeds received by Landlord, subject to the provisions of this Paragraph hereinafter set forth, if such repairs can in Landlord's opinion be completed within sixty (60) days after Landlord receives the necessary permits therefor but in any event within two hundred ten (210) days following the occurrence of the casualty under the laws and regulations of federal, state and local governmental authorities having jurisdiction thereof. In such event this Lease shall remain in full force and effect. Notwithstanding the foregoing, if such casualty shall occur during the final twelve (12) months of the term of this Lease (not including any unexercised option to extend), Landlord shall not be obligated to repair such damage, but may instead elect to terminate this Lease upon written notice given to Tenant within thirty (30) days after the date of such fire or other casualty, in which event this Lease shall terminate as of the termination date specified in Landlord's notice. A total destruction of the Building shall automatically terminate this Lease. To the extent insurance proceeds must be paid by Landlord to a mortgagee or deed of trust beneficiary encumbering the Premises or the Building to reduce any indebtedness of Landlord secured thereby, Landlord shall not be deemed

to have insurance coverage to the extent of the damage and destruction unless such mortgagee or beneficiary permits Landlord to use such proceeds for the rebuilding, restoration and repair of the Premises or the Building.

15.2 Landlord's Election to Terminate or Restore. If such repairs cannot in Landlord's opinion be made during the time period provided in Section 15.1 above or if insurance proceeds are not available to cover the total cost thereof, Landlord may elect upon notice to Tenant given within sixty (60) days after the date of such fire or other casualty to (i) repair or restore such damage, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease in which event this Lease shall terminate as of the termination date specified in Landlord's notice. Landlord's election shall be binding on Tenant.

15.3 Tenant's Termination Right. Within forty-five (45) days after the occurrence of any significant damage to or destruction of the Building or the Premises, Landlord shall provide Tenant with a reputable architect's or contractor's written estimate of the time necessary to repair and restore the Building and the Premises (as the case may be), and such supporting information showing the basis for such estimate. If the estimated time for repair or restoration is greater than the time period specified in 15.1 above or if the casualty occurs during the final twelve (12) months of the term of the Lease (not including any unexercised option to extend), Tenant may, by notice to Landlord given within fifteen (15) days after the receipt of said estimate, elect to terminate this Lease effective as of a date not later than sixty (60) days after Landlord's receipt of such notice. The failure of Tenant to give Landlord the notice specified in this Section 15.3 in a timely fashion shall be deemed a waiver by Tenant of its rights to terminate this Lease hereunder.

15.4 Waiver. Landlord and Tenant acknowledge that this Lease constitutes the entire agreement of the parties regarding events of damage or destruction, and Tenant waives the provisions of California Civil Code Section 1932(2) and 1933(4) and any similar statute now or hereafter in force. No such casualty (nor Landlord's subsequent restoration and repair work) shall constitute a constructive eviction or give Tenant any rights to terminate this Lease.

15.5 Restoration of Tenant Improvements. If the Premises are to be repaired under this Article, Landlord shall repair at its cost any damage to the Building itself and the initial Leasehold Improvements to the Premises made by Landlord. Tenant shall pay the entire cost of repairing or replacing all other improvements in the Premises, together with Tenant's trade fixtures, furnishings, equipment and other personal property.

## 16. EMINENT DOMAIN

16.1 Condemnation. If all or any part of the Premises shall be either taken or condemned for any public or quasi-public use or purpose, or transferred by agreement in connection with any public or quasi-public use or purpose with or without any condemnation action or proceeding being instituted (either such event herein called a "Taking"), and if such Taking is permanent, the term of this Lease shall automatically terminate with respect to the part of the Premises so taken as of the date when the possession of such part is required. If all or any portion of the Premises is subject to a temporary Taking, this Lease shall remain in full force and

effect and Tenant shall continue to perform all terms, conditions and covenants of this Lease. If a portion of the Premises or the Building is taken so as to require, in Landlord's reasonable judgment, a substantial alteration or reconstruction of the remaining portions, Landlord, at its sole election, may terminate this Lease as of the date when possession of the part so taken is required. If a portion of the Premises is permanently taken and the remaining portion of the Premises is not reasonably suited for Tenant's purposes (without material impairment to its ordinary business activities) Tenant may terminate this Lease as of the same date. Without obligation to Tenant, Landlord may agree to transfer to any condemner all or any portion of the Building sought by such condemner, free from this Lease and the rights of Tenant hereunder, without first requiring that any action or proceeding be instituted or, if instituted, pursued to a judgment.

16.2 Disposition of Award. Landlord shall be entitled to the entire award made to it for any Taking, provided, however, that: (a) Landlord shall have no interest in any award made to Tenant specifically for its relocation expenses, the Taking of personal property or fixtures belonging to Tenant, or the interruption of or a damage to Tenant's business, if any such award is made separately to Tenant and not as a part of an award or damages recoverable by Landlord, and (b) Tenant shall be entitled to receive the entire award made in connection with any temporary taking allocable to the period prior to the expiration of the term.

16.3 Waiver. Landlord and Tenant hereby waive the provisions of California Code of Civil Procedure Sections 1265.110 through 1265.160 to the extent that such provisions are inconsistent with this Lease.

## 17. SUBORDINATION, MERGER AND SALES

17.1 Subordination, Nondisturbance and Attornment. This Lease shall be subject and subordinate at all times to the Ground Lease and to the lien of all mortgages and deeds of trust securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against the Building or on or against Landlord's interest or estate therein, all without the necessity of having further instruments executed by Tenant to effect such subordination; provided, however, (i) with respect to any deed of trust encumbering the Building and Landlord's interest therein of record as of the date of this Lease, upon written request by Tenant, Landlord covenants to use reasonable efforts (without any requirement to pay any fees to said lender or to initiate litigation) to cause said lender to execute and deliver a non-disturbance agreement on the current form used by lender in favor of Tenant, and (ii) with respect to any mortgagee or deeds of trust encumbering the Building and/or Landlord's interest therein after the date of this Lease, the subordination of this Lease shall be conditioned upon such lender executing a non-disturbance agreement on the current form used by such lender in favor of Tenant. Subject to the foregoing, Tenant agrees to execute, acknowledge and deliver upon demand such further instruments evidencing such subordination of this Lease to the lien of all such mortgages and deeds of trust as may reasonably be required by Landlord. If Landlord, Landlord's mortgagee or any other successor to Landlord elects in writing, this Lease shall be deemed superior to the lien of the mortgage or deed of trust specified regardless of the date of recording, and Tenant shall execute an agreement confirming this election on request. If Ground Lessor or Landlord's mortgagee or its successor or any successor to Landlord succeeds to Landlord's interest under



this Lease, whether voluntarily or involuntarily, Tenant shall attorn to such person and recognize such person as Landlord under this Lease.

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

17.3 Conveyance by Landlord. If the original Landlord hereunder, or any successor owner of the Building, sells or conveys the Building, all liabilities and obligations on the part of the original Landlord, or such successor owner, under this Lease accruing after such sale or conveyance shall terminate and the original Landlord, or such successor owner, shall automatically be released therefrom, and thereupon all such liabilities and obligations shall be binding upon the new owner.

17.4 Mortgagee's Consent. This Lease is conditioned upon the approval of the current mortgagee of the Residential Project, Citibank (West) F.S.B. Landlord shall use diligent efforts to obtain such approval as soon as reasonably possible after execution of this Lease, and shall deliver to Tenant notice of such approval (or disapproval) promptly upon receipt. If Citibank (West) F.S.B. disapproves this Lease, this Lease shall be terminated without liability on the part of Landlord and Tenant, provided, however, that Landlord shall refund Tenant's one-time payment of Rent, if Tenant has already paid such Rent, and shall pay Tenant the reasonable costs of replacing the existing Muni Operator Restroom if Landlord has demolished such restroom pursuant to Section 8.1.

## 18. ESTOPPEL CERTIFICATE

18.1 Estoppel. At any time and from time to time, Tenant shall, within thirty (30) days after written request by Landlord, execute, acknowledge and deliver to Landlord a certificate certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the date and nature of each modification); (b) the Commencement Date and the Expiration Date determined in accordance with Article 2 hereof and the date, if any, to which all rent and other sums payable hereunder have been paid; (c) that no notice has been received by Tenant of any default by Tenant hereunder which has not been cured, except as to defaults specified in such certificate; (d) that Landlord is not in default under this Lease, except as to defaults specified in such certificate; and (e) such other matters as may be reasonably requested by Landlord or any actual or prospective purchaser or mortgage lender. Without limiting the generality of the foregoing, within three (3) days following the Commencement Date, Tenant shall execute a certificate satisfying the requirements of this Section 18.1 (provided the same is delivered to Tenant by Landlord). Any such certificate may be relied upon by Landlord and any actual or prospective purchaser or mortgage lender of the Building or any part thereof. Failure by Tenant to timely deliver such estoppel certificate shall be deemed a conclusively binding certification by Tenant that the statements in clauses (a) through (d) above are true and correct.

## 19. RETURN OF POSSESSION

At the expiration or earlier termination of this Lease or Tenant's right of possession, Tenant shall surrender possession of the Premises in good condition and repair, ordinary wear and tear and casualty excepted, broom clean, and shall surrender all keys and any key cards to Landlord. Tenant shall advise Landlord as to the combination of any locks or vaults remaining in the Premises, shall remove all trade fixtures and personal property of Tenant and shall repair any damage to the Premises caused by such removal. All obligations or rights of either party arising during or attributable to the period ending upon expiration or earlier termination of this Lease and all obligations or rights of either party hereunder expressly arising on or following such expiration or earlier termination shall survive such expiration or earlier termination. All improvements, fixtures and other items in or upon the Premises (except trade fixtures and personal property belonging to Tenant), whether installed by Tenant or Landlord, shall be Landlord's property and shall remain upon the Premises, all without compensation, allowance or credit to Tenant. However, if prior to such termination or within thirty (30) days thereafter Landlord so directs by written notice, Tenant shall promptly remove all improvements, fixtures and other items that Tenant has installed or constructed and designated in such notice and restore the Premises to the condition in which it existed prior to the installation thereof. If Tenant fails to perform any repairs or restoration, or fails to remove from the Premises as required any improvements, fixtures, or other items that Tenant has installed or constructed, Landlord may do so, and Tenant shall pay Landlord the cost thereof upon demand. All property removed from the Premises by Landlord pursuant to any provisions of this Lease or any applicable law may be handled or stored by Landlord at Tenant's expense, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. All property not removed from the Premises or retaken from storage by Tenant within thirty (30) days after expiration or earlier termination of this Lease or Tenant's right to possession shall, at Landlord's option, be conclusively deemed to have been conveyed by Tenant to Landlord as if by bill of sale without payment by Landlord. Unless prohibited by applicable law, Landlord shall have a lien against such property for the costs incurred in removing and storing the same.

## 20. HOLDING OVER

If, without objection by Landlord, Tenant holds possession of the Premises after expiration of either the term or Extended Term of this Lease, Tenant shall become a tenant from month to month upon the terms herein specified but at a Monthly Rent equal to two times (2X) the last month's rent after expiration of the term or Extended Term of the Lease. Such month to month tenancy may be terminated by either Landlord or Tenant by giving thirty (30) days' written notice of termination to the other at any time. If Tenant fails to surrender the Premises upon the expiration or termination of this Lease except as hereinabove provided, Tenant hereby indemnifies and agrees to hold Landlord harmless from all costs, loss, expense or liability, including without limitation, costs, real estate brokers claims and attorneys' fees, arising out of or in connection with any delay by Tenant in surrendering and vacating the Premises, including, without limitation, any claims made by any succeeding tenant based on any delay and any liabilities arising out of or in connection with these claims. Nothing in this Article 20 shall be deemed to permit Tenant to retain possession of the Premises after the expiration or sooner termination of the Lease term.

**21. INTENTIONALLY OMITTED**

**22. WAIVER**

The waiver by Landlord or Tenant of any breach of any covenant in this Lease shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant in this Lease, nor shall any custom or practice which may grow up between Landlord and Tenant in the administration of this Lease be construed to waive or to lessen the right of Landlord or Tenant to insist upon the performance by Landlord or Tenant in strict accordance with this Lease. The subsequent acceptance of rent hereunder by Landlord or the payment of rent by Tenant shall not waive any preceding breach by Tenant of any covenant in this Lease, nor cure any Event of Default, nor waive any forfeiture of this Lease or unlawful detainer action, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's or Tenant's knowledge of such preceding breach at the time of acceptance or payment of such rent.

**23. NOTICES**

All requests, approvals, consents, notices and other communications given by Landlord or Tenant under this Lease shall be properly given only if made in writing and either deposited in the United States mail, postage prepaid, certified with return receipt requested, or delivered by hand (which may be through a messenger or recognized delivery, courier or air express service) and addressed to Landlord at the address of Landlord specified in the Basic Lease Information, or at such other place as Landlord may from time to time designate in a written notice to Tenant; to Tenant, at the address of Tenant specified in the Basic Lease Information, or, after the Commencement Date, at the Premises, or at such other place as Tenant may from time to time designate in a written notice to Landlord. Such requests, approvals, consents, notices and other communications shall be effective on the date of receipt (evidenced by the certified mail receipt), if mailed, or on the date of hand delivery, if hand delivered (evidenced by confirmation of delivery). If any such request, approval, consent, notice or other communication is not received or cannot be delivered due to a change in the address of the receiving party of which notice was not previously given to the sending party or due to a refusal to accept by the receiving party, such request, approval, consent, notice or other communication shall be effective on the date delivery is attempted. Any request, approval, consent, notice or other communication under this Lease may be given on behalf of a party by the attorney for such party. Tenant hereby appoints as its agent to receive the service of all default notices and notice of commencement of unlawful detainer proceedings the person in charge of or apparently in charge of or occupying the Premises at the time, and, if there is not such person, then such service may be made by attaching the same to the door of the Premises and such service shall be effective for all purposes under this Lease.

**24. OPTION TO EXTEND TERM**

24.1 Option to Extend. Tenant shall have one (1) option ("**Option**") to extend the Term of the Lease for a period of ten (10) years, beginning on the date immediately

following the Expiration Date (the "**Extended Term**"), subject to the terms, covenants and conditions contained in the Lease.

(a) The Option granted herein is with respect to, and must be exercised by Tenant with respect to, all of the Premises then subject to the Lease (the "**Option Premises**").

(b) Tenant shall exercise each Option, if at all, by giving written notice of its exercise thereof (the "**Exercise Notice**") to Landlord not more than two hundred seventy (270) days nor less than one hundred eighty (180) days prior to the expiration of the initial Term. Landlord acknowledges and agrees that Tenant's notice of its intent to exercise the Option shall be subject to the approval of the Municipal Transportation Agency Board and the Board of Supervisors of the City and County of San Francisco in their respective sole and absolute discretion, approving and authorizing the same, within ninety (90) days after the date such notice is given. If Tenant fails to deliver to Landlord confirmation of such approval within ninety (90) days prior to the Expiration Date, then Tenant's exercise of the Option, and the Option, shall be null and void, and this Lease shall terminate on the Expiration Date.

24.2 Conditions. If Tenant fails to give Landlord the required Exercise Notice within the time period and in the manner herein provided, all rights of Tenant under this paragraph to extend the Term of the Lease shall terminate. It shall be a condition to the effective exercise of the Option that Tenant has completed the initial Lease Term, and that there exists no Default under the Lease or event or circumstance which, with notice or the passing of time, would constitute such Default, and that the Lease be in full force and effect both on the date Landlord receives the Exercise Notice and on the date the Extended Term is to commence..

## 25. MISCELLANEOUS

25.1 Rules of Construction. The words "Landlord" and "Tenant", as used herein shall include the plural as well as the singular. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation."

25.2 Joint and Several Liability. If there is more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several.

25.3 Time of the Essence. Time is of the essence of this Lease and each and all of its provisions.

25.4 Successors and Assigns. Subject to Article 12 hereof, this Lease shall benefit and bind Landlord and Tenant and the personal representatives, heirs, successors and assigns of Landlord and Tenant.

25.5 Name of Project. Tenant shall not use the name of the Project for any purpose whatsoever without the prior written consent of Landlord, which consent shall not unreasonably be withheld or delayed.

25.6 Severability. If any provision of this Lease is determined to be illegal or unenforceable, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect.

25.7 Governing Law; Venue. This Lease shall be governed by and construed in accordance with the laws of the State of California. Tenant consents to venue and personal jurisdiction in the Superior Court of the State of California for the City and County of San Francisco and waives any claim that such court is not a convenient forum.

25.8 Attorneys' Fees. If there is any legal action, proceeding or arbitration between Landlord and Tenant to enforce this Lease or to protect or establish any right or remedy under this Lease, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees and disbursements, incurred by such prevailing party in such action, proceeding or arbitration and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or arbitration, such costs, expenses and attorneys' fees and disbursements shall be included in and as a part of such judgment.

25.9 Quiet Enjoyment. Landlord covenants and agrees that Tenant, upon making all of Tenant's payments as and when due under this Lease (taking into account any grace periods granted Tenant), and upon performing, observing and keeping the covenants, agreements and conditions of this Lease on its part to be performed, observed and kept, shall peaceably and quietly hold, occupy and enjoy the Premises during the term of this Lease, subject to the terms and conditions of this Lease.

25.10 Tenant's Authority. Tenant and each person executing this Lease on behalf of Tenant represents and warrants to Landlord that Tenant has the full right, power and authority to enter into this Lease and to perform all of Tenant's obligations hereunder, and each person signing this Lease on behalf of the Tenant is duly and validly authorized to do so.

25.11 Entire Agreement. There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, offers, agreements and understandings, oral or written, if any, between Landlord and Tenant or displayed by Landlord to Tenant with respect to the subject matter of this Lease, the Premises, the Building or the Project. There are no representations between Landlord and Tenant or between any real estate broker and Tenant other than those expressly set forth in this Lease and all reliance with respect to any representations is solely upon representations expressly set forth in this Lease. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Landlord and Tenant.

25.12 No Light, Air or View Easement; No Roof Access. No easement for light, air or view is included with or appurtenant to the Premises. Any diminution or shutting off of light, air or view by any structure which may hereafter be erected (whether or not constructed by Landlord) shall in no way affect this Lease or impose any liability on Landlord. Tenant shall have no right of access to, or use of, the roof of the Building, orce Majeure. Neither Landlord nor Tenant shall be chargeable with, liable for, or responsible to the other or to any other person for any delay in the performance of any act required hereunder (other than any payment

obligation hereunder) when such delay is caused by fire, earthquake, flood, hurricane, the elements, acts of God or the public enemy, acts of war or terrorism, extraordinary action or interference of governmental authorities or agents, riots, embargoes or extraordinary unavailability or shortages of materials, or strikes, lockouts or labor disturbances. Any delay due to such causes shall not be deemed a breach of or default in the performance of this Lease, it being specifically agreed that any time limit for such party's performance contained in this Lease shall be extended for the same period of time and to the extent of the delay resulting from causes set forth above.

25.13 Bankruptcy. Landlord represents and warrants to Tenant 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. Landlord and Tenant agree that Tenant's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services, facilities and amenities of the Premises and the Property as provided herein, and that if any of such services, facilities or amenities are terminated, or materially limited or restricted on account of any such case or proceeding, or for any other reason, Tenant shall have the right to (i) contract directly with any third-party provider of such services, facilities or amenities to obtain the same, and (ii) require Landlord to pay any and all reasonable costs and expenses incurred by Tenant in obtaining such services, facilities or amenities.

25.14 Non-Liability of City Officials, Employees and Agents. Notwithstanding anything to the contrary in this Lease, no elective or appointive board, commission, member, officer, employee or agent of Tenant shall be personally liable to Landlord, its successors and assigns, in the event of any default or breach by Tenant or for any amount which may become due to Landlord, its successors and assigns, or for any obligation of Tenant under this Lease.

25.15 MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Landlord acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

25.16 Controller's Certification of Funds. The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by Tenant under this Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the 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. Without limiting the foregoing, if in any fiscal year of Tenant 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 Tenant may terminate this Lease, without penalty, liability or expense of any kind to Tenant, as of the last date on which sufficient funds are

appropriated. Tenant shall use its reasonable efforts to give Landlord reasonable advance notice of such termination.

25.17 Prevailing Wages for Landlord's Work. Landlord agrees that any person performing labor with respect to the Landlord's Work or other improvements to the Premises which Landlord provides under this Lease shall be paid not less than the highest prevailing rate of wages and that Landlord shall include, in any contract for such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord further agrees that, as to such improvements under this Lease, Landlord shall 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 that relate to payment of prevailing wages.

25.18 Non Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

In the performance of this Lease, Landlord covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee or, any employee of Tenant working with, or applicant for employment with, Landlord in any of Landlord's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Landlord.

(b) Subcontracts

Landlord shall include in all subcontracts entered into on or after the date of this Lease relating to the performance of Landlord's obligations under this Lease a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Landlord shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Landlord's failure to comply with the obligations in this subsection shall 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 or where the work is being performed for the Tenant elsewhere in 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 specified above within the United States, between employees with domestic partners and employees with spouses, and/or between domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the condition set forth in Section 12.B2(b) of the San Francisco Administrative Code.

25.19 Tropical Hardwood and Virgin Redwood Ban

Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, the City and County of San Francisco 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.

25.20 Bicycle Storage Facilities

Article 1.5, Section 155.1, of the San Francisco Planning Code ("Code") requires the provision of bicycle storage at City leased buildings at no cost to Landlord and if funds are available. In the event public and/or private donations, grants or other funds become available, at any time during the Term of the Lease including any extension thereof, City may, by giving a 60-day advanced written notice to Landlord, install at least two (2) bicycle parking spaces in a location where the majority of spaces will be long-term, and an area in front of the Premises which meets the Class 1 and/or Class 2 requirements of the Code to accommodate such bicycle storage. The location of such spaces shall be subject to the approval of Landlord, which approval shall not unreasonably be withheld or delayed. Landlord, at no cost to Landlord, shall reasonably cooperate with City regarding the location of such spaces in furtherance of the implementation of such requirements of the Code.

25.21 Construction of Decorative Arch. Tenant acknowledges that Landlord intends to install, as a decorative architectural feature, an arch between the buildings on the east and west blocks of the Residential Project. Tenant agrees to cooperate with Landlord in its efforts to obtain all required governmental approvals for construction of the arch. The arch will be designed by Landlord so as not to interfere with Muni's facilities in the Buildings and Muni's transit and maintenance operations in the vicinity of the Buildings, which operate 24 hours/day, 365 days/year.

25.22 Counterparts

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

25.23 Notification of Limitations on Contributions

Through its execution of this Lease, Landlord 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 any land or building to or from the Tenant whenever such transaction would require approval by a City elective officer or the board on which that Tenant elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the Tenant's elective officer, or the board on which that Tenant's elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a Tenant officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a Tenant officer or employee. Negotiations are completed when a contract is



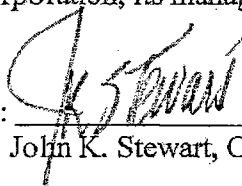
finalized and signed by the Tenant and the contractor. Negotiations are terminated when the Tenant and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first written above.

LANDLORD:

**NORTH BEACH RETAIL ASSOCIATES LLC**, a California limited liability company

By The John Stewart Company, a California Corporation, its managing member

By:   
John K. Stewart, Chairman

TENANT:

**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, acting by and through its MUNICIPAL TRANSPORTATION AGENCY, a municipal corporation

By: \_\_\_\_\_  
Edward T. Reiskin  
Director of Transportation

San Francisco Municipal Transportation Agency  
Board of Directors

Resolution No. \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest:  
\_\_\_\_\_

Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

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

**EXHIBITS "A" and "B"**  
**DESCRIPTION OF THE PREMISES**  
**and**  
**PLANS AND SPECIFICATIONS FOR LEASEHOLD IMPROVEMENTS**

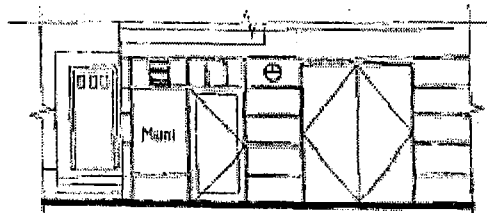
North Beach Housing  
Muni Breakroom & Ticket Kiosk  
10 November 2004

EXHIBIT A.4.8

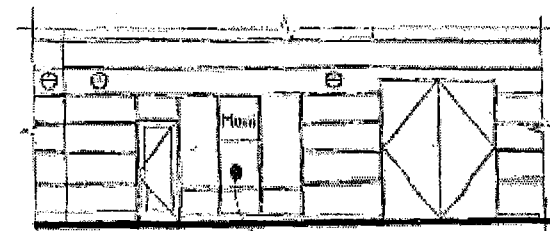
Reference Contract Documents & Field  
Conditions for information not included.

ITEM	SPECIFICATION
Stainless Steel	American Metal Works, Inc. Series AG451 (2" x 4 1/2") Center Glass System for 1" Glass Color: Dark Bronze
Cashier's Window	Clear Louver
Stainless Steel Hardware	
Top & Bottom Fyul	CRU-DP4503
Normalin Fyul	BU117001
Overhead Closure	DU211, 105" track glass, no hold open
Pinus Hardware	CR7 312, 1200 Series
Pinus Steel	316-303 (2.24, stainless)
Acoustical Ceiling	Acousticon 2 x 2 Core Orange Slop #071 w/ Clayton Metallic top
Paint Color	Nelly Moon White Coffee #23
VCT	Armstrong Camel Beige #A1805
Rubber Base	Beck's Camol #365
Breakroom Bathroom	
Clay Tile	East Lane 8" x 8" Sierra "Almond"
Wall Tile	4 1/4" x 4 1/4" x 5/16" Glass #0135 "Almond"
Counter	Maple Classa Collection #48 Almond
Alfret	Behrck B-555 3630 (18" x 30")
Roller Hooks (2)	Behrck B-7671
Paper Towel Disp.	Behrck B-359
Facial Paper Dispens.	Behrck B-3048
Hotel Sign Cover	Behrck B-221
Sign Dispenser	Behrck B-2111
Grab Bar	Behrck B-5006x34
Grab Bar	Behrck B-5006x42
Valve	Star-Tec (Behrck) 402315
Water Seal	Clayco #84
Water Supply	Remax-Craft Model CCE-19124
Sink	Swilling Kohler #19004
Sink Faucet	Danco 507 SWF (w/hold no pop cold)
Sink Drain	Empire 12 (w/hold no pop cold)
Sink Guard	Steel Guard Temp & Safety Covers
Bathroom Door	3/4" x 5 1/8" x 3 3/4" hollow metal
Bath Door Closer	Behrck A-405, Spring lever, ln. 223
Bath Door Closer	ICN #1461, Aluminum
Bath Door Hinge	Magna #81278 4 1/2" x 1 1/2" Ca. 652
Bath Door Stop	Alcon Door Stop 1211 Ln. 524

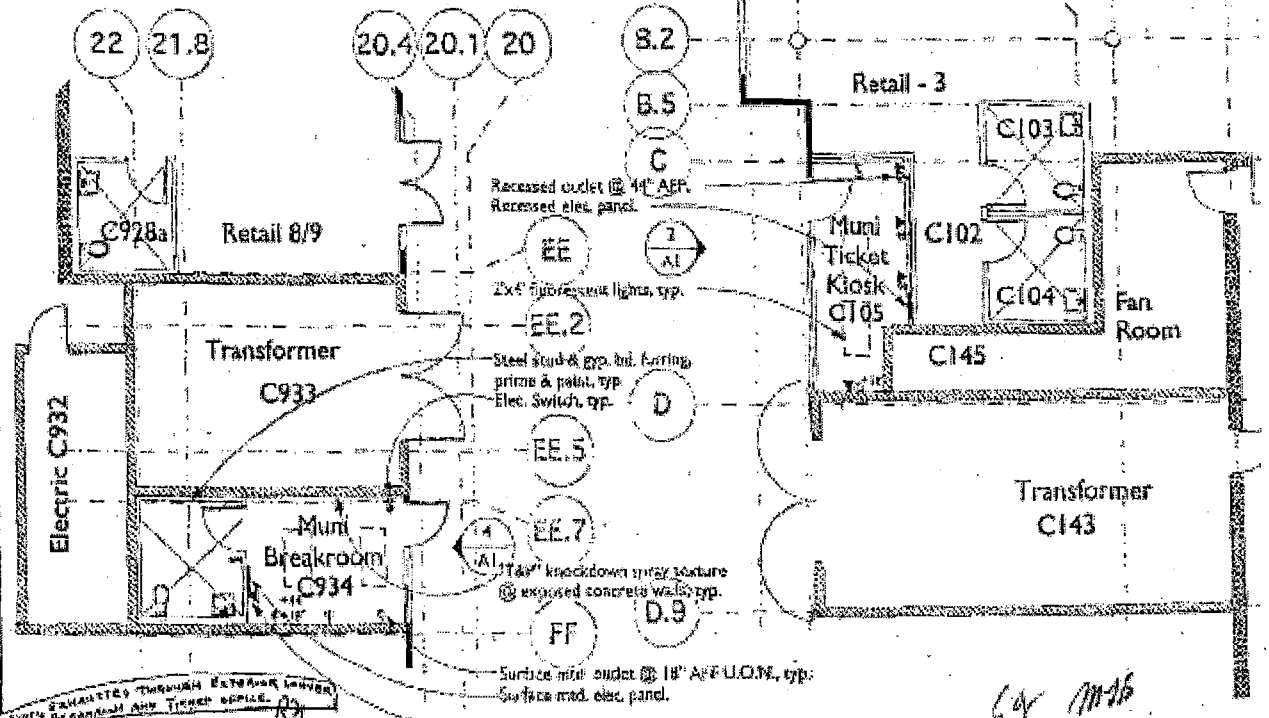
1 Muni Specifications



4 Muni Breakroom Elev.  
Scale: 1/8" = 1'-0"



2 Muni Ticket Kiosk Elev.  
Scale: 1/8" = 1'-0"



3 Muni Breakroom Plan  
Scale: 1/8" = 1'-0"

1 Muni Ticket Kiosk Plan  
Scale: 1/8" = 1'-0"

Copy 1/11/05

A&B-2  
250

## EXHIBIT "C"

### PROJECT RULES AND REGULATIONS FOR NONRESIDENTIAL TENANTS

1. Access to Project. On legal holidays, and any days between the hours of 11 P.M. and 6 A.M., access to the Building may be restricted and access shall be gained by use of a key or electronic card to the outside doors of the Project. Landlord may from time to time establish security controls for the purpose of regulating access to the Project. Tenant shall be responsible for providing access to the Premises for its agents, contractors, and employees at times access is restricted, and shall comply with all such security regulations so established.
2. Protecting Premises. The last member of Tenant to leave the Premises shall close and securely lock all doors or other means of entry to the Premises and shut off all lights and equipment in the Premises, including any gate(s) to any parking area that is included in the Premises.
3. Large Articles. Furniture, freight and other large or heavy articles may be brought into the Project only at times and in the manner designated by Landlord and always at Tenant's sole responsibility. All damage done to the Project, its furnishings, fixtures, or equipment by moving or maintaining such furniture, freight or articles shall be repaired at Tenant's expense.
4. Signs. Tenant shall not paint, display, inscribe, maintain or affix any sign, placard, picture, advertisement, name, notice, lettering or direction on any part of the outside or inside of the Building, or on any part of the inside of the Premises which can be seen from the outside of the Premises, including windows and doors, without the written consent of Landlord, and then only such name or names or matter and in such color, size, style, character, and material as shall be first approved by Landlord in writing. Landlord, without notice to Tenant, reserves the right to remove, at Tenant's expense, all matters other than that provided for above.
5. Compliance with Laws. Tenant shall comply with all applicable laws, ordinances, governmental orders, or regulations and applicable orders or directions from any public office of body having jurisdiction, whether now existing or hereinafter enacted with respect to the Premises and the use of occupancy thereof. Tenant shall not make or permit any use of the Premises which directly or indirectly is prohibited by any applicable law, ordinance, governmental regulations or order or direction of public authority.
6. Compliance with Insurance Requirements. Tenant shall not use or permit to be brought into the Premises or the Project any flammable oils or fluids, or any explosive or other articles deemed hazardous to persons or property, or do or permit to be done any act or thing which will invalidate, or which, if brought in, would be in conflict with any

insurance policy covering any part of the Project or its operation or the Premises. Tenant shall not do or permit to be done anything in or upon the Project or the Premises, or bring, or keep anything therein, which shall not comply with all requirements of any rating bureau or board of underwriters with respect thereto, or which shall increase the rate of insurance on the Project, its appurtenances, contents or operation.

7. Defacing Premises and Overloading. Tenant shall not place anything in the Premises on or near the glass of any door, partition, wall or window that may be unsightly from outside the Premises. Tenant shall not place any article of any kind on any window ledge or on the exterior walls; blinds, shades, awning or other forms of window covering shall not be placed in or about the outside windows in the Premises except to the extent that the character, shape, color, material and make thereof is approved by Landlord. Tenant shall not overload any floor or part thereof in the Premises, or any facility in the Project or any public corridors or elevators therein by bringing in or removing any large or heavy articles and Landlord may direct and control the location of safes, files, and all other heavy articles and, if considered necessary the Landlord may require Tenant at its expense to supply whatever supplementary supports necessary to properly distribute the weight.
8. Obstruction of Public Areas. Tenant shall not, whether temporarily, accidentally or otherwise, allow anything to remain in, place or store anything in, or obstruct in any way, any shipping area, parking area, sidewalk, court, hall, passageway, or entrance. Tenant shall lend its full cooperation to keep such areas free from all obstruction and in a clean and slightly condition, and move all supplies, furniture, and equipment as soon as received directly to the Premises, and shall move all such items and waste that are at any time being taken from the Premises directly to the areas designated for disposal. All courts, passageways, entrances, exits, elevators, escalators, stairways, corridors, halls and roofs are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence, in the judgment of Landlord, shall be prejudicial to the safety, character, reputation and interest of the Project and its tenants; provided, however, that nothing herein contained shall be construed to prevent such access to persons with whom Tenant deals within the normal course of Tenant's business so long as such persons are not engaged in illegal activities.
9. Additional Locks. Tenant will be changing locks on the exterior doors in order to provide access to authorize Muni personnel; Tenant will provide access to the Landlord as required.
10. Communications or Utility Connections. If Tenant desires signal, alarm or other utility or similar service connections installed or changed, then Tenant shall not install or change the same without the approval of Landlord, and then only under direction of Landlord and at Tenant's expense. Tenant shall ascertain from Landlord the maximum amount of load or demand for or use of electrical current which can safely be permitted in the Premises, taking into account the capacity of the electric wiring in the Project and the Premises and the needs of other tenants in the Project, and Tenant shall not in any event connect a greater load than that which is safe.

11. Office of the Building. If Tenant requires Landlord's maintenance, repair or other services, such requirements will be attended to only upon application at the office of the property manager.
12. Restrooms. The restrooms and toilets shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be disposed of therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule on the Premises shall be borne by the Tenant.
13. Intoxication. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated, or under the influence of liquor or drugs, or who in any way violates any of these Rules.
14. Nuisances and Certain Other Prohibited Uses. Tenant shall not (a) install or operate any internal combustion engine, boiler, machinery, refrigerating, heating or air conditioning apparatus in or about the Premises, other than as permitted by Tenant's Lease, provided that Tenant may keep a small refrigerator, microwave oven and/or space heater in the employee breakroom for the exclusive use of Tenant's employees; (b) use the Premises for housing, lodging, or sleeping purposes; (c) prepare food in the Premises or permit food to be brought into the Premises for consumption therein (heating coffee and meals for employees excepted) except as permitted by Tenant's Lease or by express permission of Landlord; (d) place any radio or television antennae on the roof or on or in any part of the Project other than as permitted by Tenant's Lease, or place a sound producing device inside or outside the Premises which may be heard outside Premises; (e) use any power source for the operation of any equipment or device other than dry cell batteries or electricity; (f) operate any electrical device from which may emanate waves that could interfere with radio or television broadcasting or reception from or in the Building; (g) bring or permit to be in the Building any bicycle, other vehicle, dogs or other animals (except for assistance animals); (h) make or permit any noise or odor to emanate from the Premises; (i) disturb, harass, solicit or canvass any occupant of the Building; (j) do anything in or about the Premises which could be a nuisance or tend to injure the reputation of the Project; (k) allow any firearms in the Project or the Premises except as approve by Landlord in writing.
15. Trash Removal. The exterior areas of the Premises shall be kept free from trash and debris. Areas used for storing trash for disposal shall be kept free of loose debris, standing water and unrelated equipment.
16. Solicitation. Tenant shall not canvass other tenants in the Building to solicit business or contributions and shall not exhibit, sell or offer to sell, use, rent or exchange any products or services in or from the Premises unless ordinarily embraced within the Tenant's Permitted Use as specified in the Lease.
17. Energy Conservation. Tenant shall not waste electricity, water, heat or air conditioning and agrees to cooperate fully with Landlord to insure the most effective operation of the

Project's heating and air conditioning, and shall not allow the adjustment (except by Landlord's authorized Project personnel) of any controls.

18. Security. At all times other than normal business hours the exterior Building doors must be kept locked to assist in security. Tenant is responsible for security within the Premises. Problems in Building and Project security should be directed to Landlord at Landlord's address for notices set forth in the Lease.
19. No Smoking. Smoking is prohibited in the Premises and in all parking areas. No cigarette vending machines shall be installed in the Premises.
20. Security Personnel. Security personnel employed or contract by Tenant shall not take law enforcement action other than as permitted under applicable California law.



**EXHIBIT "D"**

**RENT PAYMENTS SCHEDULE**

## Rent Payment Monthly Schedule

### SFMTA TO NORTH BEACH RETAIL ASSOCIATION LLC

<u>Due Date</u>	<u>Payment</u>
1/1/2014	\$660
2/1/2014	\$660
3/1/2014	\$660
4/1/2014	\$660
5/1/2014	\$660
6/1/2014	\$660
7/1/2014	\$660
8/1/2014	\$660
9/1/2014	\$660
10/1/2014	\$660
11/1/2014	\$660
12/1/2014	\$660
1/1/2015	\$679.80
2/1/2015	\$679.80
3/1/2015	\$679.80
4/1/2015	\$679.80
5/1/2015	\$679.80
6/1/2015	\$679.80
7/1/2015	\$679.80
8/1/2015	\$679.80
9/1/2015	\$679.80
10/1/2015	\$679.80
11/1/2015	\$679.80
12/1/2015	\$679.80
1/1/2016	\$700.19
2/1/2016	\$700.19
3/1/2016	\$700.19
4/1/2016	\$700.19
5/1/2016	\$700.19
6/1/2016	\$700.19
7/1/2016	\$700.19
8/1/2016	\$700.19
9/1/2016	\$700.19
10/1/2016	\$700.19
11/1/2016	\$700.19
12/1/2016	\$700.19
1/1/2017	\$721.19
2/1/2017	\$721.19
3/1/2017	\$721.19
4/1/2017	\$721.19
5/1/2017	\$721.19

<u>Due Date</u>	<u>Payment</u>
6/1/2017	\$721.19
7/1/2017	\$721.19
8/1/2017	\$721.19
9/1/2017	\$721.19
10/1/2017	\$721.19
11/1/2017	\$721.19
12/1/2017	\$721.19
1/1/2018	\$742.82
2/1/2018	\$742.82
3/1/2018	\$742.82
4/1/2018	\$742.82
5/1/2018	\$742.82
6/1/2018	\$742.82
7/1/2018	\$742.82
8/1/2018	\$742.82
9/1/2018	\$742.82
10/1/2018	\$742.82
11/1/2018	\$742.82
12/1/2018	\$742.82
1/1/2019	\$765.10
2/1/2019	\$765.10
3/1/2019	\$765.10
4/1/2019	\$765.10
5/1/2019	\$765.10
6/1/2019	\$765.10
7/1/2019	\$765.10
8/1/2019	\$765.10
9/1/2019	\$765.10
10/1/2019	\$765.10
11/1/2019	\$765.10
12/1/2019	\$765.10
1/1/2020	\$788.05
2/1/2020	\$788.05
3/1/2020	\$788.05
4/1/2020	\$788.05
5/1/2020	\$788.05
6/1/2020	\$788.05
7/1/2020	\$788.05
8/1/2020	\$788.05
9/1/2020	\$788.05
10/1/2020	\$788.05
11/1/2020	\$788.05
12/1/2020	\$788.05
1/1/2021	\$811.69

<u>Due Date</u>	<u>Payment</u>
2/1/2021	\$811.69
3/1/2021	\$811.69
4/1/2021	\$811.69
5/1/2021	\$811.69
6/1/2021	\$811.69
7/1/2021	\$811.69
8/1/2021	\$811.69
9/1/2021	\$811.69
10/1/2021	\$811.69
11/1/2021	\$811.69
12/1/2021	\$811.69
1/1/2022	\$836.04
2/1/2022	\$836.04
3/1/2022	\$836.04
4/1/2022	\$836.04
5/1/2022	\$836.04
6/1/2022	\$836.04
7/1/2022	\$836.04
8/1/2022	\$836.04
9/1/2022	\$836.04
10/1/2022	\$836.04
11/1/2022	\$836.04
12/1/2022	\$836.04
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2/1/2023	\$861.12
3/1/2023	\$861.12
4/1/2023	\$861.12
5/1/2023	\$861.12
6/1/2023	\$861.12
7/1/2023	\$861.12
8/1/2023	\$861.12
9/1/2023	\$861.12
10/1/2023	\$861.12
11/1/2023	\$861.12
12/1/2023	\$861.12
1/1/2024	\$866.95
2/1/2024	\$866.95
3/1/2024	\$866.95
4/1/2024	\$866.95
5/1/2024	\$866.95
6/1/2024	\$866.95
7/1/2024	\$866.95

<u>Due Date</u>	<u>Payment</u>
8/1/2024	\$866.95
9/1/2024	\$866.95
10/1/2024	\$866.95
11/1/2024	\$866.95
12/1/2024	\$866.95
1/1/2025	\$913.55
2/1/2025	\$913.55
3/1/2025	\$913.55
4/1/2025	\$913.55
5/1/2025	\$913.55
6/1/2025	\$913.55
7/1/2025	\$913.55
8/1/2025	\$913.55
9/1/2025	\$913.55
10/1/2025	\$913.55
11/1/2025	\$913.55
12/1/2025	\$913.55
1/1/2026	\$940.95
2/1/2026	\$940.95
3/1/2026	\$940.95
4/1/2026	\$940.95
5/1/2026	\$940.95
6/1/2026	\$940.95
7/1/2026	\$940.95
8/1/2026	\$940.95
9/1/2026	\$940.95
10/1/2026	\$940.95
11/1/2026	\$940.95
12/1/2026	\$940.95
1/1/2027	\$969.17
2/1/2027	\$969.17
3/1/2027	\$969.17
4/1/2027	\$969.17
5/1/2027	\$969.17
6/1/2027	\$969.17
7/1/2027	\$969.17
8/1/2027	\$969.17
9/1/2027	\$969.17
10/1/2027	\$969.17
11/1/2027	\$969.17
12/1/2027	\$969.17
1/1/2028	\$998.24

<u>Due Date</u>	<u>Payment</u>
2/1/2028	\$998.24
3/1/2028	\$998.24
4/1/2028	\$998.24
5/1/2028	\$998.24
6/1/2028	\$998.24
7/1/2028	\$998.24
8/1/2028	\$998.24
9/1/2028	\$998.24
10/1/2028	\$998.24
11/1/2028	\$998.24
12/1/2028	\$998.24
1/1/2029	\$1,028.18
2/1/2029	\$1,028.18
3/1/2029	\$1,028.18
4/1/2029	\$1,028.18
5/1/2029	\$1,028.18
6/1/2029	\$1,028.18
7/1/2029	\$1,028.18
8/1/2029	\$1,028.18
9/1/2029	\$1,028.18
10/1/2029	\$1,028.18
11/1/2029	\$1,028.18
12/1/2029	\$1,028.18
1/1/2030	\$1,059.02
2/1/2030	\$1,059.02
3/1/2030	\$1,059.02
4/1/2030	\$1,059.02
5/1/2030	\$1,059.02
6/1/2030	\$1,059.02
7/1/2030	\$1,059.02
8/1/2030	\$1,059.02
9/1/2030	\$1,059.02
10/1/2030	\$1,059.02
11/1/2030	\$1,059.02
12/1/2030	\$1,059.02
1/1/2031	\$1,090.79
2/1/2031	\$1,090.79
3/1/2031	\$1,090.79
4/1/2031	\$1,090.79
5/1/2031	\$1,090.79
6/1/2031	\$1,090.79
7/1/2031	\$1,090.79
8/1/2031	\$1,090.79
9/1/2031	\$1,090.79
10/1/2031	\$1,090.79

<u>Due Date</u>	<u>Payment</u>
11/1/31	\$1,090.79
12/1/2031	\$1,090.79
1/1/2032	\$1,123.51
2/1/2032	\$1,123.51
3/1/2032	\$1,123.51
4/1/2032	\$1,123.51
5/1/2032	\$1,123.51
6/1/2032	\$1,123.51
7/1/2032	\$1,123.51
8/1/2032	\$1,123.51
9/1/2032	\$1,123.51
10/1/2032	\$1,123.51
11/1/2032	\$1,123.51
12/1/2032	\$1,123.51
1/1/2033	\$1,157.21
2/1/2033	\$1,157.21
3/1/2033	\$1,157.21
4/1/2033	\$1,157.21
5/1/2033	\$1,157.21
6/1/2033	\$1,157.21
7/1/2033	\$1,157.21
8/1/2033	\$1,157.21
9/1/2033	\$1,157.21
10/1/2033	\$1,157.21
11/1/2033	\$1,157.21
12/1/2033	\$1,157.21

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. 14-031

WHEREAS, As part of a new mixed-use development to rehabilitate the Housing Authority residential units, three rooms were built for the SFMTA Muni operator restroom and break room, and ticket sales room at 2449 and 2450 Taylor Street; and,

WHEREAS, The SFMTA entered into a lease with North Beach Retail Associates, LLC, as Landlord, with a commencement date of December 23, 2004 for \$36,000 and a nine year term, with a six year option for \$36,000, the initial term of which ended December 22, 2013; and,


WHEREAS, To minimize legislative delay and to provide stability for the SFMTA, the SFMTA opted to negotiate a new lease with North Beach Retail Associates instead of exercising the six year option from the previous Lease; and,

WHEREAS, The new Lease includes a ten year term, with an additional ten year option, with rent payable to the Landlord at \$7,920 per year with three percent rent increase per year; and now, therefore be it

RESOLVED, That SFMTA Board of Directors authorizes the Director of Transportation of the San Francisco Municipal Transportation Agency (SFMTA) to execute a Lease between North Beach Retail Associates, LLC, as landlord, and the City and County of San Francisco (City), acting by and through the SFMTA, as tenant, for certain premises at 2449 Taylor Street and 2450 Taylor Street (Premises), for use as a SFMTA ticket sales room and a restroom and break room for Muni operators and other authorized Muni and City personnel; and, be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to submit the Lease to the Board of Supervisors for approval.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of February 18, 2014.



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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency



File # 140288  
Received in Committee  
4/23/14



**SFMTA**  
Municipal  
Transportation  
Agency

North Beach Housing Lease  
Ticket Sales Office and Operator Restroom

**BOS Budget & Finance Committee**  
**April 23, 2014**

## North Beach Housing Lease Ticket Sales Office and Operator Restroom

- **Action:** New lease between North Beach Retail Associates, LLC, as landlord, and San Francisco Municipal Transportation Agency (SFMTA), as tenant, for 330 square feet of space at 2449 and 2450 Taylor Street
- **Existing lease:** SFMTA has an existing lease at this site, a public housing site under jurisdiction of the SF Housing Authority at the northern terminus of the Powell/Mason Cable Car line
- **Use:** Break room and restroom for Municipal Railway (Muni) staff and for Muni ticket sales.

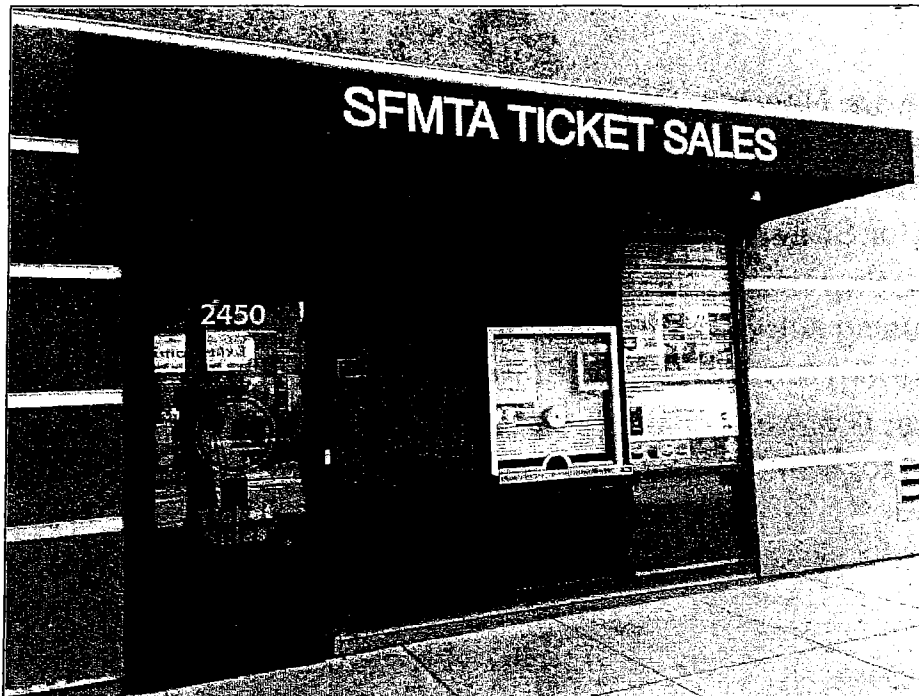
# North Beach Housing Lease

## Ticket Sales Office and Operator Restroom



# North Beach Housing Lease

## Ticket Sales Office and Operator Restroom



## North Beach Housing Lease

### Ticket Sales Office and Operator Restroom

#### Proposed Lease Terms

- **10 year initial term** effective January 1, 2014\* through December 31, 2023
- **1<sup>st</sup> year rent of \$7,920**, increasing 3% per year.
- The proposed lease provides **one 10 year extension option** through December 31, 2033, with the same terms and conditions.

\*Because the proposed lease began on January 1, 2014, the proposed resolution should be amended for retroactivity.

## North Beach Housing Lease

### Ticket Sales Office and Operator Restroom

- **Total rent payments are \$212,813** over 20 years under the proposed lease, including the initial 10-year term and the 10-year extension.
- **\$42,123 less than estimated rent payments of \$254,936** if the SFMTA were to exercise the 6-year extension option in the existing lease and then renegotiating thereafter.
- The estimated net present value savings over 20 years is **\$13,835**.

Print Form

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee.  
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission     Youth Commission     Ethics Commission
- Planning Commission     Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative**

**Sponsor(s):**


Supervisor David Chiu

**Subject:**

Lease between North Beach Retail Associates, LLC, as landlord, and the City and County of San Francisco, acting by and through the SFMTA, as tenant, for certain premises at 2449 Taylor Street and 2450 Taylor Street.

**The text is listed below or attached:**

See attached.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only: