

File No. 130420

Committee Item No. 5

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date May 13, 2013

Board of Supervisors Meeting Date \_\_\_\_\_

#### Cmte Board

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER (Use back side if additional space is needed)

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Commission Motion No. 18775</u>                      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Purchase and Sale Agreement and Joint Escrow Instructions</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Agreement of Purchase and Sale for Real Estate</u>            |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
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Completed by: Alisa Miller Date May 10, 2013

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

1 [Real Property Conveyance - Land Dedication - 1294-8 Shotwell Street - Inclusionary  
2 Affordable Housing]

3  
4 **Resolution approving and authorizing an agreement for the conveyance of a parcel of**  
5 **real estate, consisting of approximately .27 acres improved by a 11,672 square foot**  
6 **commercial building for the Mayor's Office of Housing pursuant to the land dedication**  
7 **process permitted under Planning Code Section 419; adopting findings under the**  
8 **California Environmental Quality Act; adopting findings that the conveyance is**  
9 **consistent with the City's General Plan and Eight Priority Policies of City Planning**  
10 **Code, Section 101.1; and authorizing the Director of Property to execute documents,**  
11 **make certain modifications and take certain actions in furtherance of this Resolution.**

12  
13 WHEREAS, Thomas Murphy and Martina Murphy, Trustees of the Murphy Trust UDT  
14 dated October 03, 2003 ("Seller") owns Lot 026, in Block 6571 located at 1294-8 Shotwell  
15 Street of the County of San Francisco (the "Property"), containing 11,672 square feet of  
16 Production, Distribution and Repair space on .27 acres of land; and

17 WHEREAS, 2558 Mission LLC ("Developer") is the developer of 2558 Mission Street,  
18 San Francisco, a mixed use project known as the New Mission Theatre Project (the "Principal  
19 Site"); and

20 WHEREAS, Developer has elected to satisfy the Inclusionary Affordable Housing  
21 Program requirements under Planning Code Section 415 for the Principal Site by dedicating  
22 the Property to the City pursuant to Planning Code Section 419; and

23 WHEREAS, the land dedication of the Property was included in the Conditional Use  
24 Authorization and Planned Unit Development approvals and California Environmental Quality  
25 Act (CEQA) findings for the Principal Site, which were considered and approved by Planning

1 Commission Motion No. 18775 dated January 10, 2013, a copy of which is on file with the  
2 Clerk of the Board of Supervisors under File No. 130420 and is incorporated herein by  
3 reference ("Planning Approvals"); and

4 WHEREAS, As a condition to the approval of the land dedication of the Property, and  
5 as further described in the Planning Approvals, the Mayor's Office of Housing (MOH)  
6 determined that the Property is suitable for development of up to 46 affordable housing  
7 dwelling units as required under Planning Code Sections 419.5(2) and 419.6; and

8 WHEREAS, The Developer has agreed to purchase the Property from the Seller  
9 pursuant to a Purchase and Sale Agreement and Joint Escrow Instructions dated September  
10 29, 2011 (the "Seller Agreement"), a copy of which is on file with the Clerk of the Board of  
11 Supervisors under File No. 130420 and is incorporated herein by reference; and

12 WHEREAS, The terms and conditions of the conveyance of the Property to the City  
13 have been negotiated, as further outlined in the Agreement of Purchase and Sale for Real  
14 Estate by and between the Developer and City (the "Agreement"), a copy of which is on file  
15 with the Clerk of the Board of Supervisors under File No. 130420 and is incorporated herein  
16 by reference, pursuant to which Developer shall pay Seller to acquire the Property and direct  
17 Seller to convey the fee title to the Property directly to City; and

18 WHEREAS, The Property was appraised by a third party appraiser on April 10, 2013 at  
19 \$4,200,000, and said appraisal was reviewed and approved by the City's Director of Property;  
20 and

21 WHEREAS, Because the Property is being conveyed to the City pursuant to the land  
22 dedication process permitted under Planning Code Section 419, the purchase price to be paid  
23 by the City under the Agreement is \$1; and  
24  
25

1           WHEREAS, The results of preliminary environmental testing on the Property  
2 discovered soluble lead concentrations in the soil exceeding State of California waste criteria;  
3 and

4           WHEREAS, In response to negotiations with the Director of Property and MOH,  
5 Developer has proposed to provide the following in the Agreement to address City's concerns  
6 regarding the condition of the Property (the "Developer Proposal"): 1) an assignment of  
7 Seller's representations and warranties in the Seller Agreement; 2) an agreement to deposit  
8 \$92,230 into an escrow account to be made available to City to transport and dispose of  
9 contaminated soil if necessary for any future development of the Property; and 3) a  
10 representation and warranty that the Property contains no further undisclosed adverse  
11 environmental conditions, with Developer's liability for any breach of this representation  
12 limited to a period of two years after conveyance and a cap of \$500,000.

13           WHEREAS, There are two existing commercial leases for portions of the Property,  
14 which the City will assume as part of the conveyance; and

15           WHEREAS, The Planning Approvals determined that the development of the Principal  
16 Site and the land dedication of the Property are consistent with the City's General Plan and  
17 with the Eight Priority Policies of City Planning Code Section 101.1, and are not subject to  
18 CEQA pursuant to CEQA Guidelines Section 15060(c)(2), now, therefore, be it

19           RESOLVED, That the Board of Supervisors of the City and County of San Francisco  
20 hereby adopts the findings contained in the Planning Approvals regarding CEQA, and hereby  
21 incorporates such findings by reference as though fully set forth in this Resolution; and be it

22           RESOLVED, That the Board of Supervisors of the City and County of San Francisco  
23 hereby finds that the conveyance of the Property is consistent with the General Plan and with  
24 the Eight Priority Policies of City Planning Code Section 101.1 for the same reasons as set  
25

1 forth in the Planning Approvals, and hereby incorporates such findings by reference as though  
2 fully set forth in this Resolution; and, be it

3 FURTHER RESOLVED, That in accordance with the recommendation of the Director  
4 of MOH and Director of Property, the Board of Supervisors hereby approves the conveyance  
5 of the Property to the City and the transaction contemplated thereby in substantially the form  
6 of the Agreement presented to the Board, which incorporates the terms of the Developer  
7 Proposal, and authorizes the Director of Property to execute the Agreement and any  
8 associated assignments of lease; and, be it

9 FURTHER RESOLVED, That all actions heretofore taken by any employee or official of  
10 the City with respect to this conveyance are hereby approved, confirmed and ratified; and, be  
11 it

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

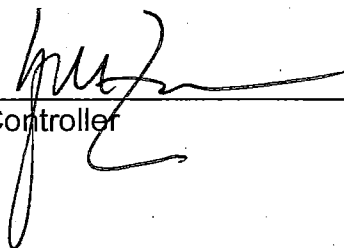
19 FURTHER RESOLVED, That the Director of Property is hereby authorized and urged,  
20 in the name and on behalf of the City and County, to accept the deed to the Property from the  
21 Seller upon the closing in accordance with the terms and conditions of the Agreement, and to  
22 take any and all steps (including, but not limited to, the execution and delivery of any and all  
23 certificates, agreements, notices, consents, escrow instructions, closing documents and other  
24 instruments or documents) as the Director of Property deems necessary or appropriate in  
25 order to consummate the conveyance of the Property pursuant to the Agreement, or to

1 otherwise effectuate the purpose and intent of this Resolution, such determination to be  
2 conclusively evidenced by the execution and delivery by the Director of Property of any such  
3 documents.

4  
5 \$1

6 INDEX CODE: MYRMOHAHF  
7 AFFORDABLE HOUSING - MOH

8 PROJECT CODE: PMOAHF AHFREV  
9 AFFORDABLE HOUSING FUND - MOH  
10 REVENUE

11  
12   
Controller

13 Recommended:

14   
15

16 Director  
17 Mayor's Office of Housing

18   
19 Director of Property



# SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Affordable Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 414)
- Other (In-lieu Fee Agreement)

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

## Planning Commission Motion No. 18775

HEARING DATE: JANUARY 10, 2013

*Date:* January 10, 2013  
*Case No.:* 2005.0694C  
*Project Address:* 2554-2558 Mission Street  
*Zoning:* Mission Street NCT (Neighborhood Commercial Transit) Zoning District  
 Mission Street Alcoholic Beverage Special Use Subdistrict  
 85-X Height and Bulk District  
*Block/Lot:* 3616/007  
*Project Sponsor:* Dean Givas  
 Oyster Development Corp.  
 355 1<sup>st</sup> Street #809  
 San Francisco, CA 94105  
*Staff Contact:* Richard Sucre – (415) 575-9108  
[richard.sucre@sfgov.org](mailto:richard.sucre@sfgov.org)  
*Recommendation:* **Approval with Conditions**

ADOPTING FINDINGS RELATED TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION FOR A PLANNED UNIT DEVELOPMENT, DEVELOPMENT ON A LOT EXCEEDING 10,000 SQ FT, OFF-STREET RESIDENTIAL PARKING ABOVE THE PRINCIPALLY PERMITTED AMOUNT, STREET FRONTAGE HEIGHT ALONG MISSION STREET EXCEEDING 65 FEET, AND FORMULA RETAIL USE WITHIN THE NEW MISSION THEATER, PURSUANT TO SECTIONS 121.1, 151.1(g), 253.4, 303, 304, 703.03, 703.4, AND 736.11 OF THE PLANNING CODE, WITH SPECIFIC MODIFICATIONS TO PLANNING CODE REGULATIONS RELATED TO REAR YARD, OPEN SPACE, DWELLING UNIT EXPOSURE, STREET FRONTAGE AND OFF-STREET FREIGHT LOADING PARKING, AND WITH SPECIFIC CONDITIONS TO MODIFY THE PROPOSED PROJECT, WITH RESPECT TO A PROPOSAL TO CONSTRUCT A NEW EIGHT-STORY, MIXED-USE BUILDING CONTAINING APPROXIMATELY 114 DWELLING UNITS, 14,750 SQUARE FEET OF GROUND FLOOR COMMERCIAL USES, AND 89 OFF-STREET PARKING SPACES AND TO REHABILITATE/CHANGE THE USE OF LANDMARK NO. 245 (NEW MISSION THEATER) TO A FIVE-SCREEN THEATER/RESTAURANT, LOCATED AT 2554-2558 MISSION STREET, LOT 007 IN ASSESSOR'S BLOCK 3616, WITHIN THE MISSION STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT, MISSION STREET ALCOHOLIC BEVERAGE SPECIAL USE SUBDISTRICT, AND A 85-X HEIGHT AND BULK DISTRICT, AND TO ADOPT FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND PLANNING CODE SECTION 101.1.

## **PREAMBLE**

On December 21, 2005, Andrew Junius of Rueben & Junius, on behalf of Oyster Development Corp. (Project Sponsor) and Gus Murad & Associates (Property Owner), filed a Conditional Use Authorization Application with the Planning Department ("hereinafter Department"), under Planning Code Sections 121.1, 151.1(g), 253.4, 303, 304, 703.3, 703.4, and 736.11 to allow a Planned Unit Development (PUD), to allow development on a lot greater than 10,000 square feet, to allow off-street parking for residential uses above the amount principally permitted by the Planning Code, to allow a street frontage height exceeding 65 feet along Mission Street, and, to allow a formula retail use (d.b.a Alamo Drafthouse Cinema) within the landmark theater for the development on the midblock lot (Lot 007 in Assessor's Block 3616) at 2554-2558 Mission Street, between 21<sup>st</sup> and 22<sup>nd</sup> Streets. The proposed project would demolish the existing three-story department store; subdivide the subject lot into two lots; construct a new eight-story mixed-use building with 114 dwelling units, ground floor commercial space (14,750 sq ft), and 89 off-street parking spaces; and, rehabilitate the landmark theater to accommodate a five-screen theater and restaurant.

On November 21, 2012, a Preliminary Mitigated Negative Declaration (PMND), Initial Study and Community Plan Exemption for the proposed project was prepared and published for public review. The PMND, Draft Initial Study, and Community Plan Exemption was available for public comment until December 11, 2012.

On January 10, 2013, the Planning Department/Planning Commission reviewed and considered the Final Mitigated Negative Declaration (FMND) and found that the contents of said report and the procedures through which the FMND was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), Title 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"): and

The Planning Department/Planning Commission found the FMND was adequate, accurate and objective, reflected the independent analysis and judgment of the Planning Department and the Planning Commission, [and that the summary of comments and responses contained no significant revisions to the Draft IS/MND,] and approved the FMND for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

The Planning Department, Jonas P. Ionin, is the custodian of records, located in the File for Case No. 2005.0694E at 1650 Mission Street, Fourth Floor, San Francisco, California.

Planning Department staff prepared a Mitigation Monitoring and Reporting program (MMRP), which material was made available to the public and this Commission for this Commission's review, consideration and action.

On December 19, 2012, the San Francisco Historic Preservation Commission conducted a duly notice public hearing at a regularly scheduled meeting on Certificate of Appropriateness Application No.



2006.0494A, to review exterior and interior alterations to the New Mission Theater, which is designated as Landmark No. 245 in Article 10 of the San Francisco Planning Code.

On January 10, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application No. 2005.0694C.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use Authorization requested in Application No. 2005.0694E, subject to the conditions of Motion No. 18775, except as specifically modified herein, contained in "EXHIBIT A" of this motion, based on the following findings:

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The Project is located on an irregularly-shaped parcel on the west side of Mission Street between 21<sup>st</sup> and 22<sup>nd</sup> Streets (Block 3616, Lot 007) with frontage onto Mission and Bartlett Streets. The existing parcel is roughly 208-ft along Bartlett Street by 160-ft along Mission Street, and is approximately 250-ft deep (44,291 sq ft). The project would subdivide the existing lot into two lots measuring 23,973 sq ft and 20,318 sq ft. The subject parcel is located within the Mission Street NCT (Neighborhood Commercial Transit) Zoning District, Mission Street Alcoholic Beverage Special Use Subdistrict, and a 85-X Height and Bulk District. Currently, the subject parcel is developed with two buildings: a three-story, single-screen theater known as the New Mission Theater, and a three-story department store (aka Giant Value Store). The New Mission Theater at 2554 Mission Street is designated as Landmark No. 245 in Article 10 of the San Francisco Planning Code.
3. **Surrounding Properties and Neighborhood.** The area surrounding the project site is mixed-use in character. A variety of residential, retail, restaurant, office and institutional uses are located within the surrounding area, including a few two-story commercial buildings, and a number of multi-family residences and apartment buildings with ground floor retail uses. Also located within the immediate vicinity are the San Francisco Buddhist Center (37-39 Bartlett Street), and the City College of San Francisco Mission Campus at Bartlett and 22<sup>nd</sup> Streets. Along Mission Street, buildings in the immediate vicinity primarily range from two to three stories in height; and contain residential or commercial uses, including restaurant, retail, bar, and grocery store uses. Within the immediate vicinity are a few buildings that are taller than three-stories in height, including the five-story-tall newer development at 2522 Mission Street and the ten-story tall U.S. Bank Building at 2601 Mission Street. Along Bartlett Street, buildings in the immediate vicinity

are predominantly two-to-three-stories tall, and are mostly residential in character. Directly across Bartlett Street from the project site is a mixed-use development with two floors of parking and residential above. All of the parcels surrounding the subject property are also located within the Mission Street NCT Zoning District. Nearby zoning districts include the RTO-M (Residential Transit Oriented-Mission), P (Public), and RH-3 (Residential, House, Three-Family) Zoning Districts.

4. **Historic Preservation Commission.** On December 19, 2012, the Historic Preservation Commission (HPC) reviewed the proposed project at the New Mission Theater, and granted a Certificate of Appropriateness for the proposed work at the New Mission Theater (Landmark No. 245), as noted in HPC Motion No. 0183.
5. **Public Comment.** The Department has received twelve letters expressing support for the proposed project proposal (See Attached). The Department has received one phone call expressing concern over the use of the land dedication alternative to meet the inclusionary affordable housing requirements.
6. **Planning Code Compliance:** The Commission finds that the project is consistent with the relevant provisions of the Planning Code in the following manner:

- a. **Use, Density & Dwelling Unit Mix.** Planning Code Section 736 outlines the residential and commercial uses permitted within the Mission Street NCT Zoning District. Per Planning Code Section 207.6, dwelling unit density is restricted by physical envelope controls of height, bulk, setback, open space, exposure, and other applicable controls of the Planning Code. Planning Code Section 207.6 states that no less than 40 percent of the total number of dwelling units on site shall contain at least two bedrooms or no less than 30 percent of the total number of dwelling units on site shall contain at least three bedrooms.

*The Project proposes three ground-floor retail spaces and 114 new dwelling units with 63 one bedroom dwelling units and 51 two-bedroom dwelling units. The proposed project meets requirements for dwelling unit mix by providing for 51 two-bedroom dwelling units (or at least 40 percent of the total number of dwelling units contain two bedrooms), which exceeds the required number of two-bedroom dwelling units. Any future retail tenant will comply with the land use requirements outlined within the Planning Code.*

- b. **Height & Bulk.** The subject property is located within a 85-X Height and Bulk District. Pursuant to Planning Code Section 270, projects within a "X"-Bulk District are not subject to specific bulk controls. Pursuant to Planning Code Section 253.4, projects with frontage along Mission Street that are located within the 85-X Height and Bulk District and the Mission Street NCT Zoning District are required to provide a 15-ft front setback above a height of 65-ft measured from the front lot line.

*The Project is requesting Conditional Use Authorization to waive the requirement for a fifteen foot setback along Mission Street for a height above 65-ft (See Below). Although the majority of the proposed project is designed within the 65-ft height limit along Mission Street, a portion of the building projects past the 65-ft height limit along Mission Street to 74-ft 8-in. This portion of the project provides visual interest along Mission Street and assists in varying the massing and façade.*

- c. Rear Yard & Useable Open Space. Planning Code Section 134 requires a minimum rear yard equal to 25 percent of the total lot depth of the lot to be provided at every residential level. Planning Code Section 135 requires a minimum of 80 sq ft of private useable open space per dwelling unit or 106.4 sq ft of common useable open space per dwelling unit. Private useable open space shall have a minimum horizontal dimension of six feet and a minimum area of 36 sq ft is located on a deck, balcony, porch or roof, and shall have a minimum horizontal dimension of 10 feet and a minimum area of 100 sq ft if located on open ground, a terrace or the surface of an inner or outer court. Common useable open space shall be at least 15 feet in every horizontal dimension and shall be a minimum area of 300 sq ft. Further, inner courts may be credited as common useable open space if the enclosed space is not less than 20 feet in every horizontal dimension and 400 sq ft in area, and if the height of the walls and projections above the court on at least three sides is such that no point on any such wall or projection is higher than one foot for each foot that such point is horizontally distant from the opposite side of the clear space in the court.

*Currently, the Project is designed to have full lot coverage and does not provide a required rear yard. The Project provides open space through two interior courtyards, a commonly-accessible roof deck, and a series of private balconies. In total, the project provides 55 dwelling units with private useable open space and 59 dwelling units with common useable open space located in one interior courtyard (2,100 sq ft) and a roof deck (2,050 sq ft). The Project provides a total of 4,400 sq ft of private open space through a series of balconies and a private inner courtyard, which is the appropriate amount of square footage for 55 dwelling units. However, the Project only provides 4,150 sq ft of common useable open space, which is below the required 6,278 sq ft for 59 dwelling units. The Project is seeking a modification of the rear yard and open space requirements as part of the PUD (See Below). Further, not all of the provided private and common open spaces meet the exposure, location and dimension requirements for usable open space, as outlined within the Planning Code.*

*The Project occupies a through lot bounded by Mission and Bartlett Streets to the east and west, between 21<sup>st</sup> and 22<sup>nd</sup> Streets. This block does not possess a pattern of mid-block open space. Therefore, providing a code complying rear yard for the Project would result in a configuration that does not reflect the traditional San Francisco development pattern, with buildings located at or near front property lines, thus creating an urban streetscape framing an interior core of mid-block open space. By using a courtyard design, the Project maintains the street wall along Mission and Bartlett Streets, and provides an urban intervention which more closely resembles a traditional mid-block open space pattern on the project site.*

- d. Dwelling Unit Exposure. Planning Code Section 140 requires that at least one room of all dwelling units face onto a public street, rear yard or other open area that meets minimum requirements for area and horizontal dimensions. To meet exposure requirements, a public street, public alley, side yard or rear yard must be at least 25 ft in width, or an open area (inner court) must be no less than 25 ft in every horizontal dimension for the floor at which the dwelling unit is located.

*The Project organizes the dwelling units to have exposure either on Mission or Bartlett Streets, or within one of the two inner courtyards. The two inner courtyards do not meet the dimension requirements of the Planning Code, since the northern courtyard does not increase by five feet in every horizontal dimension at each upper floor and the southern courtyard measures approximately 20-ft by 144-ft. The Project is seeking a modification of the dwelling unit exposure requirements for 74 dwelling units as part of the PUD (See Below).*

- e. Street Trees. For new construction, Planning Code Section 138.1 requires one street tree for every 20-ft of frontage along a street or alley. Currently, the project site has 161-ft of frontage along Mission Street, and 208-ft of frontage along Bartlett Street. However, the Project has applied for a lot subdivision, which would reduce the street frontage of the new mixed-use building 53-ft along Bartlett Street and 130-ft along Mission Street. Therefore, six street trees are required along Mission Street and three street trees are required along Bartlett Street for the Project.

*The Project provides five new street trees along Mission Street. Due to the width of Bartlett Street and underground utilities, the Project cannot provide additional street trees along Bartlett Street or the required number of street trees along Mission Street. Therefore, the Project will pay the in-lieu fee for street trees, as specified in Planning Code Section 428.*

- f. Bird-Safe Standards. Planning Code Section 139 outlines bird-safe standards for new construction to reduce bird mortality from circumstances that are known to pose a high risk to birds and are considered to be "bird hazards." Feature-related hazards may create increased risk to birds and need to be mitigated. The project site is not located within an urban bird refuge.

*The Project meets the requirements of Planning Code Section 139, and does not have any feature-related hazards, such as free-standing glass walls, wind barriers, or balconies that have unbroken glazed segments 24 sq ft or larger in size.*

- g. Street Frontage. Planning Code 145.1 outlines requirements for street frontages within the Mission Street NCT Zoning District. Under Planning Code Section 145.1(c)(2), no more than one-third of the width of any given street frontage may be dedicated to parking and loading ingress and egress.

*Currently, the Project provides a garage door that measures 18-ft 10-in; therefore, the Project is seeking a modification of the street frontage requirements as part of the PUD (See Below).*

- h. Off-Street Parking. Planning Code Section 151.1 specifies parking maximums for dwelling units within the Mission Street NCT Zoning District. Per Planning Code Section 151.1, one car for each two dwelling units would be principally permitted, while up to .75 cars for each dwelling unit would be allowed with Conditional Use Authorization. Per Planning Code Section 155, one off-street parking space per 25 off-street parking spaces shall be designed and designated for persons with disabilities. Per Planning Code Section 166, one car-share parking space shall be required for the construction of 50 to 200 residential units.

*The Project would provide 89 off-street parking spaces, composed of 86 residential parking spaces (of which three parking spaces would be handicap accessible), one car share parking space, and two retail parking spaces. The Project is seeking Conditional Use Authorization to allow parking in excess of .5 parking spaces for each dwelling unit, which is principally permitted (See Below).*

- i. Off-Street Freight Loading. Planning Code Section 152 outlines the requirements for off-street freight loading spaces. Since the Project would construct 14,750 sq ft of retail space, the Project would be required to provide one off-street freight loading space.

*The Project does not provide any off-street freight loading space and is seeking a modification of the off-street freight loading requirement as part of the PUD (See Below).*

- j. Bicycle Parking, Showers & Lockers. Planning Code Section 155.5 requires new residential buildings to install bicycle parking spaces. For projects that have over 50 units, 25 spaces plus one Class 1 space for every four units over 50 are required. Therefore, the Project is required to provide 41 bicycle parking spaces for the 114 dwelling units. The Project is not required to provide bicycle parking space for the commercial space (14,750 sq ft).

*The Project meets this requirement and provides 46 off-street parking spaces composed of 41 residential bicycle parking spaces and 5 retail bicycle parking spaces, thus exceeding the bicycle parking requirements.*

- k. Unbundled Parking. Planning Code Section 167 requires that all off-street parking spaces accessory to residential uses in new structures of 10 dwelling units or more be leased or sold separately from the rental or purchase fees for dwelling units for the life of the dwelling units.

*The Project is providing off-street parking that is accessory to the dwelling units. These spaces will be unbundled and sold and/or leased separately from the dwelling units; therefore, the Project meets this requirement.*

- l. Shadow. Planning Code Section 295 generally does not permit new buildings over 40-feet in height to cast new shadows on a property under the jurisdiction of the Recreation and Park Commission.

*The Project would construct an 85-ft tall, eight-story, mixed-use building. The Department conducted a shadow analysis, which has shown that the Project would not cast any shadows upon property under the jurisdiction of the Recreation and Parks Commission.*

- m. Affordable Housing-Land Dedication. Planning Code Section 415 sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, these requirements would apply to projects that consist of five or more units, where the first application was applied for on or after July 18, 2006. Under Planning Code Section 419.6, the Land Dedication Alternative may be elected as an alternative to the inclusionary housing component. As further described in Planning Code Section 419.5(a)(2), an Applicant may dedicate a portion of the total development area of the principal site to the City and County of San Francisco for the purpose of constructing units affordable to qualifying households. To meet this requirement, the developer must convey title to land in fee simple absolute to the Mayor's Office of Housing (MOH). The dedicated site must result in a total amount of inclusionary units not less than 40 units; however, MOH may conditionally approve and accept dedicated sites which result in no less than 25 units at their discretion. Per Planning Code Section 419.2, all sites within the Mission Street NCT Zoning District electing to utilize the land dedication alternative would be subject to the "Tier A" requirements.

*The Project Sponsor has elected to pursue the land dedication alternative to meet the inclusionary affordable housing program requirements. As a result of the pending lot subdivision, the new mixed-use building would be located on a parcel measuring 23,973 sq ft. Since the Project is located on a site that has less than 30,000 square feet of developable area, the Project Sponsor must provide a dedicated site that measures at least 35% of the project site or 8,391 sq ft. The Project Sponsor meets these requirements and shall convey the parcel (Block 6571 Lot 026) located at 1296 Shotwell Street to MOH, which measures 11,672 sq ft. This lot meets the requirements of the land dedication alternative. Further, the Project Sponsor has demonstrated that up to 46 dwelling units may be constructed on the dedicated land. If the Project were to pursue the on-site affordable housing alternative, the Project would be required to provide 12% or 14 below-market-rate dwelling units on the project site.*

*MOH concurs with the Project Sponsor's dedicated land and has conveyed a letter expressing conditional approval of the dedicated land (See Attached).*

- n. Development Fees. The Project is subject to the Eastern Neighborhoods Impact Fee per Planning Code Section 423.

*The Project Sponsor shall pay the appropriate Eastern Neighborhoods Impact fees, pursuant to Planning Code 423, at the appropriate stage of the building permit application process. To assist in reducing the amount of impact fees required, the Project Sponsor will seek an In-Kind Agreement, which will be brought forward to the Planning Commission at a later date for review and approval.*

7. **Planning Code Section 121.1** establishes criteria for the Planning Commission to consider when reviewing applications for projects within the Mission Street NCT on lots that exceed 10,000 square feet, through the Conditional Use authorization process. On balance, the project complies with said criteria in that:

- 1) The mass and facade of the proposed structure are compatible with the existing scale of the district.

*The existing development in the area is varied in scale, intensity and character. The Project is somewhat taller than the other buildings in the vicinity, and occupies a relatively large lot. However, the Project uses undulating and offset planes, deep recesses, and changes in fenestration patterns to divide the elevations into discrete modules. Further, the Project does provide for a setback at the topmost floor, though portions of the façade will rise to 74-ft 8-in along Mission Street. The Project is consistent with other nearby development including the ten-story U.S. Bank Building at the corner of Mission and 22<sup>nd</sup> Street, and the five-story building at 2522 Mission Street (formerly Medjool). While the design of the Project is suitable at a conceptual level, the details of the project will be further refined and developed throughout the building permit review in an effort to better relate to the surrounding neighborhood.*

- 2) The facade of the proposed structure is compatible with the design features of adjacent facades that contribute to the positive visual qualities of the district.

*Existing buildings in the area exhibit an eclectic architectural character, with no prevailing style establishing a dominant visual pattern for the neighborhood. Along Mission Street, the existing development ranges in size, scale, character and time period. While no single architectural style or development pattern predominates, the Project reflects the disparate elements of this context while establishing its own contemporary language. Although the Project occupies a relatively large lot, the building is articulated by a series of undulating planes, which are roughly organized into eleven bays along Mission Street. Further, the Project provides a contemporary architectural vocabulary with the use of opaque and clear glass, white metal panels, and varying colors of cement plaster, which relate to the color and feel of the surrounding neighborhood. The variations in fenestration patterns assist in reinforcing the seemingly differential in the façade treatment. The Project provides a strong horizontal articulation of the ground floor level, which relates to the definition of the ground floor level within the surrounding buildings. Finally, the new mixed-use development is setback from the pylon sign of the adjacent historic theater through a bay, which rises to roughly the same height as the new construction. This setback avoids conflict with the reading of the historic pylon sign and marquee. Overall, the building provides a relatable scale relative to the surrounding neighborhood, while reinforcing important characteristics, such as color, ground floor and sensitivity towards the LNADMARK.*

8. **Planning Code Section 151.1(g)** establishes criteria for the Planning Commission to consider when reviewing applications for residential and commercial off-street parking that exceed the principally permitted amount within an NCT District. On balance, the project complies with some, but not all of the said criteria in that:

A. Parking for all uses

- i. Vehicle movement on or around the project does not unduly impact pedestrian spaces or movement, transit service, bicycle movement, or the overall traffic movement in the district.

*The Project Sponsor proposes a quantity of parking beyond the principally permitted amount through Conditional Use Authorization, pursuant to Section 151.1. The MND prepared for the project does not identify transportation or circulation impacts that rise to the level of a significant impact under CEQA. However, the ready availability of excessive parking for the project may serve as a disincentive for residents to travel by means other than the private automobile. The resulting movement of additional vehicles around the Project Site and in the vicinity may degrade the experience of pedestrians and bicyclists.*

*Excessive parking to this degree also conflicts with multiple policies in the General Plan, and specifically the Mission Area Plan, to contribute to a built environment that encourages a variety of transportation options and discourages private automobile use as a primary mode of travel in walkable, transit-rich neighborhoods.*

*Therefore, this Conditional Use Authorization is subject to a condition of approval limiting the amount of parking permitted for the project. The residential parking is limited to an amount smaller than permitted by Conditional Use Authorization by Section 151.1 for the Mission Street NCT District, not to exceed 77 spaces (equal to .67 cars for each dwelling unit). Therefore, the condition of approval limits the number of residential parking spaces to 77. Section 166 requires one car-share parking spaces to be provided for the Project. Section 166(d) specifies that the provision of these required spaces is not counted against the number of parking allowed by the Code as a principal, accessory, or conditional use.*

- ii. Accommodating excess accessory parking does not degrade the overall urban design quality of the project proposal.

*The Project is principally permitted to have 57 parking spaces and is seeking approval for 29 additional parking spaces for a total of 86 off-street parking spaces for the dwelling units. As noted in the condition of approval, the Project would be limited to a maximum of 77 residential off-street parking spaces, as opposed to the 86 residential off-street parking spaces being sought. This reduction in the allowable residential parking reinforces the Mission Street transit corridor and transportation policies contained within the Mission Area Plan. With the condition of approval for the number of off-street parking spaces, the accessory residential parking would not degrade the overall urban design quality of the Project, since parking would be located below ground and would be limited to one entrance/exit along Bartlett Street.*



- iii. All above-grade parking is architecturally screened and, where appropriate, lined with active uses according to the standards of Section 145.1, and the project sponsor is not requesting any exceptions or variances requiring such treatments elsewhere in this Code.

*The Project provides all accessory parking within a below-grade garage, and provides the appropriate active uses on the ground floor as defined within Planning Code Section 145.1.*

- iv. Excess accessory parking does not diminish the quality and viability of existing or planned streetscape enhancements.

*The Project provides all accessory parking within a below-grade garage and would not impact the quality and viability of existing or planned streetscape enhancements.*

#### B. Parking for Residential Uses

- i. For projects with 50 dwelling units or more, all residential accessory parking in excess of 0.5 spaces per unit shall be stored and accessed by mechanical stackers or lifts, valet, or other space-efficient means that reduces space used for parking and maneuvering, and maximizes other uses.

*For the 114 dwelling units, the Project would have a condition of approval to provide a maximum of 77 residential off-street parking spaces, which would be located within a below-grade parking garage. All off-street residential parking spaces would be accessed via mechanical stackers.*

#### C. Parking for Non-Residential Uses

- i. Projects that provide more than 10 spaces for non-residential uses must dedicate 5% of these spaces, rounded down to the nearest whole number, to short-term, transient use by vehicles from certified car sharing organizations per Section 166, vanpool, rideshare, taxis, or other co-operative auto programs. These spaces shall not be used for long-term storage nor satisfy the requirement of Section 166, but rather to park them during trips to commercial uses. These spaces may be used by shuttle or delivery vehicles used to satisfy subsection (B).

*Since the project is located along a transit-rich corridor, the Project only provides two off-street parking spaces for the ground floor commercial spaces; therefore, this requirement does not apply.*

- ii. Retail uses larger than 20,000 square feet, including but not limited to grocery, hardware, furniture, consumer electronics, greenhouse or nursery, and appliance stores, which sell merchandise that is bulky or difficult to carry by hand or by public transit, shall offer, at minimal or no charge to its customers, door-to-door

delivery service and/or shuttle service. This is encouraged, but not required, for retail uses less than 20,000 square feet.

*The Project does not include retail uses larger than 20,000 sq ft.*

- iii. Parking shall be limited to short-term use only.

*Since the project is located along a transit-rich corridor, the Project only provides two off-street parking spaces for the ground floor commercial spaces; therefore, this requirement does not apply.*

- iv. Parking shall be available to the general public at times when such parking is not needed to serve the use or uses to which it is accessory.

*Since the project is located along a transit-rich corridor, the Project only provides two off-street parking spaces for the ground floor commercial spaces; therefore, this requirement does not apply.*

9. **Planning Code Section 253.4** states that Conditional Use Authorization is required to reduce or waive the requirement for a 15-ft front setback above a height of 65-ft for frontages along Mission Street that are located within the 85-X Height and Bulk District and located within the Mission Street NCT Zoning District.

*Findings for Conditional Use Authorization are discussed below in Finding 10-Planning Code Section 303.*

10. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

1. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

- A. In Neighborhood Commercial Districts, if the proposed use is to be located at a location in which the square footage exceeds the limitations found in Planning Code § 121.2(a) or 121.2(b), the following shall be considered:

- i. The intensity of activity in the district is not such that allowing the larger use will be likely to foreclose the location of other needed neighborhood-servicing uses in the area; and

*The Project would replace an under-utilized department store (approximately 58,800 sq ft) with a mixed-use development consisting of a 114 dwelling units, ground floor commercial space (14,750 sq ft), and a rehabilitated historic*

*theater. The Project would provide smaller-scale, ground floor commercial space, which would be more in keeping with the character of Mission Street. Due to the nature of the commercial activity along Mission Street, new residential development would be welcome, since it would be expected that the new residents would walk, shop, and frequent local businesses along Mission Street. As is noted within the General Plan and Mission Area Plan, housing is a much needed commodity. The Project would provide ample new housing within the neighborhood, as well as land for the development of new affordable housing units in excess of the required on-site affordable housing requirements.*

- ii. The proposed use will serve the neighborhood, in whole or in significant part, and the nature of the use requires a larger size in order to function; and

*The Project will add significant housing opportunities at a density suitable for an urban context that is well served by public transit. In addition, the project will include ground floor commercial space that will provide employment opportunities, and will serve the residents of the Project and the larger neighborhood. By targeting mixed-use development at this location, residents of the Project will be able to walk, bicycle, or take transit to commute, shop, and meet other needs without reliance on private automobile use. The ground floor commercial space and rehabilitated theater will create a vibrant focal point along an active commercial corridor, thus activating the streetscape and creating visual interest for pedestrians. The existing development in the area surrounding the Project site is varied in scale and intensity. The Project is somewhat taller than the other buildings in the vicinity, and occupies a relatively large lot. However, the building expresses an alternating rhythm of undulating bays that creates texture and further breaks down the massing of the building. The fenestration pattern changes at each bay to create greater variations in the texture of the Project. Overall, the Project will serve a significant portion of the neighborhood by contributing to the strong commercial character of Mission Street and through new housing opportunities (both market rate and affordable) and new community amenities via the rehabilitated historic theater.*

- iii. The building in which the use is to be located is designed in discrete elements which respect the scale of development in the district; and

*The Project provides a high quality design, which relates to nearby development and the surrounding neighborhood context. The Project includes elements, which create visual interest, breaks down the overall mass, and provides for a relationship to the other commercial properties along Mission Street. The residential component sensitively accommodates the pylon sign of the historic New Mission Theater, and provides appropriate setbacks, which address the scale of the immediate neighborhood. Along Mission Street, the project is*

*seeking Conditional Use Authorization to exceed a height of 65-ft along Mission Street, as required by Planning Code Section 253.4. On Mission Street, the residential component is divided into eleven bays, which undulate and rise up and down in height and scale. Four of the eleven bays rise to height of 74-ft 8-in, thus exceeding the height limit of 65-ft along the street frontage. The excess in height provides variation in scale and design along Mission Street, which breaks down the mass of the façade along Mission Street.*

*The Project, as proposed and as modified by the conditions of this approval, is necessary and desirable for, and is compatible with the neighborhood.*

- 2: The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- A. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

*The Project site is an irregularly-shaped through lot that is adequately sized to accommodate the development. In lieu of providing a Code-complying rear yard, the Project is arranged around two interior courtyards since the subject block does not have a pattern of mid-block open space. Existing development in the vicinity varies in size and intensity, and the Project is generally compatible with the eclectic character of the area. The building is designed with setbacks and varying fenestration patterns to reduce the apparent scale of the Project. The shape and size of development on the subject property will not be detrimental to persons or adjacent properties in the vicinity.*

- B. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

*The MND prepared for the project found that the project would not result in significant transportation and circulation impacts. The Project Site is located within an urban context, where convenience goods and services are available within walking distance. Residents of the project will be able to walk to such services in the vicinity. In addition, the area is served by ample public transit, so that residents do not need to rely on private automobile transportation. Improvement Measures have been incorporated into the MND to avoid traffic congestion during construction of the Project and to encourage transit ridership by residents and the retail employees.*

*The Project Sponsor has proposed a total of 89 off-street parking spaces, exceeding the maximum amount of residential parking that is principally permitted by Section 151.1. The sponsor has requested Conditional Use Authorization to allow parking in excess of the principally-permitted amount up to a ratio of .75 cars per dwelling unit. This amount*

*of off-street parking fails to meet the required Conditional Use Authorization criteria specified in Section 151.1 (see above) and contradicts multiple policies of the General Plan and Mission Area Plan. Therefore, this Conditional Use Authorization is subject to a condition of approval limiting the amount of off-street residential parking for the Project to .67 cars for each dwelling unit, in recognition of the surrounding transit district. As proposed, and as modified by the conditions of approval, the traffic patterns, off-street loading, and the quantity of off-street parking will not be detrimental to persons or adjacent properties in the vicinity.*

- C. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

*Since this will primarily be a residential project, unusual noise, odor, dust and glare as a result of its operations will generally not occur. The Project will comply with Title 24 standards for noise insulation. The materials for the facades of the buildings will not result in glare, since much of the fenestration will be treated with low-e coatings or spandrel glass. The project would generate additional night lighting, due to the theater, but not in amounts unusual for an urbanized area. Design of exterior lighting will ensure that off-site glare and lighting spillover are minimized.*

*Construction noise impacts would be less than significant because all construction activities would be conducted in compliance with the San Francisco Noise Ordinance (Article 29 of the San Francisco Police Code, as amended November 2008). The SF Board of Supervisors approved the Construction Dust Control Ordinance (Ordinance 176-08, effective July 30, 2008) with the intent of reducing the quantity of dust generated during site preparation, demolition and construction work in order to protect the health of the general public and of on-site workers, minimize public nuisance complaints, and to avoid orders to stop work by the Department of Building Inspection. Therefore, the Project would be required to follow specified practices to control construction dust and to comply with this ordinance. This Conditional Use Authorization includes conditions of approval to ensure the Project's compliance with relevant noise, glare, dust and odor requirements.*

- D. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

*The Project provides open space in the form of private decks, a common rooftop deck, a common interior courtyard and a private, interior courtyard. The Project would provide landscaping in the form of street trees along Mission Street. Further, the Project would rehabilitate the pylon sign and marquee of the New Mission Theater, thus providing for new lighting and signage along Mission Street. The Project is seeking a waiver of the rear yard and off-street freight loading requirements, as well as a modification of the open space, dwelling unit exposure and street frontage requirements, as part of the PUD. The Project includes off-street residential parking and a small number of commercial parking spaces. Generally, the area is well-served by transit and a variety of goods and services*

*are within walking distance. Conditions of approval have been added to limit the overall amount of off-street residential parking for the project given the transit-oriented nature of the surrounding district. The Project Sponsor will continue to work with the Planning staff to refine details of project massing, lighting, signage, materials, street trees, and other aspects of the design.*

3. That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the Master Plan; and.

*The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below. The Project is seeking the appropriate waivers and modifications from Planning Code requirements for rear yard, open space, street frontage, dwelling unit exposure and off-street freight loading, as detailed in the PUD (See Planning Code Section 304).*

4. With respect to applications filed pursuant to Article 7 of this Code, that such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable Neighborhood Commercial District, as set forth in Zoning Control Category .1 of Planning Code Sections 710 through 729 of this Code.

*The Project is in conformity with the stated purposes of the Mission Street NCT Zoning District, and provides appropriate ground floor commercial retail frontage with residential above. The Mission Street NCT Zoning District provides a selection of goods serving the day-to-day needs of the resident, as well as eating and drinking establishments that contribute to the street's mixed-use character and evening activity. The new development and theater rehabilitation would contribute and complement the district's overall character and purpose by introducing new residents within the neighborhood, as well as by providing for a mix of new commercial activities through the rehabilitated theater and new ground floor commercial spaces. The Project generally follows the intent of the physical envelope controls for residential density and provides the appropriate amount of family-sized dwelling units. Further, the theater rehabilitation provides a community amenity, which would contribute to the vitality and continued use of Mission Street.*

11. **Planning Code Section 304** establishes criteria and limitations for the Planning Commission to consider when reviewing applications for the authorization of PUD's over and above those applicable to Conditional Uses. On balance, the project does comply with said criteria and limitations in that:

- 1) Affirmatively promote applicable objectives and policies of the General Plan;

*This project furthers multiple existing General Plan and the Mission Plan Area objectives and policies relating to housing, commercial development, historic resources and urban design. See General Plan Compliance (See Below).*

- 2) Provide off street parking adequate for the occupancy proposed;

*The Project proposed 89 off-street parking spaces in a below-grade garage. All of the off-street parking is accessed from Bartlett Street, thus minimizing the impact on Mission Street, a busy thoroughfare with heavy car and bus traffic. There will be one car share space and two commercial parking spaces. The Project is seeking a waiver of the off-street freight loading requirement. However, given the strong transit character of the surrounding neighborhood, a condition of approval has been added to the Project to reduce the amount of off-street residential parking to 77 parking spaces. To accommodate the parking, the Project is seeking an exception from the street frontage requirements under the PUD. This requirement states that the garage width can be no more than one-third the width of the street frontage. The new residential project would have a street frontage of 53-ft along Bartlett Street, thus new garage openings would be limited to 17-ft 8-in. The Project proposes a garage width of 18-ft 10-in, in order to accommodate the entry and existing within the new development. The larger garage opening is acceptable given the overall scale and character of the Project and Bartlett Street. With the condition of approval for the off-street residential parking, the Project provides more than ample off-street parking given the close proximity to public transit options.*

- 3) Provide open space usable by the occupants and, where appropriate, by the general public, at least equal to the open spaces required by this Code;

*The project includes private open space for 55 dwelling units, a common rooftop deck measuring approximately 2,050 sq ft, and a commonly-accessible courtyard measuring 2,100 sq ft. In total, the Project provides a combination of private and common open spaces for the use of residents. The Project is seeking a modification of the rear yard, open space and dwelling unit exposure requirements (Planning Code Sections 135 & 140, respectively), since the provided open space does not meet the amount, location and dimension requirements outlined within Planning Code Section 135 and 140, respectively. In particular, the Project does not provide the required 6,278 sq ft of common open space for the 59 dwelling units, which do not have access to private open space. In total, the Project provides 4,150 sq ft of common open space and 4,400 sq ft of private open space. The total amount of open area exceeds the amount of square footage if the Project were to have provided a 25 percent rear yard (or approximately 4,234 sq ft). Given the benefits of the larger project and overall design, the amount, location and dimension of the provided open space would be acceptable, since the Project provides greater public benefit to the surrounding neighborhood, housing stock, and City, as a whole, and also provides open space in excess of the required rear yard amount.*

- 4) Be limited in dwelling unit density to less than the density that would be allowed by Article 2 of this Code for a district permitting a greater density, so that the PUD will not be substantially equivalent to a reclassification of property;

*The Project meets the residential density requirements as outlined within Planning Code Section 207.4. As noted in the Planning Code, dwelling unit density for NCT Districts shall not be limited by lot area, but by the applicable requirements and limitations, including but not limited to height, bulk, open space, exposure, and unit mix, as well as by applicable design guidelines. The Project meets the requirements for dwelling unit mix, and possesses the required number of two-bedroom units, as outlined in Planning Code Section 207.6.*

- 5) In R Districts, include commercial uses only to the extent that such uses are necessary to serve residents of the immediate vicinity, subject to the limitations for NC-1 (Neighborhood Commercial Cluster) districts under the Code;

*The Project is located within the Mission Street NCT Zoning District; therefore, this criterion does not apply.*

- 6) Under no circumstances be excepted from any height limit established by Article 2.5 of this Code, unless such exception is explicitly authorized by the terms of this Code. In the absence of such an explicit authorization, exceptions from the provisions of this Code with respect to height shall be confined to minor deviations from the provisions for measurement of height in Sections 260 and 261 of this Code, and no such deviation shall depart from the purposes or intent of those sections;

*The Project is within the 85-ft height limit and is seeking Conditional Use Authorization to allow additional height at the street frontage along Mission Street above a height limit of 65-ft, as noted in Planning Code Section 253.4.*

- 7) In NC Districts, be limited in gross floor area to that allowed under the Floor Area Ratio limit permitted for the district in Section 124 and Article 7 of this Code.

*The Project provides non-residential space (14,750 sq ft) within the permitted floor area ratio, as outlined in Planning Code Section 124.*

- 8) In NC Districts, not violate the use limitations by story set forth in Article 7 of this Code.

*The Project is in compliance with the use limitation set forth by Article 7 of the Planning Code.*

- 9) In RTO and NCT Districts, include the extension of adjacent alleys or streets onto or through the site, and/or the creation of new publicly-accessible streets or alleys through the site as appropriate, in order to break down the scale of the site, continue the surrounding existing pattern of block size, streets and alleys, and foster beneficial pedestrian and vehicular circulation.

*The Project is not required to include alley or street extensions through the project site.*

- 10) Provide street trees as per the requirements of Section 143(j) of the Code.

*The Project is in compliance with the requirements of Planning Code Section 138.1, which outlines the requirements for new street trees. The Project will provide five new street trees along Mission Street, and will pay an in-lieu fee for the remaining required street trees, due to the site constraints.*



- 11) Provide landscaping and permeable surfaces in any required setbacks in accordance with Section 132 (g) and (h).

*The Project does not have any required front setbacks and is designed to have full lot coverage. The Project would provide landscaping on a voluntary basis in front of the new commercial spaces in coordination with other city agencies.*

12. **Planning Code Section 703.3** states that a Conditional Use Authorization is required for Formula Retail Uses within this District. Pursuant to Planning Code Section 303(i), with respect to an application for Conditional Use Authorization for formula retail use, the Planning Commission shall consider the following criteria:

- i. The existing concentrations of formula retail uses within the Neighborhood Commercial District.

*With twenty-four formula retail uses in the approximately 1.3 mile long district, the existing concentration of formula retail uses is fairly low and is under four percent of the total commercial spaces within the district. The overall district does not suffer from an over-concentration of formula retail uses and the number of independently-owned retail uses far exceeds the number of formula retail uses. The Project would construct the first Alamo Drafthouse Cinema within San Francisco and California. None of the other formula retail uses within the district provide the same goods and services as Alamo Drafthouse Cinema.*

- ii. The availability of other similar retail uses within the Neighborhood Commercial District.

*The Project is located within .6 and 1.0 miles from other theaters, including the Roxie Theater at 3117 16<sup>th</sup> Street, Victoria Theater at 2961 16<sup>th</sup> Street, and the Castro Theater at 429 Castro Street. These three theaters are all independent theaters that do not directly compete with Alamo Drafthouse Cinemas, which typically shows first-run, major motion pictures. The closest first-run theater is the AMC Theater at 1000 Van Ness Avenue, which is located approximately 2.0 miles away. This theater does not provide a convenient location for movie patrons living in the Mission Street NCT Zoning District. The proposed location would allow neighborhood residents to walk, bike or take public transit to the theater.*

- iii. The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the Neighborhood Commercial District.

*The formula retail use would be located within a historic theater (the New Mission Theater) that has been part of the neighborhood, since 1910. The New Mission Theater is compatible with the surrounding aesthetic character of the district. The Project would rehabilitate a historic landmark and bring renewed vitality to Mission Street.*

- iv. The existing retail vacancy rates within the Neighborhood Commercial District.

*The Mission Street NCT Zoning District currently contains numerous vacant storefronts. Lack of available retail space is not an issue in the district. The Project would contribute to a diverse and thriving retail district, and the Project would work towards the continued success of the district by rehabilitating a long under-used historic property and occupying it with a new tenant and compatible new use. The New Mission Theater has been vacant since the late-1990s. Currently, there is at least one other known vacant historic theater within the Mission St NCT Zoning District.*

- v. The existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the Neighborhood Commercial District.

*The Mission Street NCT Zoning District possesses a mix of neighborhood-serving and citywide-serving retail uses. The area is in an easily accessible part of the City and is surrounded by residential neighborhoods. For these reasons, the retail uses in the area serve both local residents and a larger citywide population. The Project would add an entertainment use that will serve this neighborhood in addition to drawing patrons and movie-goers from other parts of the City. The neighborhood is currently underserved by movie theaters with only two other active theaters in the Mission Street NCT Zoning District. The Project would provide neighborhood residents with this desired retail use and would rehabilitate a historic theater.*

- 13. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

**HOUSING ELEMENT:**

**Objectives and Policies**

**OBJECTIVE 1.**

**IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.**

**Policy 1.1:** Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

**Policy 1.8:** Promote mixed use development, and include housing, particularly permanently affordable housing, in new commercial, institutional or other single use development projects.

**Policy 1.10:** Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

*The Project will add mixed-use development with residential units to an area that is well-served by transit, services, and shopping opportunities. The project site is suited for dense, mixed-use development, where residents can commute and satisfy convenience needs without frequent use of a private automobile. The Project Site is in an area with abundant transit options routes that travel to the Civic Center and the Financial District areas. The Project contributes to the City's overall housing supply and includes a mix of*

*one-bedroom and two-bedroom units in a range of sizes, which would provide housing opportunities for various household types and socioeconomic groups within the neighborhood.*

**COMMERCE AND INDUSTRY ELEMENT:**

**Objectives and Policies**

**OBJECTIVE 6.**

**MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.**

**Policy 6.3:** Preserve and promote the mixed commercial-residential character in neighborhood commercial districts. Strike a balance between the preservation of existing affordable housing and needed expansion of commercial activity.

**Policy 6.7:** Promote high quality urban design on commercial streets.

**Policy 6.10:** Promote neighborhood commercial revitalization, including community-based and other economic development efforts where feasible.

*The Project would demolish an underutilized, three-story department store (approximately 58,800 sq ft) and construct a new eight-story mixed-use building with 114 dwelling units and three ground floor commercial spaces. Residents of these units would shop for goods and services in the area, thus bolstering the viability of the existing businesses. The presence of the ground floor commercial space will contribute to the economic vitality of the area, will fulfill shopping needs for residents, and will activate the streetscape. Overall, the Project would contribute and promote neighborhood-serving commercial activities through a revitalized streetscape caused by the new commercial development and theater rehabilitation.*

**URBAN DESIGN ELEMENT:**

**Objectives and Policies**

**OBJECTIVE 2.**

**CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.**

**Policy 2.4:** Preserve notable landmarks and areas of historic, architectural or aesthetic value.

**OBJECTIVE 3.**

**MODERATION OF MAJOR NEW DEVELOPMENT TO COMPLEMENT THE CITY PATTERN, THE RESOURCES TO BE CONSERVED, AND THE NEIGHBORHOOD ENVIRONMENT.**

**Policy 3.4:** Promote efforts to achieve high quality of design for buildings to be constructed at prominent locations.

*The Project would preserve and reuse a historic landmark, the New Mission Theater, while constructing a new mixed-use development, which is of high quality in design, material and form. The new construction introduces a contemporary architectural vocabulary into the neighborhood, which is sensitive to the adjacent historic theater by incorporating setbacks. The new construction provides a relatable ground floor scale and occupies a prominent location next to a historic theater.*

**MISSION AREA PLAN:**

**Objectives and Policies**

**OBJECTIVE 1.1**

**STRENGTHEN THE MISSION'S EXISTING MIXED USE CHARACTER, WHILE MAINTAINING THE NEIGHBORHOOD AS A PLACE TO LIVE AND WORK.**

**Policy 1.1.3:** Maintain the successful Mission Street, 24<sup>th</sup> Street and Valencia Street Neighborhood Commercial districts; recognize the proximity to good transit service by eliminating residential density limits and minimum parking requirements.

**OBJECTIVE 1.2**

**IN AREAS OF THE MISSION WHERE HOUSING AND MIXED USE IS ENCOURAGED, MAXIMIZE DEVELOPMENT POTENTIAL IN KEEPING WITH NEIGHBORHOOD CHARACTER.**

**Policy 1.2.2:** For new construction, and as part of major expansion of existing buildings in neighborhood commercial districts, require ground floor commercial uses in new housing development. In other mixed-use districts encourage housing over commercial or PDR where appropriate.

**Policy 1.2.3:** In general, residential development is permitted, control residential density through building height and bulk guidelines and bedroom mix requirements.

**OBJECTIVE 2.3**

**ENSURE THAT NEW RESIDENTIAL DEVELOPMENTS SATISFY AN ARRAY OF HOUSING NEEDS WITH RESPECT TO TENURE, UNIT MIX AND COMMUNITY SERVICES.**

**Policy 2.3.3:** Require that a significant number of units in new developments have two or more bedrooms, except Senior Housing and SRO development unless all Below Market Rate units are two or more bedrooms.

**OBJECTIVE 8.2**

**PROTECT, PRESERVE, AND REUSE HISTORIC RESOURCES WITHIN THE MISSION PLAN AREA.**

**Policy 8.2.2:** Apply the Secretary of the Interior's Standards for the Treatment of Historic Properties in conjunction with the Mission Area Plan objectives and policies for all projects involving historic or cultural resources.

*The Project would construct a new mixed-use (residential and commercial) development, as well as rehabilitate and reuse a historic landmark, the New Mission Theater. On December 19, 2012, the Project received a Certificate of Appropriateness for the New Mission Theater (Landmark No. 245) from the Historic Preservation Commission. In furtherance with the goals and objectives of the Mission Area Plan, the Project provides new residential development over ground floor commercial space. This new residential development meets the dwelling unit mix requirements of the Planning Code, and provides the appropriate amount of two-bedroom dwelling units.*

14. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

*The Project would replace an existing department store with new dwelling units, ground floor commercial space, and a new theater/restaurant. The new residents in the Project would patronize area businesses, thus bolstering the viability of surrounding commercial establishments. In addition, the Project would include ground floor commercial spaces, which may provide goods and services to area residents, while contributing to the vital economy and streetscape of Mission Street.*

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

*The Project would not diminish the existing housing stock; rather, the Project would provide new housing opportunities through the development of 114 dwelling units. Further, the surrounding neighborhood character would be enhanced by the high quality design, which will contribute to the vitality of the streetscape.*

- C. That the City's supply of affordable housing be preserved and enhanced.

*The Project would enhance the City's supply of affordable housing by dedicating land at 1296 Shotwell Street to the City and County of San Francisco for the purpose of constructing affordable housing units.*

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*The Project would not detrimentally affect the existing on-street parking supply or MUNI transit service. The Project provides adequate on-site parking for residents via a below-grade parking garage, thus minimizing competition for on-street parking resources in the surrounding neighborhood. In*

*addition, the Project would provide one car share parking space, which will decrease the need for residents to own their own vehicles. The Project also proposes 46 Class I bicycle parking spaces.*

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

*The Project does not propose any office development and would assist in maintaining a diverse economic base by providing future employment opportunities with the new theater and ground floor commercial spaces.*

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the City Building Code.*

- G. That landmarks and historic buildings be preserved.

*On December 19, 2012, the Project received a Certificate of Appropriateness Motion No. 183 for the New Mission Theater (Landmark No. 245) from the Historic Preservation Commission for the proposed project to rehabilitate/change the use of the historic theater according to the Secretary of the Interior's Standards for Rehabilitation.*

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

*The Project will not cast shadows or impede views for parks and open spaces in the area, nor have any negative impact on existing public parks and open spaces.*

15. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
16. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

## DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2005.0694C** subject to the following conditions attached hereto as "EXHIBIT A" which is incorporated herein by reference as though fully set forth.

The Planning Commission has reviewed and considered the IS/MND and the record as a whole and finds that there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the mitigation measures contained in the MMRP to avoid potentially significant environmental effects associated with the Project, and hereby adopts the FMND.

The Planning Commission hereby adopts the MND and the MMRP attached hereto as Exhibit C and incorporated herein as part of this Resolution/Motion by this reference thereto. All required mitigation measures identified in the IS/MND and contained in the MMRP are included as conditions of approval.

The Planning Commission further finds that since the MND was finalized, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the MND due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the MND.

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18775. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on January 10, 2013.

Jonas P. Ionin  
Acting Commission Secretary

AYES: Fong, Hillis, Moore, Sugaya and Wu

NAYS: Antonini

ABSENT: Borden

ADOPTED: January 10, 2013

## **Exhibit A**

### **AUTHORIZATION**

This Conditional Use Authorization is to allow a Planning Unit Development, to allow development on a lot exceeding 10,000 sq ft, to allow accessory off-street residential parking in excess of the principally permitted amount, to allow a building height exceeding 65 feet along street frontage on Mission Street, and to allow a formula retail use (d.b.a. **Alamo Drafthouse Cinema**) located at 2554-2558 Mission Street [Block 3616, and Lot 007] pursuant to Planning Code Section(s) **121.1, 151.1(g), 253.4, 303, 304, 703.3, 703.4, and 736.11** within the **Mission Street NCT Zoning District** and a **85-X Height and Bulk District** for a project proposing new construction of an eight-story, mixed-use development of up to 114 dwelling units with ground floor commercial space (measuring 14,750 sq ft) and the rehabilitation of a historic landmark theater; in general conformance with plans, dated **December 19, 2012**, and stamped "EXHIBIT B" included in the docket for Case No. **2005.0694C** and subject to conditions of approval reviewed and approved by the Commission on **January 10, 2013** under Motion No. 18775. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### **PRINTING OF CONDITIONS OF APPROVAL ON PLANS**

The Conditions of Approval under the 'Exhibit A' of this Planning Commission Motion No. **18775** shall be reproduced on the Index Sheet of construction plans submitted with the site or building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

### **SEVERABILITY**

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

### **CHANGES AND MODIFICATIONS**

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.



## Conditions of Approval, Compliance, Monitoring, and Reporting

### PERFORMANCE

**Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained within three (3) years of the date of the Motion approving the Project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Mitigation Measures.** Mitigation measures described in the MMRP attached as Exhibit C are necessary to avoid potential significant effects of the proposed project and have been agreed to by the project sponsor. Their implementation is a condition of project approval.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

### DESIGN & CODE COMPLIANCE

**Final Materials.** The Project Sponsor(s) shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance, etc..

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

**Garbage, Composting and Recycling Storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

**Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the building permit application for each building. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

**Street Trees.** Pursuant to Planning Code Section 138.1 (formerly 143), the Project Sponsor shall submit a site plan to the Planning Department prior to Planning approval of the building permit application indicating that street trees, at a ratio of one street tree of an approved species for every 20 feet of street frontage along public or private streets bounding the Project, with any remaining fraction of 10 feet or more of frontage requiring an extra tree, shall be provided. The street trees shall be evenly spaced along the street frontage except where proposed driveways or other street obstructions do not permit. The exact location, size and species of tree shall be as approved by the Department of Public Works (DPW). In any case in which DPW cannot grant approval for installation of a tree in the public right-of-way, on the basis of inadequate sidewalk width, interference with utilities or other reasons regarding the public welfare, and where installation of such tree on the lot itself is also impractical, the requirements of this Section 428 may be modified or waived by the Zoning Administrator to the extent necessary.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

**Noise, Ambient.** Interior occupiable spaces shall be insulated from ambient noise levels. Specifically, in areas identified by the Environmental Protection Element, Map1, "Background Noise Levels," of the General Plan that exceed the thresholds of Article 29 in the Police Code, new developments shall install and maintain glazing rated to a level that insulate interior occupiable areas from Background Noise and comply with Title 24.

*For information about compliance, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, [www.sfdph.org](http://www.sfdph.org)*

**Noise.** Plans submitted with the building permit application for the approved project shall incorporate acoustical insulation and other sound proofing measures to control noise.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

## **PARKING AND TRAFFIC**

**Parking Maximum.** Pursuant to Planning Code Section 151.1, the Project shall provide no more than seventy-seven (77) off-street parking spaces for the 114 dwelling units (or .67 off-street parking spaces for each dwelling unit) contained therein.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Car Share.** Pursuant to Planning Code Section 166, no fewer than **one (1)** car share space shall be made available, at no cost, to a certified car share organization for the purposes of providing car share services for its service subscribers.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Bicycle Parking.** Pursuant to Planning Code Sections 155.1, 155.4, and 155.5, the Project shall provide no fewer than **41** bicycle parking spaces (**41** Class 1 spaces for the residential portion of the Project).

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Unbundled Parking.** All off-street parking spaces shall be made available to all building residents only as a separate “add-on” option for purchase or rent and shall not be bundled with any dwelling unit for the life of the dwelling units. Each unit within the Project shall have the first right of refusal to rent or purchase a parking space until the number of residential parking spaces are no longer available. No conditions may be placed on the purchase or rental of dwelling units, nor may homeowner’s rules be established, which prevent or preclude the separation of parking spaces from dwelling units.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation effects during construction of the Project.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## PROVISIONS

**First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.

*For information about compliance, contact the First Source Hiring Manager at 415-581-2335, [www.onestopSF.org](http://www.onestopSF.org)*

**Eastern Neighborhoods Infrastructure Impact Fee.** Pursuant to Planning Code Section 423 (formerly 327), the Project Sponsor shall comply with the Eastern Neighborhoods Public Benefit Fund provisions through payment of an Impact Fee pursuant to Article 4 of the Planning Code and/or through an In-Kind Agreement, as approved by the Planning Commission.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

## MONITORING - AFTER ENTITLEMENT

**Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## OPERATION

**Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>*

**Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>*

**Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

*For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, [www.sfdph.org](http://www.sfdph.org).*

*For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, [www.sfdbi.org](http://www.sfdbi.org).*

*For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-0123, [www.sf-police.org](http://www.sf-police.org)*

**Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Lighting.** All Project lighting shall be directed onto the Project site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to adjacent residents. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed so as to constitute a nuisance to any surrounding property.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## INCLUSIONARY HOUSING

**Land Dedication Alternative.** The Project Sponsor has chosen to satisfy the affordability requirement for the Project through a land dedication pursuant to Planning Code Section 419.6 and 419.5(a)(2)(A)-(J). The Project Sponsor has been in discussions with the Mayor's Office of Housing (MOH) and the Planning Department. On December 20, 2012, MOH provided a letter to the Planning Department that confirmed that the site that the Project Sponsor has selected, 1296 Shotwell (Shotwell Site) [Block 6571 Lot 026], is acceptable under Planning Code Section 419.5(2), subject to the following conditions precedent:

- MOH must receive a Phase II study (the "Phase II Study") showing the results of additional investigation of potential toxic substances at the Shotwell Site, dated no earlier than January 2013; and
- If the Phase II Study reveals the presence of any hazardous materials on the Shotwell Site, MOH must be presented with a toxics remediation plan, to be approved by MOH in its sole discretion.

In the event the land dedication process is completed, and the fee title to the Shotwell Site is transferred to the City prior to the issuance of the first construction document for the Project, the Project will have fully complied with the Planning Code's Section 415 inclusionary affordable housing requirements. In the event, for whatever reason, fee title to the Shotwell Site is not transferred to the City by issuance of the first construction document for the Project, the Project Sponsor has chosen, as an alternative, to put the affordable units on site at the Project.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*

**On-Site Alternative.** In the event fee title to the Shotwell Site is not transferred to the City by issuance of the first construction document for the Project, the Project Sponsor shall comply with the Planning Code's inclusionary affordable housing requirements as noted within the Planning Code. The following conditions will apply to all on-site below market rate affordable housing units:

1. **Number of Required Units.** Pursuant to Planning Code Section 415.6, the Project is required to provide 12% of the proposed dwelling units as affordable to qualifying households. The Project contains 114 dwelling units; therefore, 14 affordable units are required. The Project Sponsor will fulfill this requirement by providing the 14 affordable units on-site. If the number of market-rate units change, the number of required affordable units shall be modified accordingly with written approval from Planning Department staff in consultation with the Mayor's Office of Housing ("MOH").  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*
2. **Unit Mix.** The Project contains 18 studios, 45 one-bedroom, and 51 two-bedroom units; therefore, the required affordable unit mix is 2 studios, 6 one-bedroom, and 6 two-bedroom units. If the market-rate unit mix changes, the affordable unit mix will be modified accordingly with written approval from Planning Department staff in consultation with MOH.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*
3. **Unit Location.** The affordable units shall be designated on a reduced set of plans recorded as a Notice of Special Restrictions on the property prior to the issuance of the first construction permit.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*
4. **Phasing.** If any building permit is issued for partial phasing of the Project, the Project Sponsor shall have designated not less than twelve percent (12%) of the each phase's total number of dwelling units as on-site affordable units.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*
5. **Duration.** Under Planning Code Section 415.8, all units constructed pursuant to Section 415.6, must remain affordable to qualifying households for the life of the project.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*
6. **Other Conditions.** The Project is subject to the requirements of the Inclusionary Affordable Housing Program under Section 415 et seq. of the Planning Code and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual"). The Procedures Manual, as amended from time to time, is incorporated herein by reference, as published and adopted by the Planning Commission, and as required by Planning Code Section 415. Terms used in these conditions of approval and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at the MOH at 1 South Van Ness Avenue or on the Planning Department or Mayor's Office of Housing's websites, including on the internet at:  
<http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451>.

As provided in the Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for sale.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*

- a. The affordable unit(s) shall be designated on the building plans prior to the issuance of the first construction permit by the Department of Building Inspection ("DBI"). The affordable unit(s) shall (1) reflect the unit size mix in number of bedrooms of the market rate units, (2) be constructed, completed, ready for occupancy and marketed no later than the market rate units, and (3) be evenly distributed throughout the building; and (4) be of comparable overall quality, construction and exterior appearance as the market rate units in the principal project. The interior features in affordable units should be generally the same as those of the market units in the principal project, but need not be the same make, model or type of such item as long they are of good and new quality and are consistent with then-current standards for new housing. Other specific standards for on-site units are outlined in the Procedures Manual.
- b. If the units in the building are offered for sale, the affordable unit(s) shall be sold to first time home buyer households, as defined in the Procedures Manual, whose gross annual income, adjusted for household size, does not exceed an average of ninety (90) percent of Area Median Income under the income table called "Maximum Income by Household Size derived from the Unadjusted Area Median Income for HUD Metro Fair Market Rent Area that contains San Francisco." The initial sales price of such units shall be calculated according to the Procedures Manual. Limitations on (i) reselling; (ii) renting; (iii) recouping capital improvements; (iv) refinancing; and (v) procedures for inheritance apply and are set forth in the Inclusionary Affordable Housing Program and the Procedures Manual.
- c. The Project Sponsor is responsible for following the marketing, reporting, and monitoring requirements and procedures as set forth in the Procedures Manual. MOH shall be responsible for overseeing and monitoring the marketing of affordable units. The Project Sponsor must contact MOH at least six months prior to the beginning of marketing for any unit in the building.
- d. Required parking spaces shall be made available to initial buyers or renters of affordable units according to the Procedures Manual.
- e. Prior to the issuance of the first construction permit by DBI for the Project, the Project Sponsor shall record a Notice of Special Restriction on the property that contains these conditions of approval and a reduced set of plans that identify the affordable units satisfying the requirements of this approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to MOH or its successor.
- f. The Project Sponsor has demonstrated that it is eligible for the On-Site Affordable Housing Alternative under Planning Code Section 415.6 instead of payment of the Affordable Housing Fee, and has submitted the *Affidavit of Compliance with the Inclusionary Affordable*

*Housing Program: Planning Code Section 415* to the Planning Department stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the Project.

- g. If the Project Sponsor fails to comply with the Inclusionary Affordable Housing Program requirement, the Director of DBI shall deny any and all site or building permits or certificates of occupancy for the development project until the Planning Department notifies the Director of compliance. A Project Sponsor's failure to comply with the requirements of Planning Code Section 415 et seq. shall constitute cause for the City to record a lien against the development project and to pursue any and all available remedies at law.
- h. If the Project becomes ineligible at any time for the On-Site Affordable Housing Alternative, the Project Sponsor or its successor shall pay the Affordable Housing Fee prior to issuance of the first construction permit or may seek a fee deferral as permitted under Ordinances 0107-10 and 0108-10. If the Project becomes ineligible after issuance of its first construction permit, the Project Sponsor shall notify the Department and MOH and pay interest on the Affordable Housing Fee at a rate equal to the Development Fee Deferral Surcharge Rate in Section 107A.13.3.2 of the San Francisco Building Code and penalties, if applicable.



**1296 SHOTWELL STREET, SAN FRANCISCO, CALIFORNIA**  
**PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

between

**THOMAS F. MURPHY AND MARTINA MURPHY,**  
**TRUSTEES OF THE MURPHY TRUST UDT DATED OCTOBER 03, 2003**

as **“SELLER”**,

and

**2558 MISSION LLC,**  
a California limited liability company

as **“PURCHASER”**

## PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "**Agreement**") is dated for reference purposes only as of September 29 2011 and is by and between THOMAS F. MURPHY AND MARTINA MURPHY, TRUSTEES OF THE MURPHY TRUST UDT DATED OCTOBER 03, 2003 ("**Seller**"), and 2558 MISSION LLC, a California limited liability company ("**Purchaser**") or its permitted assignee as provided in Section 10.1 (b). The effective date of this Agreement ("**Effective Date**") is the day on which this Agreement is executed by both Seller and Purchaser. This Agreement is made with reference to the following facts:

A. Seller owns the land and improvements commonly known as 1296 Shotwell Street, San Francisco, California, identified as Assessor's Parcel 6571-026, which includes buildings and other improvements totaling approximately 10,700 square feet.

B. Seller has agreed to sell to Purchaser and Purchaser has agreed to buy from Seller the Property hereafter described in this Agreement in accordance with and upon satisfaction of the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### ARTICLE 1

#### PURCHASE AND SALE

1.1 Agreement of Purchase and Sale. Subject to the terms and conditions hereinafter set forth, Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, the following:

(a) that certain tract or parcel of land situated in the City and County of San Francisco, California which is commonly known as 1296 Shotwell Street, San Francisco, California and is more particularly described in Exhibit A attached hereto and made a part hereof, together with all rights and appurtenances pertaining to such property, including any right, title and interest of Seller in and to adjacent streets, alleys or rights-of-way (the property described in clause (a) of this Section 1.1 being herein referred to collectively as the "**Land**");

(b) the buildings, structures, fixtures and other improvements (with respect to fixtures and other improvements, only to the extent owned by Seller) affixed to or located on the Land, (the property described in clause (b) of this Section 1.1 being herein referred to collectively as the "**Improvements**");

(c) the personal property owned by Seller and located on the Real Property (hereafter defined) and/or used in the operation of the Property (as hereafter defined), (the

property described in clause (c) of this Section 1.1 being herein referred to collectively as the "Personal Property"); and

(d) any and all of Seller's right, title and interest in and to (i) all assignable permits, licenses, approvals, authorizations, and entitlements issued by any governmental authority in connection with the Property, (ii) all assignable fees and deposits paid in connection with the development, proposed redevelopment, leasing and operation of the Property, (iii) all assignable drawings, plans and specifications and due diligence studies pertaining to the development and/or redevelopment of the Property, (iv) all building and trade names associated with the Property, and (v) all contracts and leases affecting the occupancy and/or operation of the Property which are expressly approved by Purchaser (the property described in clause (d) of this Section 1.1 being herein referred to collectively as the "Intangibles").

1.2. Property Defined. The Land and the Improvements are sometimes herein referred to collectively as the "Real Property." The Land, the Improvements, the Personal Property and the Intangibles are sometimes herein referred to collectively as the "Property."

1.3 Purchase Price. Seller shall sell and Purchaser shall purchase the Property for a purchase price of [REDACTED] Dollars ([REDACTED]) (the "Purchase Price").

1.4 Deposit.

(a) Within five (5) business days after the Effective Date (the "Initial Deposit Due Date"), Purchaser shall deposit with the Title Company (hereafter defined) the sum of Seventy-five Thousand Dollars (\$75,000.00) (the "Initial Deposit") in good funds, either by certified bank or cashier's check or by federal wire transfer.

(b) The Initial Deposit and, if and when made pursuant hereto, the Extension Payments (as provided in Section 3.3 of this Agreement) together with all interest earned on the Initial Deposit and the Extension Payments are hereinafter referred to as the "Deposit" and shall be applied, credited and, if applicable, refunded or not refunded to Purchaser as provided in this Agreement.

(c) Until such time as the Deposit or portions thereof are transferred to the Seller Escrow Account, (i) the Title Company shall hold the Deposit in an interest-bearing account reasonably acceptable to Seller and Purchaser and in accordance with the terms and conditions of this Agreement and (ii) all interest earned on the Deposit shall be credited to the account of and deemed income of Purchaser; following transfer to the Seller Escrow Account, interest thereafter earned on the portions of the Deposit so transferred shall accrue to Seller. The Deposit shall be credited to Purchaser towards the Purchase Price at the Closing (as defined in Section 4.1). The failure of Purchaser to timely deliver any Deposit when due hereunder shall be a material default, and shall entitle Seller, at Seller's sole option, to terminate this Agreement immediately. Notwithstanding the foregoing, the Deposit shall be refundable or non-refundable to Purchaser as and to the extent expressly provided in this Agreement.

1.5 Release and Distribution of Initial Deposit. Until the expiration of the Initial Due Diligence Period (hereafter defined) the Initial Deposit and all interest earned thereon shall be refundable in full to Purchaser should this Agreement terminate for any reason. Upon expiration of the Initial Due Diligence Period if Purchaser has not terminated this Agreement as provided in this Agreement and if Seller is not then in default under this Agreement, the Initial Deposit and all interest earned thereon (i) shall become non-refundable to Purchaser except as expressly provided in Section 1.11 of this Agreement, (ii) shall remain applicable to the Purchase Price at Closing as hereinabove provided, and (iii) shall be transferred to the "Seller Escrow Account" as follows:

First American Title Insurance Company  
100 Spear Street, Suite 1600  
San Francisco, CA 94105  
Attention: Kimberleigh Toci, Senior Commercial Escrow  
Officer  
Escrow Number: \_\_\_\_\_

1.6 Deposit as Liquidated Damages.

(a) IN THE EVENT THAT THIS AGREEMENT DOES NOT TERMINATE ON OR BEFORE THE EXPIRATION OF THE INITIAL DUE DILIGENCE PERIOD, FROM AND AFTER THE EXPIRATION OF THE INITIAL DUE DILIGENCE PERIOD, IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED DUE TO A DEFAULT OF PURCHASER HEREUNDER AND SELLER IS NOT IN DEFAULT HEREUNDER, THE DEPOSIT SHALL BE LIQUIDATED DAMAGES TO SELLER AS PROVIDED BELOW AND PURCHASER HEREBY IRREVOCABLY DIRECTS ESCROW HOLDER, IF NOT PREVIOUSLY RELEASED TO SELLER PURSUANT TO THIS AGREEMENT, TO IMMEDIATELY PAY THE DEPOSIT TO SELLER AS LIQUIDATED DAMAGES AND, EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 6.4, AS SELLER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT, AT LAW OR IN EQUITY, AS A RESULT OF SUCH PURCHASER DEFAULT. IN CONNECTION WITH SUCH PAYMENT, ALL AMOUNTS OF THE DEPOSIT PREVIOUSLY DISTRIBUTED TO SELLER OR PAID OUT OF ESCROW PURSUANT TO THE TERMS OF THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN DISTRIBUTED TO SELLER IN SATISFACTION OF THIS LIQUIDATED DAMAGES PROVISION.

(b) THE PARTIES ACKNOWLEDGE THAT SELLER'S ACTUAL DAMAGES IN THE EVENT THAT THE SALE IS NOT CONSUMMATED DUE TO A DEFAULT OF PURCHASER AND SELLER IS NOT IN DEFAULT HEREUNDER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY SEPARATELY INITIALING THIS SECTION, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT, AT LAW OR IN EQUITY, AGAINST PURCHASER IN THE EVENT

THE CLOSING (AS DEFINED IN SECTION 4.1) DOES NOT OCCUR DUE TO A DEFAULT OF PURCHASER AND SELLER IS NOT IN DEFAULT HEREUNDER. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL THIS SECTION LIMIT THE DAMAGES RECOVERABLE BY EITHER PARTY AGAINST THE OTHER PARTY DUE TO THE OTHER PARTY'S OBLIGATION TO INDEMNIFY SUCH PARTY IN ACCORDANCE WITH THIS AGREEMENT. PURCHASER AND SELLER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTOOD THE ABOVE PROVISION COVERING LIQUIDATED DAMAGES, AND THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS EXECUTED. SELLER AGREES TO AND DOES HEREBY WAIVE ALL OTHER REMEDIES AGAINST PURCHASER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY PURCHASER TO CONSUMMATE THE SALE INCLUDING, WITHOUT LIMITATION, ANY AND ALL BENEFITS IT MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3389.

Seller's Initials



Purchaser's Initials \_\_\_\_\_

1.7 Payment of Purchase Price. The Purchase Price shall be paid at the Closing. At such time as is required by the Escrow Holder for Closing to occur on the Closing Date, Purchaser shall deposit with Escrow Holder, in good funds, the balance of the Purchase Price reduced or increased by such amounts as are required to take into account any prorations, credits, costs or other adjustments which are required by this Agreement and which can be computed and determined as of the time for the required deposit hereunder.

1.8 Assumed Liabilities. Except as expressly set forth in this Agreement, Purchaser shall not assume in connection with the transactions contemplated hereby any claim, cause of action, loss, damage, fine, judgment, cost, attorney's fee, liability or obligation (collectively, "Claims") of Seller whatsoever, and Seller shall retain responsibility for all Claims accrued or incurred prior to Closing and all Claims arising from Seller's ownership of the Property prior to Closing. The provisions of this Section 1.8 shall survive the Closing.

1.9 Title Company.

(a) Within two (2) business days after the Effective Date, the parties hereto shall deposit an executed counterpart of this Agreement with Title Company and this Agreement shall serve as instructions to Title Company for consummation of the purchase contemplated hereby. Seller and Purchaser shall execute such supplemental escrow instructions as may be appropriate to enable Title Company to comply with the terms of this Agreement, provided such supplemental escrow instructions are not in conflict with this Agreement as it may be amended in writing from time to time. In the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions signed by Purchaser and Seller, as between Purchaser and Seller, the terms of this Agreement shall control. Title Company shall hold and dispose of the funds and instruments delivered into escrow in accordance with the terms of this Agreement. Seller and Purchaser agree that the duties of the Title Company hereunder are purely ministerial in nature and shall be expressly limited to the matters set forth in this

THE CLOSING (AS DEFINED IN SECTION 4.1) DOES NOT OCCUR DUE TO A DEFAULT OF PURCHASER AND SELLER IS NOT IN DEFAULT HEREUNDER. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL THIS SECTION LIMIT THE DAMAGES RECOVERABLE BY EITHER PARTY AGAINST THE OTHER PARTY DUE TO THE OTHER PARTY'S OBLIGATION TO INDEMNIFY SUCH PARTY IN ACCORDANCE WITH THIS AGREEMENT. PURCHASER AND SELLER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTOOD THE ABOVE PROVISION COVERING LIQUIDATED DAMAGES, AND THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS EXECUTED. SELLER AGREES TO AND DOES HEREBY WAIVE ALL OTHER REMEDIES AGAINST PURCHASER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY PURCHASER TO CONSUMMATE THE SALE INCLUDING, WITHOUT LIMITATION, ANY AND ALL BENEFITS IT MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3389.

Seller's Initials \_\_\_\_\_

Purchaser's Initials WWS

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1.8 Assumed Liabilities. Except as expressly set forth in this Agreement, Purchaser shall not assume in connection with the transactions contemplated hereby any claim, cause of action, loss, damage, fine, judgment, cost, attorney's fee, liability or obligation (collectively, "Claims") of Seller whatsoever, and Seller shall retain responsibility for all Claims accrued or incurred prior to Closing and all Claims arising from Seller's ownership of the Property prior to Closing. The provisions of this Section 1.8 shall survive the Closing.

1.9 Title Company.

(a) Within two (2) business days after the Effective Date, the parties hereto shall deposit an executed counterpart of this Agreement with Title Company and this Agreement shall serve as instructions to Title Company for consummation of the purchase contemplated hereby. Seller and Purchaser shall execute such supplemental escrow instructions as may be appropriate to enable Title Company to comply with the terms of this Agreement, provided such supplemental escrow instructions are not in conflict with this Agreement as it may be amended in writing from time to time. In the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions signed by Purchaser and Seller, as between Purchaser and Seller, the terms of this Agreement shall control. Title Company shall hold and dispose of the funds and instruments delivered into escrow in accordance with the terms of this Agreement. Seller and Purchaser agree that the duties of the Title Company hereunder are purely ministerial in nature and shall be expressly limited to the matters set forth in this

Agreement. As used in this Agreement the terms "Title Company", "Escrow Holder" and "Escrow" shall refer to and mean the following:

First American Title Insurance Company  
901 Mariners Island Boulevard, Suite 380  
San Mateo, CA 94404  
Attention: Karen Matsunaga, Senior Commercial  
Escrow Officer  
Escrow Number: NCS-498418-SM

(b) Title Company shall execute this Agreement solely for the purpose of being bound by the provisions of this Agreement directing action by the Title Company.

1.10 Vacation and Surrender by Current Tenants. Seller has represented to Purchaser that there are currently three (3) tenants of the Property ("**Current Tenants**"). Seller proposes to arrange for the termination of the leases of the Current Tenants, and the vacation and surrender of the portion of the Property leased by the Current Tenants (or to otherwise relocate one or more of the Current Tenants to other property owned by Seller) such that all of such Current Tenants agree to vacate and surrender the portion of the Property leased by them on or before the Closing Date. Seller shall have sixty (60) days from the Effective Date ("**Seller Contingency Date**") to negotiate and execute agreements with each of the Current Tenants (collectively, "**Relocation Agreements**"), satisfactory to Seller, for (a) a termination of each of the Current Tenant's leases of the Property and any other possessory or other rights with respect to the Property that the Current Tenants may hold and (b) the vacation and surrender of the portion of the Property leased by such Current Tenants on or before the Closing Date. Seller shall make a good faith, commercially reasonable effort to procure Relocation Agreements from each of the Current Tenants within the above-referenced sixty (60) day period. On or before the Seller Contingency Date, the Seller shall notify Purchaser in writing ("**Seller's Notice**") whether Seller and Current Tenants have executed Relocation Agreements. The date on which Seller gives Seller's Notice shall be referred to in this Agreement as the "**Seller's Notice Date.**" If the Seller and all Current Tenants have executed Relocation Agreements, Seller's Notice shall include a certification to Purchaser that each of the Current Tenants is required by their respective Relocation Agreements to vacate and surrender prior to the Closing Date and shall also include a full and complete copy of the executed Relocation Agreements. If the Seller notifies Purchaser that Seller was unable to obtain a Relocation Agreement from each of the Current Tenants, Seller may by Seller's Notice terminate this Agreement in which event this Agreement shall immediately terminate, the Deposit shall be promptly refunded to Purchaser and the Seller and Purchaser shall have no further obligations pursuant to this Agreement except for those obligations which expressly survive termination. If the Seller fails to give Purchaser a Seller's Notice in the time and manner provided herein, Purchaser may, by written notice to Seller given on or before the termination of the Initial Due Diligence Period, terminate this Agreement in which event this Agreement shall immediately terminate, the Deposit shall be promptly refunded to Purchaser and the Seller and Purchaser shall have no further obligations pursuant to this Agreement except for those obligations which expressly survive termination. If neither party terminates this Agreement due to Seller's inability to obtain all of the Relocation Agreements, neither Purchaser nor Seller shall have the right thereafter to terminate this Agreement due to Seller's inability to obtain such Relocation Agreements. Purchaser acknowledges that Seller shall have no liability to Purchaser

in the event one or more of the Current Tenants executes and delivers a Relocation Agreement to Seller but then one or more of such Current Tenants fails to vacate and surrender as required by the terms of its Relocation Agreement; provided, Seller acknowledges that a condition to Purchaser's obligation to purchase the Property is that the Property be free of tenancies at Closing, including the tenancy of all of the Current Tenants, and that in the event of a failure of such condition which is not expressly waived by Purchaser, Purchaser shall be entitled to the return of the Deposit.

1.11 Deposit Refund. Notwithstanding anything to the contrary stated elsewhere in this Agreement, the Deposit (which includes interest earned thereon and Extension Payments, if any, made by Purchaser) shall be promptly refunded to Purchaser should the Closing not occur for either of the following reasons: (a) a Seller's Default as defined in Section 6.1 (b); or (b) a failure of any of Purchaser's Conditions (as defined in Section 4.6 below).

## ARTICLE 2

### TITLE, SURVEY AND FURTHER COVENANTS

2.1 Title Inspection. Seller has, or on or before the Purchaser's deposit of the Initial Deposit will have, delivered to Purchaser (a) any existing surveys of the Property in Seller's possession, and (b) copies of the most recent property tax bills for the Property.

2.2 Liquidated Liens. Seller agrees to remove on or before the Closing any mortgages and/or mechanic's liens shown as exceptions on the Title Report (provided that such mortgages and/or mechanic's liens were not created or caused by Purchaser or as a result of any of Purchaser's Inspections), any judgment liens against the Real Property, and any liens for delinquent taxes, and no such mortgages or liens (collectively, "**Liquidated Liens**") shall be Permitted Exceptions notwithstanding any other provision of this Agreement, nor shall Purchaser be required to formally object to the same except that Purchaser shall be deemed to object to Liquidated Liens.

2.3 Title Examination. Purchaser has ordered a current preliminary title report on the Real Property issued by the Title Company, accompanied by copies of all documents referred to in the report (collectively, the "**Title Report**"). If the Title Report contains any exception or defect not acceptable to Purchaser, in Purchaser's sole discretion, then Purchaser shall deliver to Seller, not later than thirty (30) days after the Seller's Notice Date ("**Purchaser's Title Notice Date**") written notice ("**Purchaser's Title Notice**") of Purchaser's objections. Such written notice shall specifically set forth the nature of Purchaser's objections to title. In the event that on or before the Purchaser's Title Notice Date Purchaser shall fail to object to any matter set forth in the Title Report, such matter shall be deemed to be a "**Permitted Exception**", excluding, however, Liquidated Liens. Seller shall have three (3) business days after receipt of Purchaser's Title Notice ("**Seller's Title Notice Date**") in which to notify Purchaser, in writing ("**Seller's Title Notice**"), whether and how it will resolve Purchaser's objections to title. If Seller shall fail to give Seller's Title Notice on or before the Seller's Title Notice Date, Seller shall be presumed to have elected not to cure or correct any of the matters objected to by Purchaser. If Seller notifies Purchaser in Seller's Title Notice that Seller is unable or unwilling to cure any of Purchaser's objections to title on or before the Closing, or if the manner in which Seller proposes



to resolve any matter objected to by Purchaser is unacceptable to Purchaser, or if Seller is presumed to have elected not to cure any such defects on or before Closing, then, on or before the Initial Contingency Date, Purchaser shall inform Seller in writing that Purchaser has elected one of the following options to be exercised in Purchaser's sole discretion and as Purchaser's sole remedy: (1) to proceed with the purchase and sale transaction described herein in accordance with the terms of this Agreement and accept title to the Property at Closing subject to such defects (in which case such defects shall be deemed Permitted Exceptions) or (2) to terminate this Agreement in which event the Purchaser shall be entitled to an immediate refund by the Escrow Holder of the Deposit, whereupon all rights and liabilities of the parties hereto to each other shall end except for any obligations which expressly survive the termination of this Agreement.

2.4 Permitted Exceptions. The Property shall be conveyed subject to the following matters, which are hereinafter referred to as the "**Permitted Exceptions**": (a) those matters that have been approved by Purchaser in writing as exceptions in the Title Policy (or deemed to have been approved pursuant to the terms of this Agreement); (b) the lien of all ad valorem real estate taxes and assessments not yet due and payable as of the date of Closing, subject to adjustment as herein provided; and (c) local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Real Property. Notwithstanding anything to the contrary contained in this Agreement, the Permitted Exceptions shall not include, and Seller shall cause to be removed from record at or before the Closing, at Seller's cost, all Liquidated Liens.

2.5 Conveyance of Title. At Closing, Seller shall convey and transfer to Purchaser fee simple title to the Real Property, by execution and delivery of the Deed (as defined in Section 4.2(a) hereof). Evidence of delivery of such title shall be the issuance by the Title Company of the Title Policy covering the Real Property, in the full amount of the Purchase Price, subject only to the Permitted Exceptions. Seller and Purchaser acknowledge that the description of the Land set forth in Exhibit A includes an adjacent parcel owned by Seller which is commonly known as 1298 Shotwell Street ("**1298 Parcel**"). Seller believes the 1298 Parcel is a separate legal parcel notwithstanding its inclusion in the legal description of the Land, and that in order for Seller to convey and transfer to Purchaser fee simple title to the Real Property it is necessary to establish a separate legal description for the Land ("**Separate Legal Description**"). Purchaser shall, at Purchaser's sole cost and expense, take all commercially reasonable actions in order to establish the Separate Legal Description prior to the Closing Date; provided, however, in no event shall Purchaser's failure to establish the Separate Legal Description be deemed a Purchaser Default.

2.6 Further Seller Covenants. Provided this Agreement shall not have been terminated, following the expiration of the Initial Due Diligence Period, without the prior written consent of Purchaser (not to be unreasonably withheld, conditioned or delayed), Seller shall not (i) enter into any obligations or agreements affecting the Real Property, or Intangibles which will survive Closing, (ii) create any liens, encumbrances or easements affecting the Real Property, (iii) except as provided in Section 1.10 amend, modify or terminate any lease on the Property which the Purchaser has expressly accepted as a Permitted Exception; (iv) make any alteration of any of the Improvements (except as Seller deems necessary in the ordinary course of business), (v) store, generate or dispose of any hazardous materials at or in the vicinity of the Real Property (for which purpose, the term "**hazardous materials**" means any substance, the use, storage,

generation or disposal of which is regulated by applicable federal or state laws or regulations), or (vi) fail to take such actions as may be reasonably necessary to prevent damage to or the deterioration of the Improvements. At no third-party cost or expense to Seller, Seller shall reasonably and timely cooperate with Purchaser in connection with Purchaser's securing the Separate Legal Description described in Section 2.5 above and in connection with Purchaser's entitlement of the Property for Purchaser's residential project and shall not in any way oppose or impede either such process.

## ARTICLE 3

### REVIEW OF PROPERTY

3.1 Right of Inspection. Subject to the terms and conditions set forth in this Agreement, from the Effective Date and until the Closing or earlier termination of this Agreement ("**Inspection Period**"), Purchaser may inspect the Property, review the Due Diligence Materials (hereafter defined) and conduct its' due diligence activities for the purpose of ascertaining the physical condition of the Property and the feasibility of Purchaser's purchase and proposed use and development of the Property. Seller agrees that, during the Inspection Period, Seller shall cooperate and provide Purchaser with reasonable and continuing access to the Property. For purposes of certain deadlines under this Agreement the term "**Initial Due Diligence Period**" shall mean the period commencing on the Seller's Notice Date and ending at 5:00 P.M. on the date that is sixty (60) days after the Seller's Notice Date (the "**Initial Contingency Date**") and the term "**Second Due Diligence Period**" shall mean the period commencing on the Seller's Notice Date and ending at 5:00 P.M. on the date that is three hundred sixty-five (365) days after the Seller's Notice Date (the "**Second Contingency Date**"). The Second Due Diligence Period and the Second Contingency Date may be extended by Purchaser as provided in Section 3.3 below.

On or before Purchaser's deposit of the Initial Deposit, Seller shall make all Due Diligence Materials available to Purchaser for Purchaser's review. Thereafter and until the Closing or termination of this Agreement, Seller shall promptly upon receipt thereof make available for Purchaser's review any additional Due Diligence Materials which come into Seller's possession, custody or control. As used herein, the "**Due Diligence Materials**" shall mean all documents, records and files in Seller's possession, custody or control concerning the physical condition, leasing, operation, tenancies, entitlement status, development, use and/or ownership of the Property, including, without limitation, all physical condition reports (including, without limitation all reports respecting soils condition and/or environmental condition), and all Intangibles relating to the Property in Seller's possession but excluding any attorney-client privileged correspondence, Seller's partnership or corporate records, internal memoranda, accounting and tax records and similar proprietary information that does not relate to the operation of the Property; provided, however, that the attorney-client privilege exception above shall not extend to copies of environmental inspections, notices or reports related to the Property. Seller shall cooperate reasonably (and at no cost or expense to Seller) with Purchaser in approaching any consultants or issuers of the Due Diligence Materials to have such materials dated down and reissued to Purchaser provided, however that Purchaser shall pay any costs and expenses with respect to such date down and reissuance.

Seller shall use commercially reasonable efforts to obtain from each current tenant and subtenant, if any, at the Property ("Tenant"), on or before twenty (20) days after the Effective Date, an estoppel certificate in the form of Exhibit "E" hereto, (the "**Tenant Estoppel Certificate**") and in substance reasonably satisfactory to Purchaser. Seller shall also use commercially reasonable efforts to obtain from each Tenant, if any, then occupying or leasing any portion of the Property, an additional Tenant Estoppel Certificate signed by the Tenant and dated within twenty (20) days prior to the final Closing Date. At Closing the Property shall be delivered to Purchaser free and clear of all tenancies and persons in possession of any portion of the Property.

During the Inspection Period, during ordinary business hours and one (1) business days' notice (which notice may be by e-mail), Purchaser and Purchaser's agents, employees, consultants or contractors shall have the right, at Purchaser's sole cost and expense, to conduct physical inspections of the Property, and to conduct any environmental, engineering, geologic, use, development or other feasibility tests and studies that Purchaser chooses to perform. Purchaser, at all times, will conduct all inspections and reviews in compliance with all applicable laws, and in a manner so as to not cause damage, loss, cost or expense to Seller or the Property. Purchaser shall have the right to perform invasive testing of the Property with Seller's prior written consent, which consent shall not be unreasonably withheld or delayed but may be subject to reasonable conditions imposed by Seller. In connection with any such invasive testing, promptly following Purchaser's receipt of a written report related to such inspection, Purchaser shall deliver to Seller, without representation or warranty, a true and complete copy of the report. Immediately upon the completion of any physical inspection of the Property, Purchaser shall at its sole cost and expense cause any portion of the Property damaged or altered by or in connection with such inspection to be repaired and/or restored to the condition it was in prior to the inspection; provided, Purchaser shall not disturb any tenants of the Property while performing said inspections. Prior to entering the Property (and on each and every occasion), Purchaser shall (a) deliver to Seller prior notice (which notice may be by e-mail), (b) afford Seller a reasonable opportunity to have a representative of Seller present while Purchaser performs its inspections provided that such opportunity shall not cause an unreasonable delay in the performance of Purchaser's inspections, and (c) provide the identity of the party(s) who will perform the inspections and the proposed scope of such inspections.

Purchaser agrees that, prior to undertaking any inspections of the Property, Purchaser or Purchaser's agents will obtain comprehensive general liability insurance in an amount of not less than Two Million Dollars (\$2,000,000.00) combined single limit for any injury or death of one or more persons per occurrence and for damage to tangible property (including loss of use) per occurrence with a contractual liability endorsement which insures Purchaser's indemnity obligations related to Purchaser's inspection of the Property, which names Seller as an additional insured thereunder (a copy of the certificate of insurance shall be provided by Purchaser to Seller prior to undertaking any inspections and contain a cross-liability provision, and contain a provision that such insurance shall be primary and non-contributing with any other insurance available to Seller). Such insurance coverage shall be maintained by Purchaser until the later of (a) the Closing Date, or (b) thirty (30) days after the termination of this Agreement for any reason.

Except to the extent resulting from Seller's negligence or willful misconduct or from the negligence or willful misconduct of an employee, contractor or agent of Seller, Purchaser agrees to protect, indemnify, defend and hold Seller harmless from and against any Claims arising out of or resulting from the inspection of the Property by Purchaser or its agents or consultants (other than matters arising as a result of Purchaser's discovery of existing conditions within or beneath the Property). Notwithstanding anything to the contrary in this Agreement, the obligation to indemnify and hold harmless Seller shall survive Closing or any termination of this Agreement for a period of one (1) year.

3.2 Right of Termination. On or before the Initial Contingency Date, Purchaser shall have the right to terminate this Agreement for any reason by giving written notice thereof to Seller ("**Purchaser Termination Notice**"), and if Purchaser gives such notice of termination prior to the expiration of the Initial Due Diligence Period, this Agreement shall immediately terminate. If this Agreement is terminated pursuant to the foregoing provision of this paragraph, then neither party shall have any further rights or obligations hereunder (except for any indemnity obligations of either party pursuant to this Agreement and any obligations which expressly survive the termination of this Agreement), the Initial Deposit shall be promptly refunded to Purchaser with any interest earned thereon, and each party shall bear its own costs incurred hereunder. If upon expiration of the Initial Due Diligence Period this Agreement has not terminated as provided in this Agreement, Purchaser shall be deemed to have approved of all Due Diligence Materials, Purchaser's inspections and title as of the Initial Contingency Date, and from and after the expiration of the Initial Due Diligence Period and until the Second Contingency Date (as such date may be extended by Purchaser as hereafter provided), Purchaser shall have the right to terminate this Agreement for any of the following reasons (but for no other reasons except those described in Section 1.11) by giving a Purchaser Termination Notice to Seller: (i) Purchaser shall not have received all required discretionary approvals for its project at 2558 Mission Street, San Francisco, California (the "**Mission Street Project**"); (ii) The applicable appeals period(s) for all required discretionary approvals for the Mission Street Project shall not have expired; (iii) Purchaser shall not have obtained from the Mayor's Office of Housing formal approval of the Property as a land dedication site in connection with the Mission Street Project; (iv) Purchaser shall not have obtained full environmental clearance by the Planning Department for use of the Property for a land dedication in connection with the Mission Street Project; or, (v) Purchaser shall not have secured the Separate Legal Description of the Land as provided in Section 2.5. If Purchaser gives such notice of termination prior to the expiration of the Second Due Diligence Period, this Agreement shall immediately terminate. If this Agreement is so terminated, then neither party shall have any further rights or obligations hereunder (except for any indemnity obligations of either party pursuant to this Agreement and any other obligations or liabilities which expressly survive the Closing), provided that Seller is not then in default under this Agreement, the Deposit (including any Extension Payments made by Purchaser) shall be retained by Seller and be non-refundable to Purchaser except as expressly provided in Section 1.11 of this Agreement, and each party shall bear its own costs incurred hereunder.

3.3 Extension of Second Due Diligence Period. Purchaser shall be permitted up to three (3) extensions of the Second Due Diligence Period and Second Contingency Date (each, an "**Extension**"), and each Extension shall be for a period of three (3) months from the expiration of the prior Extension. Each Extension must be exercised in strict accordance with the procedures

described in this Section 3.3. Each Extension must be properly exercised in order to irrevocably exercise the next Extension. Purchaser shall provide Seller with at least fifteen (15) days written notice prior to the expiration of the then-current Period that Purchaser desires to exercise an Extension, along with a cash payment of Twenty-five Thousand Dollars (\$25,000) for each Extension (each, an "**Extension Payment**"). The Extension Payments shall be non-refundable to Purchaser except as provided in Section 1.11 and paid to the Seller Escrow Account and at Closing shall be credited against the Purchase Price.

## ARTICLE 4

### CLOSING

#### 4.1 Time and Place.

(a) Provided that neither Purchaser nor Seller has terminated this Agreement as provided in this Agreement and further provided that all of the Purchaser's Conditions and Seller's Conditions have been satisfied as of the Closing Date, the consummation of the transaction contemplated hereby (the "**Closing**") shall be held at the offices of the Title Company on the date that is thirty (30) days after the expiration of the Second Due Diligence Period as such Second Due Diligence Period may be extended as expressly provided herein (the "**Closing Date**").

(b) If for any reason the Closing does not occur on the Closing Date, as such date may be extended by mutual agreement of Purchaser and Seller, the obligations of the parties to buy and sell the Property shall terminate and each party shall have the rights and remedies set forth herein. If Closing does not occur for any reason other than a Default of Seller, Purchaser shall, upon written request from Seller, deliver to Seller, without representation or warranty of any kind with respect to the items or such delivery, true and complete copies of Purchaser's third-party due diligence reports generated in connection with Purchaser's inspections of the Property.

(c) Documents shall be deposited with the Title Company as provided in this Agreement. At the Closing, Seller and Purchaser shall perform the obligations set forth in, respectively, Section 4.2 and Section 4.3 hereof, the performance of which obligations shall be concurrent conditions.

#### 4.2 Seller's Deliveries.

(a) Seller shall deliver to Title Company, in escrow, a duly executed grant deed (the "**Deed**") in the form attached hereto as **Exhibit B**, conveying the Land and Improvements, subject only to the Permitted Exceptions.

(b) Seller shall deliver to Title Company, in escrow, two duly executed counterpart originals of an assignment of Seller's interest in the Personal Property and the Intangibles by agreement in the form attached hereto as **Exhibit C** (the "**Assignment of Intangibles**").

(c) Seller shall deliver to Title Company such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Seller.

(d) Seller shall deliver to Title Company a certificate in the form attached hereto as **Exhibit D** duly executed by Seller stating that Seller is not a "foreign person" as defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and a State of California Form 597 (collectively, the "Non-Foreign Affidavits").

(e) Seller shall deliver to Purchaser outside of escrow the assigned Intangibles.

(f) Seller shall deliver to Title Company a full release and reconveyance of all monetary encumbrances affecting the Property which are not to be paid out of the proceeds of the Closing (other than the lien of current, non-delinquent real property taxes and assessments) and any mechanics' liens, and such affidavits as may be customarily and reasonably required by the Title Company, in a form reasonably acceptable to Seller in order to allow issuance of the Title Policy.

(g) Seller shall deliver to Purchaser possession and occupancy of the Property free and clear of all occupants, leases and occupancy agreements, subject to the Permitted Exceptions.

(h) Seller shall deliver to Title Company, in Escrow, a closing statement reasonably acceptable to Seller duly executed by Seller. Purchaser and Seller shall cooperate in good faith with Title Company to prepare the final closing statement.

(i) Seller shall deliver to Title Company such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement, including without limitation, an Owner's Affidavit in a form reasonably acceptable to Seller.

#### 4.3 Purchaser's Deliveries.

(a) Purchaser shall wire transfer to Title Company the full amount of the Purchase Price (less the Deposit), increased or decreased by prorations and adjustments as herein provided.

(b) Purchaser shall deliver to Title Company, in Escrow, two (2) duly executed counterpart originals of the Assignment of Intangibles.

(c) Purchaser shall deliver to Title Company such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Purchaser.

(d) Purchaser shall deliver to Title Company, in Escrow, a closing statement reasonably acceptable to Purchaser duly executed by Purchaser.

(e) Purchaser shall deliver to Title Company such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement.

#### 4.4 Credits, Prorations and Closing Deliveries.

(a) All income and expenses of the Property shall be apportioned as of 12:01 a.m., on the day of Closing, as if Purchaser were vested with title to the Property during the entire day upon which Closing occurs. Such prorated items shall include without limitation the following: (i) all rents, if any; (ii) taxes and assessments levied against the Property; (iii) to the extent that such utilities are not terminated as of the Closing, utility charges for which Seller is liable, if any, such charges to be estimated at Closing on the basis of the most recent meter reading occurring prior to Closing (dated not more than fifteen (15) days prior to Closing) or, if unmetered, on the basis of a current bill for each such utility; and (iv) any other operating expenses or other items pertaining to the Property which are customarily prorated between a purchaser and a seller in the county in which the Property is located.

(b) Notwithstanding anything contained in Section 4.4(a) hereof:

(i) Any taxes paid at or prior to Closing shall be prorated based upon the amounts actually paid. If taxes and assessments due and payable prior to or during the year of Closing have not been paid before Closing, Seller shall be charged at Closing an amount equal to that portion of such taxes and assessments which relates to the period before Closing and Purchaser shall pay the taxes and assessments prior to their becoming delinquent. Any such apportionment made with respect to a tax year for which the tax rate or assessed valuation, or both, have not yet been fixed shall be based upon the tax rate and/or assessed valuation last fixed. To the extent that the actual taxes and assessments for the current year differ from the amount apportioned at Closing, the parties shall make all necessary adjustments by appropriate payments between themselves within thirty (30) days after such amounts are determined following Closing and this obligation shall survive the Closing;

(ii) As to utility charges, Seller may on notice to Purchaser elect to pay one or more of all of said items accrued to the date hereinabove fixed for apportionment directly to the person or entity entitled thereto, and to the extent Seller so elects, such item shall not be apportioned hereunder, and Seller's obligation to pay such item directly in such case shall survive the Closing or any termination of this Agreement.

(c) Except as otherwise provided herein, any revenue or expense amount which cannot be ascertained with certainty as of Closing shall be prorated on the basis of the parties' reasonable estimates of such amount, and shall be the subject of a final proration four (4) months after Closing, or as soon thereafter as the precise amounts can be ascertained. If and to the extent necessary, Purchaser and Seller shall cooperate to prepare a post-Closing reconciliation. Purchaser shall promptly notify Seller when it becomes aware that any such estimated amount has been ascertained. Once all revenue and expense amounts have been ascertained, Purchaser shall prepare, and certify as correct, a final proration statement that shall be subject to Seller's reasonable approval. Upon Seller's acceptance and approval of any final proration statement submitted by Purchaser, such statement shall be conclusively deemed to be accurate and final. The obligations of the parties with respect to such post-Closing reconciliations shall survive the Closing.

(d) Upon the Closing, Title Company shall record the Deed in the Official Records of the City and County of San Francisco with a conformed recorded copy to be delivered to Purchaser and Seller, fund the balance of the Purchase Price to Seller, less any of Seller's share of closing costs, as approved by Seller pursuant to the Closing Statement, deliver the originals of the Non-Foreign Status Affidavits to Purchaser, and deliver the other instruments and documents delivered through escrow to the applicable party. Upon recordation of the Deed, Title Company shall deliver the documents deposited with it to the entities entitled to the same. If for any reason the Closing does not occur, Title Company shall return the documents to the entities depositing the same.

#### 4.5 Transaction Taxes and Closing Costs.

(a) Seller and Purchaser shall execute such returns, questionnaires and other documents as shall be required with regard to all applicable real property transaction taxes imposed by applicable federal, state or local law or ordinance. Title Company is designated as the "**reporting person**" for the transaction.

(b) Seller shall pay the fees of any counsel representing Seller in connection with this transaction. Seller shall also pay the following costs and expenses (i) all City and County of San Francisco documentary transfer taxes payable in connection with the recording of the Deed in the Official Records of the City and County of San Francisco, (ii) the cost of a CLTA Owner's Policy and (iii) all costs and expenses to remove all Liquidated Liens and all of Purchaser's objections to title that Seller has agreed to remove. In addition, in the event Purchaser elects to obtain an ALTA survey or obtain an ALTA Owner's Policy, Seller shall pay a portion of such costs to the extent such costs, plus the cost of Seller's obligation under Section 4.5(b)(ii) above, shall not exceed \$5,000.00.

(c) Purchaser shall pay the fees of any counsel representing Purchaser in connection with this transaction. Purchaser shall also pay the following costs and expenses: (i) the escrow fee, if any, which may be charged by the Title Company; (ii) to the extent not paid by Seller as provided in Section 4.5(b) above, the additional premium, if any, for an ALTA Owner's Policy if required by Purchaser; (iii) all of the cost of any endorsements to the Title Policy which are requested by the Purchaser and are not required to satisfy Seller's express obligations under this Agreement; (iv) the costs of recording the Deed in the Official Records of the City and County of San Francisco and (v) to the extent not paid by Seller as provided in Section 4.5(b) above, the cost of an ALTA survey if Purchaser elects to obtain an ALTA survey.

(d) All costs and expenses incident to this transaction and the Closing thereof, and not specifically described above, shall be paid in accordance with the customary practices for commercial real estate transactions in the City and County of San Francisco as determined by the Escrow Holder.

4.6 Purchaser's Closing Conditions. The obligation of Purchaser to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of Closing of all of the following conditions ("**Purchaser's Conditions**"), any or all of which may be waived by Purchaser in its sole discretion:



(a) Seller shall deliver the Property to Purchaser on the Closing Date free and clear of any tenancies and/or occupants, free and clear of all personal property of Seller and of any former occupants except for the Property which is described in Section 1.1 of this Agreement, and free and clear of all debris;

(b) Seller shall have delivered to Title Company, in escrow, all of the items required to be delivered by Seller pursuant to the terms of this Agreement, including but not limited to, those provided for in Section 4.2 hereof and shall have timely performed all other acts required of Seller hereunder to effect the Closing;

(c) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the Closing Date;

(d) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the Closing Date;

(e) Title Company shall be unconditionally committed to issue to Purchaser upon the Closing, at standard commercial title insurance rates, as of the Closing, a CLTA Owner's Policy of Title Insurance with liability limits equal to the Purchase Price (the "**Title Policy**"), in form and substance reasonably satisfactory to Purchaser and insuring marketable fee title to the Property as being vested in Purchaser (or Purchaser's assigns), free and clear of all liens and encumbrances as of the Closing Date subject only to the Permitted Exceptions and any additional exceptions to title caused or created by Purchaser;

(f) As of the Closing Date, there shall have been no condemnation or casualty entitling Purchaser to terminate this Agreement;

(g) As of the Closing Date there shall have been no material adverse change in the Property not caused or created by or on behalf of the Purchaser which shall have caused the Property to be unusable as a land dedication site in connection with Purchaser's Mission Street Project. Purchaser acknowledges that the Property is currently zoned for Purchaser's intended use and Purchaser covenants that Purchaser will not seek to change the zoning of the Property prior to Closing without Seller's prior written consent which Seller may withhold, in Seller's sole discretion; and

(h) Purchaser shall have secured as of the Closing Date the Separate Legal Description of the Land as provided in Section 2.5.

4.7 Seller's Closing Conditions. The obligation of Seller to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of Closing of all of the following conditions ("**Seller's Conditions**"), any or all of which may be waived by Seller in its sole discretion:

(a) Seller shall have received confirmation of the wiring of the Purchase Price, as adjusted as provided herein;

(b) Purchaser shall have delivered to Title Company, in escrow, all of the items required to be delivered to Seller pursuant to the terms of this Agreement, including, but not limited to, those provided for in Section 4.3 hereof;

(c) All of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the date of Closing;

(d) Purchaser shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Purchaser as of the date of Closing; and

(e) Purchaser shall have secured as of the Closing Date the Separate Legal Description of the Land as provided in Section 2.5.

## ARTICLE 5

### REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Representations, Warranties and Covenants of Seller. Seller hereby makes the following representations and warranties to Purchaser which, unless expressly stated to the contrary herein, shall be true and correct as of the Effective Date and the Closing Date, and further covenants to Purchaser as herein below provided:

(a) Organization and Authority. Seller has been duly organized, is validly existing and in good standing under the laws of the State of California. Seller has the full right and authority to enter into this Agreement and to transfer all of the Property and to consummate or cause to be consummated the transaction contemplated by this Agreement. Each person signing this Agreement on behalf of Seller is authorized to do so.

(b) Pending Actions. To Seller's actual knowledge, except as disclosed in the Due Diligence Materials, there is no action, suit, arbitration, government investigation or proceeding pending or threatened against Seller or the Property which, if adversely determined, would individually or in the aggregate materially interfere with the consummation of the transaction contemplated by this Agreement or affect the Property or Purchaser's intended use of the Property.

(c) Due Diligence Materials. To Seller's actual knowledge, Seller has provided Purchaser with all material Due Diligence Materials in its possession.

(d) Intangibles. To Seller's actual knowledge (i) Seller has provided to Purchaser complete copies of any Intangibles in its possession, (ii) to the extent Seller owns the Intangibles, Seller has not previously assigned or conveyed them to any other person under an assignment or conveyance that has not been reconveyed or reassigned as of the Closing, and (iii) Seller owns the Personal Property free and clear of any liens, claims or encumbrances and to the extent Seller owns the Intangibles, Seller owns the Intangibles free and clear of any liens, claims or encumbrances

(e) Operating Agreements. Seller covenants that any service contracts entered into by Seller shall either be agreed to in writing by and assigned to Purchaser or, provided Purchaser shall have given Seller at least forty (40) days prior written notice that Purchaser does not desire assignment of such service contracts, such service contracts will be terminated by Seller as of Closing.

(f) Surviving Contracts. To Seller's actual knowledge, there are no contracts or agreements affecting the Property which will survive Closing which shall have not been disclosed to Purchaser by Seller.

(g) Leases. There are no leases or occupancy agreements affecting the Property except those which have been disclosed to Purchaser in the Due Diligence Materials.

(h) Condemnation. Except as disclosed in the Due Diligence Materials, there is no existing pending condemnation proceedings relating to the Property and Seller has no actual knowledge (without inquiry or investigation) of any such condemnation which has been threatened.

(i) Tax Appeals. Except as disclosed in the Due Diligence Materials, Seller has made no tax appeals with respect to the Property which have not been fully appealed.

(j) Litigation. To Seller's actual knowledge, except as disclosed in the Due Diligence Materials, there is no existing litigation that arises out of the ownership of the Property or Seller's ability to perform hereunder and Seller has no actual knowledge (without inquiry or investigation) of any such litigation which has been threatened.

(k) Environmental Conditions. To Seller's actual knowledge, there are no adverse environmental conditions affecting the Property which have not been disclosed by Seller or are not disclosed in the Due Diligence Materials provided by Seller to Purchaser.

(l) Miscellaneous. (i) This Agreement and all documents executed by Seller that are to be delivered to Purchaser at Closing are duly authorized, executed and delivered by Seller, (ii) this Agreement and all documents executed by Seller that are to be delivered to Purchaser at Closing do not, and at the time of Closing will not, violate any provision of any judicial order to which Seller is a party or to which Seller is subject and constitute (or in the case of closing documents will constitute) a valid and legally binding obligation of Seller, and (iii) Seller is not presently the subject of a bankruptcy, insolvency or probate proceedings and Seller neither anticipates nor intends to file or cause to be filed any bankruptcy or insolvency proceeding involving Seller or Seller's assets during the pendency of this Agreement.

5.2 Survival of Seller's Representations and Warranties. The representations and warranties of Seller set forth in Section 5.1 hereof as updated as of the Closing in accordance with the terms of this Agreement and as stated or implied by law in the transfer documents shall survive Closing for a period of twelve (12) months ("**Survival Period**"). No claim for a breach of any representation or warranty of Seller shall be actionable or payable if the breach in question results from or is based on a condition, state of facts or other matter which was known to Purchaser prior to Closing and Purchaser elects to purchase the Property. Seller shall have no liability to Purchaser for a breach of any representation or warranty unless written notice

containing a description of the specific nature of such breach shall have been given by Purchaser to Seller prior to the expiration of said twelve (12) month period and an action shall have been commenced by Purchaser against Seller within sixty (60) days following the expiration of such twelve (12) month period. Subject to the terms of Section 10.17, in no event shall any Claim for breach of any representation, warranty or covenant of Seller be made against Seller unless the amount of damage claimed by Purchaser is at least Ten Thousand Dollars (\$10,000.00) and in no event, except for fraud or an intentional failure to disclose by Seller, shall Seller's liability for any such breach exceed in the aggregate Five Hundred Thousand Dollars (\$500,000.00). Purchaser agrees to use commercially reasonable efforts to also simultaneously seek recovery under any insurance policies, service contracts or warranties but the recovery from such sources or ability to recover is not a limitation on Seller's obligation or liability hereunder.

5.3 Representations and Warranties of Purchaser. Purchaser hereby makes the following representations and warranties to Seller as of the Closing Date:

(a) Organization and Authority. Purchaser has been duly organized, is validly existing and is in good standing under the laws of the state of its organization and the State of California. Purchaser has the full right and authority to enter into this Agreement and to consummate or cause to be consummated the transaction contemplated by this Agreement. Each person signing this Agreement on behalf of Purchaser is authorized to do so;

(b) Pending Actions. To Purchaser's actual knowledge, there is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Purchaser which, if adversely determined, would individually or in the aggregate materially interfere with the consummation of the transaction contemplated by this Agreement.

(c) Miscellaneous. This Agreement and all documents executed by Purchaser that are to be delivered to Seller at Closing are duly authorized, executed and delivered by Purchaser, (i) this Agreement and all documents executed by Purchaser that are to be delivered to Seller at Closing do not, and at the time of Closing will not, violate any provision of any judicial order to which Purchaser is a party or to which Purchaser is subject and constitute (or in the case of closing documents will constitute) a valid and legally binding obligation of Purchaser, (ii) Purchaser is not presently the subject of a bankruptcy, insolvency or probate proceedings and Purchaser neither anticipates nor intends to file or cause to be filed any bankruptcy or insolvency proceeding involving Purchaser or Purchaser's assets during the pendency of this Agreement, (iii) Purchaser is a sophisticated investor with substantial experience in investing in assets of the same type as the Property and has such knowledge and experience in financial and business matters that Purchaser is capable of evaluating the merits and risks of an investment in the Property, and (iv) the funds for the Purchase of the Property will not be from sources of funds or properties derived from any unlawful activity.

5.4 Survival of Purchaser's Representations and Warranties. The representations and warranties of Purchaser set forth in Section 5.3 hereof, shall survive Closing for a period of twelve (12) months. No claim for a breach of any representation or warranty of Purchaser shall be actionable or payable if the breach in question results from or is based on a condition, state of facts or other matter which was known to Seller prior to Closing and Seller elects to sell the Property. Purchaser shall have no liability to Seller for a breach of any representation or warranty

unless written notice containing a description of the specific nature of such breach shall have been given by Seller to Purchaser prior to the expiration of said twelve (12) month period and an action shall have been commenced by Seller against Purchaser within sixty (60) days following the expiration of such twelve (12) month period. Subject to the terms of Section 10.17, in no event shall any Claim for breach of any representation, warranty or covenant of Purchaser be made against Purchaser unless the amount of damage claimed by Seller is at least Ten Thousand Dollars (\$10,000.00) and in no event, except for fraud or an intentional failure to disclose by Purchaser, shall Purchaser's liability for any such breach exceed an aggregate of Five Hundred Thousand Dollars (\$500,000.00). Seller agrees to use commercially reasonable efforts to also simultaneously seek recovery under any insurance policies, service contracts or warranties but the recovery from such sources or ability to recover is not a limitation on Purchaser's obligation or liability hereunder.

## ARTICLE 6

### DEFAULT

#### 6.1 Events of Default.

(a) The following shall constitute a Default of Purchaser hereunder ("**Purchaser's Default**"): (i) Purchaser defaults under any provision of this Agreement providing for the payment of money and such failure to pay continues for a period of five (5) days after receipt of notice of nonpayment; provided that no notice is required in connection with a default on the Closing Date; (ii) Purchaser defaults under any other material provision of this Agreement and such default is not cured for a period of ten (10) business days after receipt of notice of such default; provided that no notice is required in connection with a default on the Closing Date; (iii) if at any time prior to Closing (a) there shall be filed by Purchaser in any court or with any governmental body pursuant to any statute either of the United States or of any state, a petition in bankruptcy or insolvency or a petition seeking to effect any plan or other arrangement with creditors or seeking the appointment of a receiver; or (b) a receiver, conservator or liquidating agent or similar person shall be appointed for all or a substantial portion of Purchaser's property; or (c) Purchaser shall give notice to any person or governmental body of insolvency or suspension or pending suspension of its operations; or (d) Purchaser shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors.

(b) The following shall constitute a Default of Seller hereunder ("**Seller's Default**"): (i) Seller defaults under any provision of this Agreement providing for the payment of money and such failure to pay continues for a period of five (5) days after receipt of notice of nonpayment; provided that no notice is required in connection with a default on the Closing Date; (ii) Seller defaults under any other material provision of this Agreement and such default is not cured for a period of ten (10) business days after receipt of notice of such default; provided that no notice is required in connection with a default on the Closing Date; (iii) if at any time prior to Closing (a) there shall be filed by Seller in any court or with any governmental body pursuant to any statute either of the United States or of any state, a petition in bankruptcy or insolvency or a petition seeking to effect any plan or other arrangement with creditors or seeking the appointment of a receiver; or (b) a receiver, conservator or liquidating agent or similar person

shall be appointed for all or a substantial portion of Seller's property; or (c) Seller shall give notice to any person or governmental body of insolvency or suspension or pending suspension of its operations; or (d) Seller shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors, or (e) any action for foreclosure of any lien on the Property shall have been commenced by any creditor of the Seller and not dismissed within the earlier of (A) the Closing Date or (B) thirty (30) days after the commencement of the action.

6.2 Default by Purchaser. If Purchaser fails to complete the purchase of the Property by reason of any default of Purchaser (and not due to the failure of a Purchaser's Condition), as provided in Section 1.6 Seller shall be entitled, as its sole and exclusive remedy under this Agreement, at law or in equity, to terminate this Agreement and receive the Deposit as liquidated damages for the breach of this Agreement; provided, however, that in the event that any Purchaser's Default can be cured or compensated for by the payment of money or otherwise, Seller shall not have the right to terminate this Agreement by reason thereof in the event that Tricon (as defined in Section 10.1(b) below) or an affiliate of Tricon, within the time period set forth in Section 10.1(b), fully cures the same to Seller's reasonable satisfaction or elects to increase the Purchase Price by an amount Seller reasonably determines is necessary to compensate Seller for such default. The Closing Date shall be extended at the sole option of Tricon or its affiliate by delivering written notice to Seller of such extension prior to the Closing Date and such extension shall be for a reasonable period of time but in no event greater than the period specified in Section 10.1(b) below.

6.3 SELLER'S DEFAULT. IF SELLER FAILS TO COMPLETE THE SALE OF THE PROPERTY BY REASON OF ANY DEFAULT OF SELLER (AND NOT DUE TO A FAILURE OF A CONDITION PRECEDENT), PURCHASER SHALL BE RELEASED FROM ITS OBLIGATION TO PURCHASE THE PROPERTY FROM SELLER, AND PURCHASER SHALL HAVE THE RIGHT TO ONE OF THE FOLLOWING REMEDIES ONLY (AND PURCHASER WAIVES ALL OTHER REMEDIES AGAINST SELLER WHICH PURCHASER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY SELLER TO CONSUMMATE THE SALE): (I) PROCEED AGAINST SELLER BY BRINGING AN ACTION FOR SPECIFIC PERFORMANCE SO LONG AS (A) PURCHASER IS READY, WILLING AND ABLE TO PURCHASE THE PROPERTY ON THE SCHEDULED CLOSING DATE, AND (B) PURCHASER FILES A LEGAL ACTION FOR SPECIFIC PERFORMANCE WITHIN SIXTY (60) DAYS AFTER THE CLOSING DATE, OR (II) TERMINATE THIS AGREEMENT IN WHICH EVENT THE DEPOSIT (TO THE EXTENT MADE) SHALL BE RETURNED TO PURCHASER AND PURCHASER SHALL PROMPTLY RETURN TO SELLER THE SELLER'S DOCUMENTS. PURCHASER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY PURCHASER AS A RESULT OF SUCH DEFAULT BY SELLER TO CONSUMMATE THE SALE, AND AGREE THAT THE REMEDY SET FORTH IN CLAUSE (II) ABOVE IF PURCHASER ELECTS SUCH REMEDY INSTEAD OF THE REMEDY IN CLAUSE (I) ABOVE, IS A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT SELLER BREACHES THIS AGREEMENT BY DEFAULTING IN THE COMPLETION OF THE SALE, AND PURCHASER ELECTS

NOT TO EXERCISE THE REMEDY SET FORTH IN CLAUSE (I) ABOVE BUT INSTEAD ELECTS THE REMEDY SET FORTH IN CLAUSE (II) ABOVE, SUCH SUMS SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF PURCHASER WHICH IS NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO PURCHASER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. PURCHASER AGREES TO AND DOES HEREBY WAIVE ALL OTHER REMEDIES AGAINST SELLER WHICH PURCHASER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY SELLER TO CONSUMMATE THE SALE.

SELLER'S INITIALS:  \_\_\_\_\_ PURCHASER'S INITIALS: \_\_\_\_\_

6.4 Recoverable Damages. In no event shall the provisions of this Article limit the damages recoverable by either party against the other party due to the other party's express obligation to indemnify such party in accordance with this Agreement or the exhibits.

6.5 Survival. The provisions of this Article 6 shall survive the Closing and any termination of this Agreement.

#### ARTICLE 7

##### COMMISSIONS

7.1 Brokerage Commissions. Each party represents to the other party that it was not represented by an agent or broker in connection with the transactions contemplated by this Agreement. Seller agrees that if any person or entity makes a claim for brokerage commissions or finder's fees related to the sale of the Property by Seller to Purchaser, and such claim is made by, through or on account of any acts or alleged acts of Seller or its representatives, Seller will protect, indemnify, defend and hold Purchaser free and harmless from and against any and all Claims in connection therewith. Purchaser agrees that if any person or entity makes a claim for brokerage commissions or finder's fees related to the sale of the Property by Seller to Purchaser, and such claim is made by, through or on account of any acts or alleged acts of Purchaser or its representatives, Purchaser will protect, indemnify, defend and hold Seller free and harmless from and against any and all Claims in connection therewith. The provisions of this paragraph shall survive Closing or any termination of this Agreement.

#### ARTICLE 8

##### DISCLAIMERS, WAIVERS, RELEASES

8.1 No Reliance on Documents. Except as expressly stated in this Agreement and the transfer documents, Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by Seller or its brokers or agents to Purchaser in connection with the transaction contemplated hereby. Purchaser acknowledges and agrees that, subject to Seller's express representations, warranties and covenants as set forth in

NOT TO EXERCISE THE REMEDY SET FORTH IN CLAUSE (I) ABOVE BUT INSTEAD ELECTS THE REMEDY SET FORTH IN CLAUSE (II) ABOVE, SUCH SUMS SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF PURCHASER WHICH IS NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO PURCHASER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. PURCHASER AGREES TO AND DOES HEREBY WAIVE ALL OTHER REMEDIES AGAINST SELLER WHICH PURCHASER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY SELLER TO CONSUMMATE THE SALE.

SELLER'S INITIALS: \_\_\_\_\_ PURCHASER'S INITIALS: ND 12/11

6.4 Recoverable Damages. In no event shall the provisions of this Article limit the damages recoverable by either party against the other party due to the other party's express obligation to indemnify such party in accordance with this Agreement or the exhibits.

6.5 Survival. The provisions of this Article 6 shall survive the Closing and any termination of this Agreement.

#### ARTICLE 7

#### COMMISSIONS

7.1 Brokerage Commissions. Each party represents to the other party that it was not represented by an agent or broker in connection with the transactions contemplated by this Agreement. Seller agrees that if any person or entity makes a claim for brokerage commissions or finder's fees related to the sale of the Property by Seller to Purchaser, and such claim is made by, through or on account of any acts or alleged acts of Seller or its representatives, Seller will protect, indemnify, defend and hold Purchaser free and harmless from and against any and all Claims in connection therewith. Purchaser agrees that if any person or entity makes a claim for brokerage commissions or finder's fees related to the sale of the Property by Seller to Purchaser, and such claim is made by, through or on account of any acts or alleged acts of Purchaser or its representatives, Purchaser will protect, indemnify, defend and hold Seller free and harmless from and against any and all Claims in connection therewith. The provisions of this paragraph shall survive Closing or any termination of this Agreement.

#### ARTICLE 8

#### DISCLAIMERS, WAIVERS, RELEASES

8.1 No Reliance on Documents. Except as expressly stated in this Agreement and the transfer documents, Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by Seller or its brokers or agents to Purchaser in connection with the transaction contemplated hereby. Purchaser acknowledges and agrees that, subject to Seller's express representations, warranties and covenants as set forth in



this Agreement and in the documents to be executed and delivered by Seller at Closing, all materials, data and information delivered by Seller to Purchaser in connection with the transaction contemplated hereby are provided to Purchaser as a convenience only and that any reliance on or use of such materials, data or information by Purchaser shall be at the sole risk of Purchaser, except as otherwise expressly stated herein. Except in the case of a breach of an express representation, warranty and covenant of Seller as set forth in this Agreement or in any of the documents to be executed and delivered by Seller at Closing, neither Seller, nor any affiliate of Seller shall have any liability to Purchaser for any inaccuracy in or omission from any such reports.

8.2 AS-IS SALE. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND/OR IN ANY OF THE DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER AT CLOSING, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT AND/OR IN ANY OF THE DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER AT CLOSING. PURCHASER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, OFFERING PACKAGES DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY SELLER, THE MANAGERS OF THE PROPERTY, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT AND/OR IN ANY OF THE DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER AT CLOSING. PURCHASER ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD "AS-IS", SUBJECT TO THE EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AS SET FORTH IN THIS AGREEMENT AND IN THE DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER AT CLOSING.

PURCHASER REPRESENTS TO SELLER THAT PURCHASER HAS CONDUCTED, OR AS OF THE CLOSING DATE WILL HAVE CONDUCTED SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS PURCHASER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN

WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT AND/OR IN ANY OF THE DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER AT CLOSING. EXCEPT WITH RESPECT TO (1) ANY BREACH OF ANY REPRESENTATION, WARRANTY AND/OR COVENANT OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT AND/OR IN ANY OF THE DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER AT CLOSING, OR (2) ANY THIRD PARTY CLAIM TO THE EXTENT RELATING TO AN OCCURRENCE PRIOR TO THE CLOSING (OTHER THAN CLAIMS FOR WHICH PURCHASER IS REQUIRED TO INDEMNIFY SELLER PURSUANT TO THE EXPRESS PROVISIONS OF THIS AGREEMENT): (A) UPON CLOSING, PURCHASER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INVESTIGATIONS, AND (B) PURCHASER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY

8.3 Release. Purchaser, for itself and on behalf of each of Purchaser's members, partners, shareholders, directors, and officers, and each of their respective successors and assigns (collectively "**Releasors**"), agrees that each of Seller and Seller's partners, members, trustees, beneficiaries, directors, officers, employees, and each of their respective heirs, successors and assigns (collectively, "**Releasees**") from and after the Closing are fully and forever released and discharged from any and all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise or in any way be connected with the Property including, without limitation, the physical, environmental and structural condition of the Property or any law or regulation applicable thereto, including, without limitation, any Claim or matter (regardless of when it first appeared) relating to or arising from (i) the presence of any environmental problems, or the use, presence, storage, release, discharge, or migration of Hazardous Materials on, in, under or around the Property regardless of when such Hazardous Materials were first introduced in, on or about the Property, (ii) any patent or latent defects or deficiencies with respect to the Property, (iii) any and all matters related to the condition and/or operation of the Property or any portion thereof, and (iv) the presence, release and/or remediation of asbestos and asbestos containing materials in, on or about the Property regardless of when such asbestos and

asbestos containing materials were first introduced in, on or about the Property. The term "Hazardous Materials" as used in this Agreement shall mean and refer to (a) any hazardous or toxic wastes, materials or substances, or chemicals, and other pollutants or contaminants, which are or become regulated by applicable local, state, regional and/or federal orders, ordinances, statutes, rules, regulations (as interpreted by judicial and administrative decisions) and all Environmental Laws; (b) asbestos, asbestos-containing materials or urea formaldehyde; (c) polychlorinated biphenyls; (d) flammables, explosive, corrosive or radioactive materials; (e) medical waste and biochemicals; and (f) gasoline, diesel, petroleum or petroleum by-products. As used herein "Environmental Law" means any federal, state or local statute, law, ordinance, regulation, rule, code, order, consent decree or judgment, in each case in existence as of the Closing Date, relating to pollution or protection of the environment. Purchaser hereby waives and agrees not to commence any action, legal proceeding, cause of action or suits in law or equity, of whatever kind or nature, including, but not limited to, a private right of action under the federal superfund laws, 42 U.S.C. Sections 9601 et seq. and California Health and Safety Code Sections 25300 et seq. (as such laws and statutes may be amended, supplemented or replaced from time to time), directly or indirectly, against the Releasees in connection with Claims described above (collectively, the "Released Claims") and expressly waives the provisions of California Civil Code Section 1542 which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR**

and all similar provisions or rules of law. Purchaser elects to and does assume all risk for such Released Claims, whether now known or unknown by Purchaser. Notwithstanding anything to the contrary herein, the aforementioned release shall neither apply to, and the Released Claims shall not include or be applicable to, (i) any matters arising out of the execution, interpretation or enforcement of this Agreement or any provision hereof so long as Seller is notified with specificity of such Claim in writing within the Survival Period, or (ii) a breach by Seller of any of the representations or warranties made in Section 5.1 hereof so long as Seller is notified with specificity of any such Claim in writing within the Survival Period, or (iii) any Claim asserted against any Releasor by a former Tenant, occupant, invitee of or to the Property so long as Seller is notified with specificity of such Claim in writing within twenty-four months (24) months after the Closing Date ("Claim Notice Period"), or (iv) any Claim asserted by any other third person against any Releasor relating to events occurring on or the condition of the Property prior to the Closing so long as Seller is notified with specificity of such Claim in writing within the Claim Notice Period, or (v) any Claim arising out of the fraud of any Releasee or Seller's intentional failure to disclose information material to Purchaser. After the expiration of the Survival Period or the Claim Notice Period, as the case may be, the aforementioned release (and the Released Claims) shall include all Claims arising from or related to this Agreement except Claims referenced in subsection (v) above. Without limiting the foregoing, if Purchaser has actual knowledge of (1) a default in any of the covenants, agreements or obligations to be performed by Seller under this Agreement and/or (2) any breach or inaccuracy in any representation of Seller made in this Agreement, and Purchaser nonetheless elects to proceed to Closing, then, upon

Closing, Purchaser shall be conclusively deemed to have waived any such default and/or breach or inaccuracy and shall have no Claim against Seller with respect thereto. For purposes of this Section 8.3, the actual knowledge of Purchaser shall mean the actual knowledge of Dean Givas.

Seller has given Purchaser material concessions regarding this transaction in exchange for Purchaser agreeing to the provisions of this Section. Seller and Purchaser have each initialed this Section to further indicate their awareness and acceptance of each and every provision hereof. The provisions of this Section shall survive the Closing and shall not be deemed merged into any instrument or conveyance delivered at the Closing.

SELLER'S INITIALS:

 \_\_\_\_\_

PURCHASER'S INITIALS:

\_\_\_\_\_

8.4 Survival of Disclaimers. The provisions of this Article 8 shall survive Closing or any termination of this Agreement.

## ARTICLE 9

### RISK OF LOSS

9.1 Damage. If there is material (the cost of restoration or repair is reasonably estimated by Purchaser to exceed \$25,000) damage to the Property or if the Property is destroyed by earthquake, flood, landslide, fire or other casualty prior to Closing, then Purchaser shall have the right, by written notice delivered to Seller and Escrow Holder within ten (10) business days after Purchaser receives written notice of such damage or destruction, to terminate this Agreement and cancel Escrow. Otherwise, if there is non-material damage or if Purchaser does not elect to terminate this Agreement and cancel Escrow by written notice delivered to Seller and Escrow Holder within such ten (10) business day period following material damage, then this Agreement shall remain in full force and effect, there shall be no adjustment of the Purchase Price, all insurance proceeds payable to Seller with respect to such damage or destruction, if any, shall be assigned and delivered by Seller to Purchaser at Closing and Seller shall pay to Purchaser at Closing the amount of Seller's deductible under Seller's property insurance applicable to such damage or destruction. If this Agreement and the Escrow are terminated pursuant to this Section 9.1, then, notwithstanding any other provisions of this Agreement, Purchaser and Seller shall each pay one-half of all Escrow cancellation charges, and the Deposit and any other funds deposited by Purchaser into Escrow, together with all interest earned thereon in Escrow, shall be promptly returned to Purchaser.

9.2 Condemnation. In the event that a proceeding for condemnation of the Property is threatened or commenced prior to the Closing Date, Purchaser shall have the right, by written notice delivered to Seller and Escrow Holder within ten (10) business days after Purchaser receives written notice of the threat or commencement of a proceeding of condemnation, to terminate this Agreement and cancel Escrow. If Purchaser does not elect to terminate this Agreement and cancel Escrow by written notice delivered to Seller and Escrow Holder within such ten (10) business day period following the threat or commencement of a proceeding of condemnation, then this Agreement shall remain in full force and effect, there shall be no adjustment of the Purchase Price, and Seller shall assign to Purchaser all of Seller's right, title

Closing, Purchaser shall be conclusively deemed to have waived any such default and/or breach or inaccuracy and shall have no Claim against Seller with respect thereto. For purposes of this Section 8.3, the actual knowledge of Purchaser shall mean the actual knowledge of Dean Givas.

Seller has given Purchaser material concessions regarding this transaction in exchange for Purchaser agreeing to the provisions of this Section. Seller and Purchaser have each initialed this Section to further indicate their awareness and acceptance of each and every provision hereof. The provisions of this Section shall survive the Closing and shall not be deemed merged into any instrument or conveyance delivered at the Closing.

SELLER'S INITIALS: \_\_\_\_\_ PURCHASER'S INITIALS: W. D. G.

8.4 Survival of Disclaimers. The provisions of this Article 8 shall survive Closing or any termination of this Agreement.

## ARTICLE 9

### RISK OF LOSS

9.1 Damage. If there is material (the cost of restoration or repair is reasonably estimated by Purchaser to exceed \$25,000) damage to the Property or if the Property is destroyed by earthquake, flood, landslide, fire or other casualty prior to Closing, then Purchaser shall have the right, by written notice delivered to Seller and Escrow Holder within ten (10) business days after Purchaser receives written notice of such damage or destruction, to terminate this Agreement and cancel Escrow. Otherwise, if there is non-material damage or if Purchaser does not elect to terminate this Agreement and cancel Escrow by written notice delivered to Seller and Escrow Holder within such ten (10) business day period following material damage, then this Agreement shall remain in full force and effect, there shall be no adjustment of the Purchase Price, all insurance proceeds payable to Seller with respect to such damage or destruction, if any, shall be assigned and delivered by Seller to Purchaser at Closing and Seller shall pay to Purchaser at Closing the amount of Seller's deductible under Seller's property insurance applicable to such damage or destruction. If this Agreement and the Escrow are terminated pursuant to this Section 9.1, then, notwithstanding any other provisions of this Agreement, Purchaser and Seller shall each pay one-half of all Escrow cancellation charges, and the Deposit and any other funds deposited by Purchaser into Escrow, together with all interest earned thereon in Escrow, shall be promptly returned to Purchaser.

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and interest in and to any claims and proceeds Seller may have with respect to any condemnation awards relating to the Property. If this Agreement and the Escrow are terminated pursuant to this Section 9.2, then, notwithstanding any other provisions of this Agreement, Purchaser and Seller shall each pay one-half of all Escrow cancellation charges, and the Deposit and any other funds deposited by Purchaser into Escrow, together with all interest earned thereon in Escrow, shall be promptly returned to Purchaser.

## ARTICLE 10

### MISCELLANEOUS

#### 10.1 Assignment.

(a) Subject to the provisions of this Section, the terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the parties hereto. No transfer or assignment in violation of the provisions hereof shall be valid or enforceable. The provisions of this Section shall survive the Closing or any termination of this Agreement.

(b) Purchaser may assign its rights under this Agreement, absolutely or as collateral, without first obtaining Seller's written approval. Without limitation, Purchaser may assign its interest in this Agreement to a wholly owned subsidiary of Purchaser or of Purchaser and/or Tricon IX LP ("**Tricon**"), or to a one hundred percent (100%) owned affiliate(s) of Purchaser or of Purchaser and/or Tricon, or to any entity controlled (directly or indirectly, through voting or equity ownership) by Purchaser or by Purchaser and/or Tricon; ("**Permitted Assignee**"). In the event Purchaser intends to assign its rights hereunder, including to a Permitted Assignee, (a) Purchaser shall send Seller written notice of the assignment no more than five (5) business days prior to such assignment but in no event later than two (2) days prior to Closing, which notice shall include the legal name and structure of the proposed assignee, and Purchaser shall also provide to Seller any other information respecting such assignee that Seller may reasonably request, (b) Purchaser and (except in the case of a collateral assignment) the assignee shall execute an assignment and assumption of this Agreement in form and substance reasonably satisfactory to Seller, and (c) in no event shall any assignment of this Agreement release or discharge Purchaser from any liability or obligation hereunder. If Purchaser collaterally assigns its interest in this Agreement to Tricon, as a precondition to exercising any remedies as the result of a default by Purchaser, Purchaser shall notify Seller in writing within ten (10) days following such assignment and Seller shall deliver a notice to Tricon describing the default (which may be a copy of any notice given to Purchaser in connection with the default) and shall permit Tricon a period of not more than ninety (90) days to cure the default. Seller shall accept Tricon's timely cure of Purchaser's default as if originally and timely tendered by Purchaser. If, after first having been informed that Purchaser has collaterally assigned its interest in this Agreement to Tricon, Tricon represents and warrants to Seller that Tricon has become the absolute assignee (rather than the collateral assignee) of this Agreement, Seller will thereafter treat Tricon as "Purchaser" under this Agreement, notwithstanding any objection from the purchaser originally named in this Agreement (or any assignee of such purchaser). The originally named purchaser hereunder or any subsequently named purchaser other than Tricon hereby waives and releases Seller from any and all Claims arising from or related to Seller so treating Tricon as "Purchaser" and, as a condition to Seller treating Tricon as "Purchaser" hereunder, Tricon shall indemnify,

defend and hold Seller harmless from and against all such Claims made by the originally named purchaser or subsequently named purchaser other than Tricon. For the purposes of this Section 10.1(b), the term "Purchaser" shall include any permitted assignee of Purchaser, and the term "Tricon" shall include any assignee of Tricon. Tricon is a third party beneficiary of this Agreement, and this Agreement shall not be amended or modified (or any provision or condition of this Agreement benefiting Purchaser waived) without the prior written consent of Tricon. The provisions of this Section shall survive the Closing or any termination of this Agreement.

10.2 Notices. Any notice pursuant to this Agreement shall be given in writing by (a) reputable overnight delivery service with proof of delivery, and shall be deemed to have been given upon receipt or refusal to accept delivery or (b) United States Mail, postage prepaid, registered or certified mail, return receipt requested sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given upon receipt or refusal to accept delivery. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

**If to Seller:**

The Murphy Trust  
1485 Bayshore Blv'd., Ste. #101  
San Francisco, CA 94124  
Attention: Tom Murphy

**If to Purchaser:**

2558 Mission LLC  
c/o Oyster Development Corp.  
355 1st Street, #809  
San Francisco, CA 94105  
Attention: Dean Givas

**With a copy to:**

Tricon Fund IX LP  
c/o Tricon Capital Group, Inc.  
1067 Yonge Street  
Toronto, Ontario, Canada M4W 2L2  
Attention: Jonathan Ellenzweig

**And with a copy to:**

George H. Cole, Jr, Esq.  
Law Offices of George H. Cole, Jr.  
P.O. Box 250  
Olalla, WA 98359

10.3 Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

10.4 Entire Agreement. This Agreement, including the exhibits and schedules hereto, contains the entire agreement between the parties hereto pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

10.5 Further Assurances. Each party agrees that it will execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate the transaction contemplated by this Agreement. The provisions of this Section shall survive Closing.

10.6 Counterparts. This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same agreement, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

10.7 Facsimile Signatures. In order to expedite the transaction contemplated herein, telecopied signatures may be used in place of original signatures on this Agreement. Seller and Purchaser intend to be bound by the signatures on the telecopied document, are aware that the other party will rely on the telecopied signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on a facsimile signature. The parties shall provide original signatures promptly after delivery of facsimile signatures.

10.8 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

10.9 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State California. Purchaser and Seller agree that the provisions of this Section shall survive the Closing or any termination of this Agreement.

10.10 Attorneys' Fees; Waiver of Jury Trial.

(a) In the event of any action or proceeding between Seller and Purchaser to enforce or construe any provision of this Agreement, the non-prevailing party shall pay to the prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred in such action and in any appeal in connection therewith by such prevailing party. The "prevailing party" will be determined by the court before whom the action was brought based upon an assessment of which party's major arguments or positions taken in the suit or proceeding could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision.

(b) IF ANY ACTION OR PROCEEDING BETWEEN SELLER AND PURCHASER TO ENFORCE THE PROVISIONS OF THIS AGREEMENT PROCEEDS TO TRIAL, TO THE EXTENT PERMITTED BY LAW, SELLER AND PURCHASER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY IN SUCH TRIAL. Seller and Purchaser agree that this paragraph constitutes a written consent to waiver of trial by jury within the meaning of California Code of Civil Procedure Section 631(a)(2), and each party does hereby authorize and empower the other party to file this paragraph and/or this Agreement, as required,



with the clerk or judge of any court of competent jurisdiction as a written consent to waiver of jury trial.

10.11 No Third-Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party (other than Tricon), and accordingly, no third party (other than Tricon) shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

10.12 Captions. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

10.13 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

10.14 Recordation. This Agreement may not be recorded by any party hereto without the prior written consent of the other party hereto. The provisions of this Section shall survive the Closing or any termination of this Agreement.

10.15 Time for Performance. Time is of the essence of this Agreement. As used in this Agreement, a "business day" shall mean a day which is not a Saturday, Sunday or recognized federal or state holiday. If the last date for performance by either party under this Agreement occurs on a day which is not a business day, then the last date for such performance shall be extended to the next occurring business day.

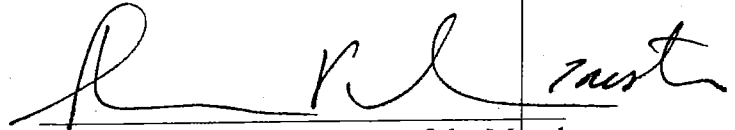
10.16 Tax Deferred Exchange. Either party may consummate the purchase or sale of the Property as part of a so-called like kind exchange (the "**Exchange**") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, provided that (i) Closing shall not be delayed or affected by reason of the Exchange, nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to either party's obligations under this Agreement; (ii) the party electing to consummate this transaction as part of an Exchange (the "**Electing Party**") shall effect the Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary; (iii) the other party (the "**Other Party**") shall not be required to take an assignment of the purchase agreement for the relinquished property or be required to acquire or hold title to any real property for purposes of consummating the Exchange; (iv) the Electing Party shall pay any additional costs that would not otherwise have been incurred by the Other Party had the Electing Party not consummated this transaction through the Exchange; (v) the Electing Party shall indemnify, defend and hold the Other Party harmless from and against any and all Claims whatsoever arising out of, connected with or in any manner related to such Exchange that would not have been incurred by the Other Party if the transaction were not the subject of an Exchange; and (vi) the Exchange is not considered a closing condition of either party. The Other Party shall not by this Agreement or acquiescence to the Exchange proposed by the Electing Party have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted

to the Electing Party that the Exchange in fact complies with Section 1031 of the Internal Revenue Code of 1986, as amended.

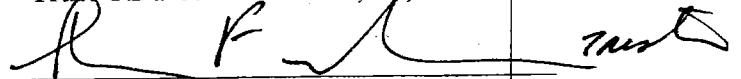
10.17 No Consequential or Punitive Damages. Except with respect to fraud committed by a party to this Agreement and except with respect to a party's intentional failure to disclose a material fact, in no event whatsoever shall either party be liable to the other party for consequential or punitive damages under this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

**SELLER:**



Thomas F. Murphy, Trustee of the Murphy Trust UDT dated October, 03, 2003



Martina Murphy, Trustee of the Murphy Trust UDT dated October 03, 2003

Executed by Seller on ~~August~~ 29, 2011  
SEP

**PURCHASER:**

2558 MISSION LLC,  
a California limited liability company

By: Van Ness Clay Corp.,  
a California corporation  
Its Managing Member

By: \_\_\_\_\_  
Name: Dean Givas  
Its: President

Executed by Purchaser on August \_\_\_\_\_, 2011

to the Electing Party that the Exchange in fact complies with Section 1031 of the Internal Revenue Code of 1986, as amended.

10.17 No Consequential or Punitive Damages. Except with respect to fraud committed by a party to this Agreement and except with respect to a party's intentional failure to disclose a material fact, in no event whatsoever shall either party be liable to the other party for consequential or punitive damages under this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

**SELLER:**

\_\_\_\_\_  
Thomas F. Murphy, Trustee of the Murphy  
Trust UDT dated October, 03, 2003

\_\_\_\_\_  
Martina Murphy, Trustee of the Murphy  
Trust UDT dated October 03, 2003

Executed by Seller on August \_\_\_\_, 2011

**PURCHASER:**

2558 MISSION LLC,  
a California limited liability company

By: Van Ness Clay Corp.,  
a California corporation  
Its Managing Member

By: Dean Givas  
Name: Dean Givas  
Its: President

Executed by Purchaser on August \_\_\_\_, 2011

*September 28*

*D. Givas*

Title Company executes this Agreement below solely for the purpose of acknowledging that it agrees to be bound by the provisions of this Agreement relating to performance by the Title Company., with the exception of paragraph 2.5, which legal description will need to be in compliance with the subdivision map act.

**TITLE COMPANY:**

FIRST AMERICAN TITLE INSURANCE  
COMPANY

By: 

Name: Karen Matsunaga

Title: Senior Commercial Escrow Officer

Date: ~~August~~ 9-29 2011

Exhibit A

DESCRIPTION OF LAND

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

BEGINNING AT A POINT ON THE WESTERLY LINE OF SHOTWELL STREET PRODUCED NORTHERLY, DISTANT THEREON 207.109 FEET NORTHERLY FROM THE NORTHERLY LINE OF ARMY STREET AS SAID ARMY STREET EXISTED PRIOR TO THE WIDENING THEREOF; RUNNING THENCE SOUTH 4° 15' EAST ALONG SAID LINE OF SHOTWELL STREET 171.064 FEET TO THE PRESENT NORTHERLY LINE OF ARMY STREET; THENCE SOUTH 88° 36' 34" WEST ALONG LAST SAID LINE OF ARMY STREET 100 FEET; THENCE NORTH 4° 15' WEST 40.87 FEET TO A LINE DRAWN NORTH 84° 34' WEST FROM A POINT ON SAID LINE OF SHOTWELL STREET DISTANT THEREON 64.864 FEET NORTHERLY FROM THE NORTHERLY LINE OF ARMY STREET AS SAID ARMY STREET EXISTED PRIOR TO THE WIDENING THEREOF; THENCE NORTH 84° 34' WEST ALONG THE LINE SO DRAWN 7.010 FEET TO A "FIXED POINT" DISTANT THEREON 108.330 FEET FROM SAID LINE OF SHOTWELL STREET; THENCE NORTH 4° 15' WEST 5.998 FEET TO A LINE DRAWN NORTH 14° 49' 38" EAST FROM A POINT DISTANT NORTH 84° 34' WEST 1.996 FEET FROM SAID "FIXED POINT"; THENCE NORTH 14° 49' 38" EAST 128.468 FEET TO A LINE DRAWN SOUTH 88° 41' 39" WEST FROM THE POINT OF BEGINNING; THENCE NORTH 88° 41' 39" EAST 64.91 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 200

EXCEPTING THEREFROM THAT CERTAIN REAL PROPERTY DESCRIBED IN DEED CONVEYED FROM FORREST W. WILSON, A SINGLE MAN; JOHN J. WILSON AND DELLA WILSON, HIS WIFE, TO MANCO PACIFIC COMPANY, A CALIFORNIA CORPORATION, DATED JULY 18, 1956 AND RECORDED IN BOOK 6889 OF OFFICIAL RECORDS OF SAN FRANCISCO, COUNTY, AT PAGE 251, ON JULY 27, 1956, SAID PORTION OF SAID REAL PROPERTY BEING DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE COMMON LINE BETWEEN SAID LANDS OF MANCO PACIFIC COMPANY AND THE LANDS DESCRIBED IN DEED CONVEYED FROM CALIFORNIA PACIFIC TITLE INSURANCE COMPANY, A CORPORATION, TO J.W. ALLEN, DATED APRIL 9, 1948, AND RECORDED APRIL 12, 1948, IN BOOK 4872, OFFICIAL RECORDS OF SAN FRANCISCO COUNTY, AT PAGE 41, SAID POINT OF BEGINNING BEING CALLED A "FIXED POINT" IN BOTH SAID DEEDS AND BEING DISTANT NORTH 84° 34' WEST 108.33 FEET FROM A POINT ON THE WESTERLY LINE OF SHOTWELL STREET (THE BEARING OF SAID LINE OF SHOTWELL STREET IS ASSUMED TO BE NORTH 4° 15' WEST FOR THE PURPOSE OF THIS DESCRIPTION AND ALL OTHER BEARINGS HEREIN ARE RELATED THERETO), DISTANT THEREON 64.864 FEET NORTHERLY FROM THE LINE OF ARMY STREET, AS SAID STREETS EXISTED PRIOR TO THE WIDENING OF ARMY STREET; RUNNING THENCE NORTH 4° 15' WEST 6.022 FEET (CALLED "5.998 FEET" IN BOTH SAID DEEDS) TO A LINE NORTH 14° 49' 38" EAST FROM A POINT WHICH IS DISTANT NORTH 84° 34' WEST 1.996 FEET FROM SAID "FIXED POINT"; THENCE NORTH 14° 49' 38" EAST 21.163 FEET; THENCE SOUTH 4° 15' EAST 27.206 FEET; THENCE NORTH 84° 34' WEST 7.01 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 200

**Exhibit B**

**FORM OF DEED**

**(to be modified as required)**

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO AND  
MAIL TAX STATEMENTS TO:

---

(space above line for Recorder's use only)

**GRANT DEED**

In accordance with Section 11932 of the California Revenue and Taxation Code, Grantor has declared the amount of the transfer tax which is due by a separate statement which is not being recorded with this Grant Deed.

FOR VALUE RECEIVED, THOMAS F. MURPHY AND MARTINA MURPHY, TRUSTEES OF THE MURPHY TRUST UDT DATED OCTOBER 03, 2003 grant to 2558 MISSION LLC, a California limited liability company ("Grantee"), all that certain real property (the "Property") situated in the City of San Francisco, County of San Francisco, State of California, described on Exhibit A attached hereto and by this reference incorporated herein.

THE PROPERTY IS CONVEYED TO GRANTEE SUBJECT TO:

(a) All exceptions appearing in a certain policy of title insurance for the Property issued to the Grantee as of the date hereof; and

(b) Zoning ordinances and regulations and any other laws, ordinances, or governmental regulations restricting or regulating the use, occupancy or enjoyment of the Property.

IN WITNESS WHEREOF, the undersigned has executed this Grant Deed dated as of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Thomas F. Murphy, Trustee of the Murphy  
Trust UDT dated October, 03,2003

\_\_\_\_\_  
Martina Murphy, Trustee of the Murphy  
Trust UDT dated October 03, 2003

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2012, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/ their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within instrument.

WITNESS my hand and official seal.

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

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2012, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/ their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within instrument.

WITNESS my hand and official seal.

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



**EXHIBIT A TO DEED**

**LEGAL DESCRIPTION**

BEGINNING AT A POINT ON THE WESTERLY LINE OF SHOTWELL STREET PRODUCED NORTHERLY, DISTANT THEREON 207.109 FEET NORTHERLY FROM THE NORTHERLY LINE OF ARMY STREET AS SAID ARMY STREET EXISTED PRIOR TO THE WIDENING THEREOF; RUNNING THENCE SOUTH 4° 15' EAST ALONG SAID LINE OF SHOTWELL STREET 171.064 FEET TO THE PRESENT NORTHERLY LINE OF ARMY STREET; THENCE SOUTH 88° 36' 34" WEST ALONG LAST SAID LINE OF ARMY STREET 100 FEET; THENCE NORTH 4° 15' WEST 40.87 FEET TO A LINE DRAWN NORTH 84° 34' WEST FROM A POINT ON SAID LINE OF SHOTWELL STREET DISTANT THEREON 64.864 FEET NORTHERLY FROM THE NORTHERLY LINE OF ARMY STREET AS SAID ARMY STREET EXISTED PRIOR TO THE WIDENING THEREOF; THENCE NORTH 84° 34' WEST ALONG THE LINE SO DRAWN 7.010 FEET TO A "FIXED POINT" DISTANT THEREON 108.330 FEET FROM SAID LINE OF SHOTWELL STREET; THENCE NORTH 4° 15' WEST 5.998 FEET TO A LINE DRAWN NORTH 14° 49' 38" EAST FROM A POINT DISTANT NORTH 84° 34' WEST 1.996 FEET FROM SAID "FIXED POINT"; THENCE NORTH 14° 49' 38" EAST 128.468 FEET TO A LINE DRAWN SOUTH 88° 41' 39" WEST FROM THE POINT OF BEGINNING; THENCE NORTH 88° 41' 39" EAST 64.91 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 200

EXCEPTING THEREFROM THAT CERTAIN REAL PROPERTY DESCRIBED IN DEED CONVEYED FROM FORREST W. WILSON, A SINGLE MAN; JOHN J. WILSON AND DELLA WILSON, HIS WIFE, TO MANCO PACIFIC COMPANY, A CALIFORNIA CORPORATION, DATED JULY 18, 1956 AND RECORDED IN BOOK 6889 OF OFFICIAL RECORDS OF SAN FRANCISCO, COUNTY, AT PAGE 251, ON JULY 27, 1956, SAID PORTION OF SAID REAL PROPERTY BEING DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE COMMON LINE BETWEEN SAID LANDS OF MANCO PACIFIC COMPANY AND THE LANDS DESCRIBED IN DEED CONVEYED FROM CALIFORNIA PACIFIC TITLE INSURANCE COMPANY, A CORPORATION, TO J.W. ALLEN, DATED APRIL 9, 1948, AND RECORDED APRIL 12, 1948, IN BOOK 4872, OFFICIAL RECORDS OF SAN FRANCISCO COUNTY, AT PAGE 41, SAID POINT OF BEGINNING BEING CALLED A "FIXED POINT" IN BOTH SAID DEEDS AND BEING DISTANT NORTH 84° 34' WEST 108.33 FEET FROM A POINT ON THE WESTERLY LINE OF SHOTWELL STREET (THE BEARING OF SAID LINE OF SHOTWELL STREET IS ASSUMED TO BE NORTH 4° 15' WEST FOR THE PURPOSE OF THIS DESCRIPTION AND ALL OTHER BEARINGS HEREIN ARE RELATED THERETO), DISTANT THEREON 64.864 FEET NORTHERLY FROM THE LINE OF ARMY STREET, AS SAID STREETS EXISTED PRIOR TO THE WIDENING OF ARMY STREET; RUNNING THENCE NORTH 4° 15' WEST 6.022 FEET (CALLED "5.998 FEET" IN BOTH SAID DEEDS) TO A LINE NORTH 14° 49' 38" EAST FROM A POINT WHICH IS DISTANT NORTH 84° 34' WEST 1.996 FEET FROM SAID "FIXED POINT"; THENCE NORTH 14° 49' 38" EAST 21.163 FEET; THENCE SOUTH 4° 15' EAST 27.206 FEET; THENCE NORTH 84° 34' WEST 7.01 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 200

Exhibit C

FORM OF BILL OF SALE, ASSIGNMENT AND ASSUMPTION OF INTANGIBLES

[to be modified as required]

THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION OF INTANGIBLES (this "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2012, by and between THOMAS F. MURPHY AND MARTINA MURPHY, TRUSTEES OF THE MURPHY TRUST UDT DATED OCTOBER 03, 2003 ("Seller"), and 2558 MISSION LLC, a California limited liability company ("Purchaser")

WITNESSETH:

WHEREAS, by that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of August \_\_\_, 2011 (the "Purchase Agreement") between Seller and Purchaser, Seller agreed to sell to Purchaser certain real property described on **Exhibit A** annexed hereto and made a part hereof and the buildings and other improvements thereon known as 1296 Shotwell Street, San Francisco, California, as more fully described in the Purchase Agreement (the "Real Property"); and

WHEREAS, Seller desires to sell, transfer, convey, assign and deliver to Purchaser the "Property" (as defined in the Purchase Agreement) pursuant to the Purchase Agreement, and Purchaser desires to accept the sale, transfer, conveyance, assignment and delivery thereof;

NOW, THEREFORE, for and in consideration of the mutual covenants contained in the Purchase Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby irrevocably sells, transfers, conveys, assigns and delivers to Purchaser, all of Seller's right, title and interest in, to and under the Property, to have and to hold the same unto Purchaser, its successors and assigns, forever. In furtherance, and not in limitation, thereof, the undersigned parties do further agree as follows:

1. Bill of Sale. Seller hereby sells, transfers, conveys, assigns and delivers to Purchaser all of its right, title and interest in, to all of the Personal Property (as defined in the Purchase Agreement ), including any furniture, furnishing, equipment, fixtures, inventory supplies and other items of personal property owned by Seller and located upon or used in connection with the Real Property, without recourse, representation or warranty, including without limitation, habitability, merchantability and fitness for a particular purpose, except as set forth in Section 6 below.

2. Transfer of Intangibles. Seller hereby sells, transfers, conveys, assigns and delivers to Purchaser all of its right, title and interest in, to and under any Intangibles (as defined in the Purchase Agreement), including any and all permits and licenses (including, but not limited to, any and all presently pending applications therefor), as holder, claimant, licensee,

permittee, successor in interest, applicant and/or owner of the Real Property, issued by, or to be issued by, any and all federal, state, county, municipal and local governments, and all departments, commissions, boards, bureaus and offices thereof; having or claiming jurisdiction over the Real Property, whether or not the same may presently be in full force and effect and to any rights relating to the construction, ownership, use and operation of the Real Property (including, but not limited to, any and all warranties, causes of action, and guaranties) in connection therewith), trade name, logotype, trademark or other symbol and other items of intangible property associated with the Real Property.

3. Legal Proceedings. In the event of any action or proceeding between Seller and Purchaser to enforce or construe any provision of this Agreement, the non-prevailing party shall pay to the prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred in such action and in any appeal in connection therewith by such prevailing party. The "prevailing party" will be determined by the court before whom the action was brought based upon an assessment of which party's major arguments or positions taken in the suit or proceeding could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision.

4. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective heirs, executors, administrators, successors and assigns.

5. Miscellaneous. This Agreement and the obligations of Seller and Purchaser hereunder shall survive the closing of the transactions referred to in the Purchase Agreement, shall be binding upon and inure to the benefit of Purchaser and Seller and their respective successors and assigns, shall be governed by and construed in accordance with the laws of the State of California and may not be modified or amended in any manner other than by a written agreement signed by the party to be charged therewith. This Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same instrument.

6. Conditions of Transfer. Purchaser hereby accepts the sale, transfer, conveyance, assignment and delivery of the items described herein "AS IS" and acknowledges and agrees that Seller makes no representations or warranties with respect thereto, except as specifically set forth in this Agreement or the Purchase Agreement. Notwithstanding the foregoing, Seller represents that the Personal Property and the Intangibles are not subject to any lease interests or monetary liens or encumbrances.

[This Space Intentionally Left Blank; Signatures Begin On The Next Page]

IN WITNESS WHEREOF, Seller and Purchaser have duly executed this Agreement as of the day and year first above written.

**SELLER:**

\_\_\_\_\_  
Thomas F. Murphy, Trustee of the Murphy  
Trust UDT dated October, 03,2003

\_\_\_\_\_  
Martina Murphy, Trustee of the Murphy  
Trust UDT dated October 03, 2003

**PURCHASER:**

2558 MISSION LLC,  
a California limited liability company

By: Van Ness Clay Corp.,  
a California corporation  
Its Managing Member

By: \_\_\_\_\_  
Name: Dean Givas  
Its: President

**Exhibit A to Form of Assignment of Intangibles**

**LEGAL DESCRIPTION**

BEGINNING AT A POINT ON THE WESTERLY LINE OF SHOTWELL STREET PRODUCED NORTHERLY, DISTANT THEREON 207.109 FEET NORTHERLY FROM THE NORTHERLY LINE OF ARMY STREET AS SAID ARMY STREET EXISTED PRIOR TO THE WIDENING THEREOF; RUNNING THENCE SOUTH 4° 15' EAST ALONG SAID LINE OF SHOTWELL STREET 171.064 FEET TO THE PRESENT NORTHERLY LINE OF ARMY STREET; THENCE SOUTH 88° 36' 34" WEST ALONG LAST SAID LINE OF ARMY STREET 100 FEET; THENCE NORTH 4° 15' WEST 40.87 FEET TO A LINE DRAWN NORTH 84° 34' WEST FROM A POINT ON SAID LINE OF SHOTWELL STREET DISTANT THEREON 64.864 FEET NORTHERLY FROM THE NORTHERLY LINE OF ARMY STREET AS SAID ARMY STREET EXISTED PRIOR TO THE WIDENING THEREOF; THENCE NORTH 84° 34' WEST ALONG THE LINE SO DRAWN 7.010 FEET TO A "FIXED POINT" DISTANT THEREON 108.330 FEET FROM SAID LINE OF SHOTWELL STREET; THENCE NORTH 4° 15' WEST 5.998 FEET TO A LINE DRAWN NORTH 14° 49' 38" EAST FROM A POINT DISTANT NORTH 84° 34' WEST 1.996 FEET FROM SAID "FIXED POINT"; THENCE NORTH 14° 49' 38" EAST 128.468 FEET TO A LINE DRAWN SOUTH 88° 41' 39" WEST FROM THE POINT OF BEGINNING; THENCE NORTH 88° 41' 39" EAST 64.91 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 200

EXCEPTING THEREFROM THAT CERTAIN REAL PROPERTY DESCRIBED IN DEED CONVEYED FROM FORREST W. WILSON, A SINGLE MAN; JOHN J. WILSON AND DELLA WILSON, HIS WIFE, TO MANCO PACIFIC COMPANY, A CALIFORNIA CORPORATION, DATED JULY 18, 1956 AND RECORDED IN BOOK 6889 OF OFFICIAL RECORDS OF SAN FRANCISCO, COUNTY, AT PAGE 251, ON JULY 27, 1956, SAID PORTION OF SAID REAL PROPERTY BEING DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE COMMON LINE BETWEEN SAID LANDS OF MANCO PACIFIC COMPANY AND THE LANDS DESCRIBED IN DEED CONVEYED FROM CALIFORNIA PACIFIC TITLE INSURANCE COMPANY, A CORPORATION, TO J.W. ALLEN, DATED APRIL 9, 1948, AND RECORDED APRIL 12, 1948, IN BOOK 4872, OFFICIAL RECORDS OF SAN FRANCISCO COUNTY, AT PAGE 41, SAID POINT OF BEGINNING BEING CALLED A "FIXED POINT" IN BOTH SAID DEEDS AND BEING DISTANT NORTH 84° 34' WEST 108.33 FEET FROM A POINT ON THE WESTERLY LINE OF SHOTWELL STREET (THE BEARING OF SAID LINE OF SHOTWELL STREET IS ASSUMED TO BE NORTH 4° 15' WEST FOR THE PURPOSE OF THIS DESCRIPTION AND ALL OTHER BEARINGS HEREIN ARE RELATED THERETO), DISTANT THEREON 64.864 FEET NORTHERLY FROM THE LINE OF ARMY STREET, AS SAID STREETS EXISTED PRIOR TO THE WIDENING OF ARMY STREET; RUNNING THENCE NORTH 4° 15' WEST 6.022 FEET (CALLED "5.998 FEET" IN BOTH SAID DEEDS) TO A LINE NORTH 14° 49' 38" EAST FROM A POINT WHICH IS DISTANT NORTH 84° 34' WEST 1.996 FEET FROM SAID "FIXED POINT"; THENCE NORTH 14° 49' 38" EAST 21.163 FEET; THENCE SOUTH 4° 15' EAST 27.206 FEET; THENCE NORTH 84° 34' WEST 7.01 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 200

**EXHIBIT D**

**FORM OF NON-FOREIGN AFFIDAVIT**

**CERTIFICATE OF NON-FOREIGN STATUS**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a United States real property interest by [ \_\_\_\_\_ ], a [ \_\_\_\_\_ ] ("**Transferor**"), the undersigned hereby certifies the following on behalf of the Transferor.

1. That the undersigned is the authorized signatory of the Transferor and, in such capacity, has actual knowledge of the matters set forth herein and is duly authorized to execute the certification for the purposes herein expressed;
2. That Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
3. That Transferor's U.S. employer identification number is \_\_\_\_\_;
4. That Transferor's address \_\_\_\_\_; and
5. That the undersigned understands that this certification may be disclosed to the Internal Revenue Service by transferee, [ \_\_\_\_\_ ], and that any false statement contained herein could be punished by fine, imprisonment or both.

[SIGNATURE ON THE FOLLOWING PAGE]

Under penalties of perjury, the undersigned declares as of \_\_\_\_\_, 2010, that the undersigned has examined this certification and, to the best of its knowledge and belief, it is true, correct and complete, and the undersigned further declares that it has the authority to sign this certification on behalf of Transferor.

**TRANSFEROR:**

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2010, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/ their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within instrument.

WITNESS my hand and official seal.

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

**EXHIBIT E**

**FORM OF TENANT ESTOPPEL CERTIFICATE**

TENANT ESTOPPEL CERTIFICATE

To:  
2558 Mission LLC  
355 1st Street #809  
San Francisco, California 94105  
Attention: Mr. Dean D. Givas, President

Re: \_\_\_\_\_ (“Lease”)

The undersigned is the Tenant of the Premises under the Lease described above, and hereby certifies as follows:

1. Attached hereto as **Exhibit “A”** is a true, correct and complete copy of the Lease, together with all amendments thereto;
2. The Lease is in full force and effect and has not been modified, supplemented or amended in any way except as set forth in **Exhibit “A”**. The interest of the undersigned in the Lease has not been assigned or encumbered in whole or in part.
3. There are no subleases of the Premises and no subtenants. The undersigned is in sole and exclusive possession and occupancy of the Premises.
4. The Lease attached as **Exhibit “A”** represents the entire agreement between the Landlord identified in the Lease and the undersigned as to the undersigned’s leasing of the Premises, and there are no other agreements, written or oral, which affect the occupancy of the Premises by the undersigned or the right of the undersigned to use or purchase the property.
5. All insurance required of the undersigned under the Lease has been provided, all premiums have been paid, and the insurance is currently in full force and effect;
6. The Term of the Lease is \_\_\_\_\_ commencing on \_\_\_\_\_ and ending on \_\_\_\_\_. The undersigned has no rights to renew, extend or cancel the Lease or to lease additional space at 1296 and/or 1298 Shotwell Street in San Francisco, California;
7. All conditions of the Lease to be performed by the Landlord and necessary to the enforceability of the Lease have been satisfied. On this date there are no existing defenses, offsets, claims or credits which the undersigned has against the Landlord or in regard to the Landlord’s enforcement of the Lease;
8. The monthly rent currently payable under the Lease is \_\_\_\_\_, and such rent has been paid through \_\_\_\_\_, 2011;



9. The undersigned has made no agreement with the Landlord or any agent, representative or employee of the Landlord concerning free rent, partial rent, rebate of rental payments or any other similar rent concession (except as expressly set forth in the Lease). No rents have been prepaid more than one (1) month in advance.

10. There are no defaults by the undersigned or the Landlord under the Lease, and no event has occurred or situation exists that would, with the passage of time, constitute a default by Landlord or the undersigned under the Lease;

11. The undersigned has paid to the Landlord a security deposit in the amount of \$ \_\_\_\_\_; and

12. As of this date there are no actions, whether voluntary or otherwise, pending against the undersigned or any guarantor of the Lease under the bankruptcy or insolvency laws of the United States or any state thereof.

The undersigned acknowledges the right of 2558 Mission LLC and its assigns to rely upon the certifications and agreements in this Certificate in purchasing from Landlord the property on which the Premises is situated from Landlord.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Tenant

By:

Name:

Title:

AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE

between

2558 MISSION LLC,  
A California limited liability company  
as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,  
A Municipal Corporation  
as Buyer

For the purchase and sale of:

1296 Shotwell Street  
San Francisco, California

May 1, 2013

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**AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE**  
(1296 Shotwell Street, San Francisco)

THIS AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE (this "**Agreement**") dated for reference purposes only as of May 1, 2013 is by and between 2558 MISSION LLC, a California limited liability company ("**Seller**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**Buyer**" or "**City**").

**RECITALS**

This Agreement is made with reference to the following:

**A.** Seller is a residential developer in the City and County of San Francisco and is the project sponsor for a residential and mixed-use project located at 2554-2558 Mission Street in San Francisco.

**B.** On January 10, 2013, pursuant to Planning Commission Motion No. 18775, the San Francisco Planning Commission approved Seller's development application for construction of a new eight story mixed-use building containing approximately 114 dwelling units, 14,750 square feet of ground floor commercial uses, and 89 off-street parking spaces (the "**2558 Mission Project**").

**C.** The San Francisco Planning Code ("**Planning Code**") requires market rate residential projects to comply with certain Residential Inclusionary Housing rules designed to create affordable housing in San Francisco ("**Affordability Requirement**"). Seller desires to satisfy the Affordability Requirement for the 2558 Mission Project through a land dedication pursuant to Planning Code Section 419.6 and 419.5(a)(2)(A)-(J) ("**Land Dedication Option**"). In the event the Land Dedication Option is not successfully consummated for any reason, Seller has the right to satisfy the Affordability Requirement for the 2558 Mission Project by producing the required units onsite within the 2558 Mission Project ("**Onsite Option**").

**D.** Seller and THOMAS F. MURPHY AND MARTINA MURPHY, TRUSTEES OF THE MURPHY TRUST UDT DATED OCTOBER 03, 2003 ("**Owner**"), are parties to a Purchase and Sale Agreement and Joint Escrow Instructions the Effective Date of which is September 29, 2011 ("**Owner PSA**"). Pursuant to the Owner PSA, Owner has agreed to sell to Seller, and Seller has agreed to purchase, certain real property and improvements in the City and County of San Francisco, State of California commonly known as 1296 Shotwell Street, San Francisco, California together with certain personal property and intangibles all of which are more particularly described in the Owner PSA ("**Shotwell Property**").

**E.** Seller entered into the Owner PSA to acquire the Shotwell Property for the sole purpose of using the Shotwell Property to comply with the Affordability Requirement for the 2558 Mission Project through the Land Dedication Option. Seller has provided Buyer with a copy of the Owner PSA, receipt of which Buyer acknowledges;

**F.** Owner's obligation to sell and Seller's obligation to purchase the Shotwell Property are subject to the satisfaction or waiver of certain conditions set forth in the Owner PSA ("**Shotwell PSA Conditions of Closing**") and Seller's right to terminate the Owner PSA under certain conditions, and if the Shotwell PSA Conditions of Closing are not satisfied or waived, or if Seller exercises its right to terminate the Owner PSA, Seller will not acquire and become the owner of the Shotwell Property or any interests therein.

**G.** Seller and Buyer are entering into this Agreement in order to facilitate satisfaction of the Affordability Requirement for the 2558 Mission Project under the Land Dedication Option

through a transfer to Buyer of the Shotwell Property should the purchase and sale of the Shotwell Property pursuant to the Owner PSA be consummated.

**H.** By letter dated January 6, 2012, which was amended in part by letter dated December 20, 2012, from the Mayor's Office of Housing and Planning, City and County of San Francisco, City, based on its review of all due diligence documents and information requested by City and provided by Seller, verified the Property as acceptable for dedication pursuant to the Land Dedication Option described above, subject to satisfaction of certain conditions set forth in the December 20, 2012 letter ("**Dedication Approval Conditions**").

WHEREFORE, IN CONSIDERATION of the payment of the non-refundable sum of One Dollar (\$1.00) by City, the receipt of which is hereby acknowledged by Seller ("**Independent Consideration**"), which is fully earned by Seller and not refundable under any circumstances, and the respective agreements contained hereinbelow, Seller and City agree as follows:

## 1. PURCHASE AND SALE

### 1.1 Property Included in Sale

Seller agrees to sell and convey to City, and City agrees to purchase from Seller, all of the following, subject, however, to the terms, covenants and conditions hereinafter set forth (including, without limitation, the condition that Seller acquires the Shotwell Property pursuant to the Owner PSA described in the Recitals above):

(a) the real property consisting of approximately 11,672 square feet of land, located in the City and County of San Francisco, commonly known as 1296 Shotwell Street and more particularly described in Exhibit A attached hereto (the "**Land**");

(b) all improvements and fixtures located on the Land, including, without limitation, all other buildings and structures located on the Land and all apparatus, equipment and appliances located on and affixed to the Land and used in connection with the operation or occupancy of the Land and its improvements (collectively, the "**Improvements**");

(c) all of Seller's right, title and interest, if any, in and to (i) any and all rights, privileges, and easements incidental or appurtenant to the Land or Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Land, (ii) any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Land, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land or Improvements, and (iii) all roads and alleys adjoining or servicing the Land or Improvements (collectively, the "**Appurtenances**");

(d) all Personal Property (as that term is defined in the Owner PSA) which is acquired by Seller from the Owner pursuant to the Owner PSA (the "**Personal Property**").

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

### 1.2 Seller's Rights to the Property

Seller and City hereby acknowledge that Seller does not own the Property and that this Agreement is entered into for the purpose of satisfying the Affordability Requirements for the 2558 Mission Project through exercise by Seller of the Land Dedication Option should Seller

acquire the Shotwell Property pursuant to the Owner PSA. City further acknowledges that should the Seller acquire the Shotwell Property and transfer the Property to City pursuant to this Agreement, the Affordability Requirement will be fully satisfied by such transfer. However, nothing in this Agreement is intended to compel Seller to either purchase the Shotwell Property or to pursue the Land Dedication Option in order to satisfy the Affordability Requirement for the 2558 Mission Project in lieu of the Onsite Option, and if for any reason Seller in its sole discretion elects to terminate this Agreement, does not acquire the Shotwell Property or the Closing under this Agreement does not occur, Seller may, nonetheless, satisfy the Affordability Requirement through the Onsite Option.

In addition, Seller and City hereby acknowledge and agree that should the Seller acquire the Shotwell Property, Seller may arrange with Owner to have the Property conveyed to City directly from Owner, in accordance with Section 3.1 below.

## 2. PURCHASE PRICE

### 2.1 Purchase Price

The total purchase price for the Property is One Dollar (\$1.00) (the "**Purchase Price**") and is in addition to the Independent Consideration.

### 2.2 Payment

The Purchase Price shall be paid at the Closing. At such time as is required by the Escrow Holder for Closing to occur on the Closing Date, Purchaser shall deposit with Escrow Holder, in good funds, the Purchase Price reduced or increased by such amounts as are required to take into account any prorations, credits, costs or other adjustments which are required by this Agreement and which can be computed and determined as of the time for the required deposit hereunder.

### 2.3 Funds

All payments made by any party hereto shall be in legal tender of the United States of America, paid by Controller's warrant or in cash or by wire transfer of immediately available funds to the Escrow Agent.

## 3. TITLE TO THE PROPERTY

### 3.1 Conveyance of Title to the Property

At the Closing, Seller or Owner shall convey to City marketable and insurable fee simple title to the Land, the Improvements and the Appurtenances, by duly executed and acknowledged grant deed in the form attached hereto as Exhibit C (the "**Deed**"), subject to the Accepted Conditions of Title (as defined in Section 3.2 [Title Insurance]).

### 3.2 Title Insurance

Delivery of title in accordance with the preceding Section shall be evidenced and satisfied by the commitment of First American Title Insurance Company (the "**Title Company**") to issue to City as of the Closing Date an ALTA extended coverage owner's policy of title insurance (Form B - 1970 amended 4-6-90) (the "**Title Policy**") in the amount of \$4,200,000.00, insuring fee simple title to the Land, the Appurtenances and the Improvements in City, free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, creditors' claims, rights of tenants or other occupants (except for the tenants under the Approved Leases), and all other exceptions, liens and encumbrances except solely for the following (such



exceptions approved by City are collectively referred to herein as the "**Accepted Conditions of Title**"): (i) the lien of real property taxes, not yet due or payable, provided City shall be shown as exempt from such taxes in the Title Policy; (ii) applicable zoning and building ordinances and land use regulations; (iii) standard printed exceptions and exclusions set forth in the jacket of the Title Policy; (iv) any exceptions caused or created by Buyer, its agents, representatives or employees; (v) such other exceptions as the Title Company shall commit to insure over without any additional cost to Buyer; and (vi) exception numbers \_\_\_\_\_ in Schedule B of the preliminary title report attached hereto as Exhibit K (the "**Preliminary Report**"). The Title Policy shall provide full coverage against mechanics' and materialmen's liens arising out of the construction, repair or alteration of any of the Property, shall not contain any exclusion from coverage for creditor's rights or bankruptcy, and shall contain an affirmative endorsement that there are no violations of restrictive covenants, if any, affecting the Property such special endorsements as City may reasonably request. The Title Policy shall also provide for reinsurance with direct access with such companies and in such amounts as City may reasonably request.

### 3.3 Bill of Sale

At the Closing Seller or Owner shall transfer title to the Personal Property and Intangibles (as defined in the Owner PSA) by bill of sale in the form attached hereto as Exhibit D (the "**Bill of Sale**").

### 3.4 Assignment of Leases

At the Closing Seller or Owner shall assign all of Seller's, or Owner's, right, title and interest in and to the Leases by an assignment of leases in the form attached hereto as Exhibit F (the "**Assignment of Leases**").

## 4. INTENTIONALLY OMITTED.

## 5. ENTRY & CONDITIONS TO CLOSING

Until the earlier of (i) the date on which the Board of Supervisors of the City and the Mayor, in their respective sole discretion, shall have enacted a resolution approving, adopting and authorizing this Agreement and the transactions set forth herein ("**Inspection Contingency Date**") or (ii) the termination of this Agreement, Seller shall afford City and its Agents reasonable access to the Property for the purposes of satisfying City with respect to the representations, warranties and covenants of Seller contained herein and the satisfaction of the Buyer's Conditions Precedent. For purposes of this Agreement, "**reasonable access**" shall mean the access to the Property that Seller and its agents are afforded pursuant to Article 3 of the Owner PSA (subject to the requirements and conditions set forth in said Article 3), limited, however, as follows: Seller has conducted certain examinations of the Property and other environmental investigations which included soil and groundwater sampling and other invasive testing to determine the presence and extent, if any, of Hazardous Materials on the site. Such matters are described in Seller's Environmental Disclosure (detailed in Section 8.1 (l) of this Agreement) a copy of which has been given to Buyer and Buyer acknowledges receipt thereof. Buyer shall not conduct any additional invasive testing of the Property unless Buyer reasonably determines that the testing and/or test results and conclusions provided by Seller in Seller's Environmental Disclosure are materially inadequate, incomplete or incorrect or that Buyer requires verification of any material aspect of the test results. Should Buyer make any such determination, any additional invasive testing of the Property shall be conducted by Buyer in accordance with the provisions of Article 3 of the Owner PSA and subject to the Owner's approval and monitoring as provided therein. All inspections, investigations and other due diligence conducted by Buyer shall be at Buyer's sole cost and expense. Buyer, before undertaking any inspections of the Property, shall provide the insurance required by Article 3 of

the Owner PSA naming both Seller and Owner as additional insureds. Buyer shall maintain such insurance coverage until the later of (i) the Closing under this Agreement or (ii) sixty (60) days after the termination of this Agreement. Buyer shall restore the Property to substantially the condition it was found prior to any investigations or testing by Buyer or its agents or consultants, subject to applicable laws.

Except to the extent resulting from Seller's negligence or willful misconduct or from the negligence or willful misconduct of an employee, contractor or agent of Seller, City hereby agrees to indemnify, defend by counsel reasonably acceptable to Seller, and hold Seller harmless from any Claims arising out of or resulting from the investigations and inspections of the Property by Buyer or its agents or consultants (other than matters arising as a result of Buyer's discovery of existing conditions within or beneath the Property). In addition, except to the extent resulting from Owner's negligence or willful misconduct or from the negligence or willful misconduct of an employee, contractor or agent of Owner, City hereby agrees to indemnify, defend by counsel reasonably acceptable to Owner, and hold Owner harmless from any Claims arising out of or resulting from the investigations and inspections of the Property by Buyer or its agents or consultants (other than matters arising as a result of Buyer's discovery of existing conditions within or beneath the Property). These indemnities shall survive the termination of this Agreement or the Closing, as applicable, provided that Seller or Owner, as the case may be, must give notice of any Claim it may have against Buyer under such indemnity (i) within six (6) months of such termination if the claim is brought by a third party against Seller or Owner or (ii) within three (3) months of such termination or the Closing Date, as applicable, if the Claim involves damage to the Property or any other Claim not brought by a third party against the Seller or Owner. For purposes of this Agreement the term "**Claim**" when capitalized shall mean any action, assertion of damage or liability, cause of action, loss, damage, fine, judgment, cost, attorney's fee, liability or obligation.

### 5.1 City's Conditions to Closing

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

(a) City acknowledges that it has received from Seller (i) copies of the leases for the Current Tenants of the Property as represented to Seller by Owner in Section 1.10 of the Owner PSA ("**Leases**") and (ii) copies of the Seller's Notice and Relocation Agreements delivered by Owner to Seller pursuant to Section 1.10 of the Owner PSA. City hereby desires to have the Leases with Chu Chu's Goods, Inc., dba Harvest Hills Market and Auto Smog and Oil Changes, Inc., continue in effect in accordance with its terms following the Closing ("**Approved Leases**"). Except for the Approved Leases, all Leases shall be terminated as of the Closing.

(b) Seller shall use commercially reasonable efforts to obtain and deliver to City, before the Closing Date, tenant estoppel certificates in form and substance satisfactory to City from any and all tenants occupying any portion of the Property. Such certificates shall be substantially in the form attached hereto as Exhibit G and shall be dated no earlier than thirty (30) days prior to the Closing Date.

(c) Seller shall not be in default in the performance of any covenant or agreement to be performed by Seller under this Agreement or the Owner PSA, and all of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date. At the Closing Seller shall deliver to City a certificate certifying that each of its representations and warranties contained in Section 8 below are true and correct as of the Closing Date.

(d) Seller shall use commercially reasonable efforts to cause Owner to maintain the physical condition of the Property in substantially the same condition on the Closing Date as on the date of City's execution of this Agreement, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Section 9.1 [Risk of Loss]), and, as of the Closing Date, there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, which after the Closing would materially adversely affect the value of the Property or the ability of City to operate the Property for its intended use, and no proceedings shall be pending or threatened which could or would cause the change, redesignation or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Property.

(e) Title Company shall be committed at the Closing to issue to City the Title Policy as provided in Section 3.2.

(f) The City's Mayor and the Board of Supervisors, in the respective sole discretion of each, shall have enacted a resolution approving, adopting and authorizing this Agreement and the transactions.

(g) Seller shall have delivered the items described in Section 6.3 below on or before the Closing.

(h) On or before the Closing Date, the final parcel map for the Property shall have been recorded.

(i) On or before the Closing Date, Seller shall have deposited the Remediation Funds into the Remediation Escrow Account pursuant to the Remediation Funds Agreement and Escrow Instructions as further described in Section 8.6 below.

(j) Seller shall have delivered notice to Owner of its assignment of the Owner representations and warranties in the Owner PSA, as required under Section 10.1(b) of the Owner PSA, and shall have obtained Owner's consent to the assignment agreement to be executed by Seller and City in the form attached hereto as Exhibit J ("**Assignment of Owner Representations**").

The Buyer's Conditions Precedent contained in the foregoing Subsections (a) through (j) are solely for the benefit of City. If any Buyer's Condition Precedent is not satisfied, City shall have the right in its sole discretion either to waive in writing the Buyer's Condition Precedent in question and proceed with the purchase or, in the alternative, terminate this Agreement, provided that the Buyer's Condition Precedent described in item (f) may not be waived.

## 5.2 Cooperation with City

Seller shall cooperate in a commercially reasonable manner with City and do all acts as may be reasonably requested by City with regard to the fulfillment of any Buyer's Condition Precedent including, without limitation, execution of any documents, applications or permits. Seller hereby irrevocably authorizes City and its Agents, at their sole cost and expense, to make all inquiries with and applications to any person or entity, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations.

### 5.3 Seller's Conditions to Closing.

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

- (a) Seller, in Seller's sole discretion, shall have purchased the Shotwell Property pursuant to the Owner PSA.
- (b) Seller, in Seller's sole discretion, shall have elected to satisfy the Affordability Requirement for the 2558 Mission Project by conveying the Property to the City pursuant to the Land Dedication Option.
- (c) On or before June 1, 2013, the City's Mayor and the Board of Supervisors, in the respective sole discretion of each, shall have enacted a resolution approving, adopting and authorizing this Agreement and the transactions herein.
- (d) On or before the Closing Date, the final parcel map for the Property shall have been recorded.
- (e) City shall not be in default in the performance of any covenant or agreement to be performed by City under this Agreement and all of Buyer's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date.

The Seller's Conditions Precedent contained in the foregoing Subsections (a) through (e) are solely for the benefit of Seller. If any Seller's Condition Precedent is not satisfied, Seller shall have the right in its sole discretion either to waive in writing the Seller's Condition Precedent in question and proceed with the sale or, in the alternative, terminate this Agreement.

## 6. ESCROW AND CLOSING

### 6.1 Opening of Escrow

Not later than five (5) business days after the date on which this Agreement has been executed by both Seller and City ("**Escrow Opening Date**"), the parties shall open escrow by depositing an executed counterpart of this Agreement with Title Company, and this Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and City agree to execute such additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

## 6.2 Closing Date

The consummation of the purchase and sale contemplated hereby (the "**Closing**") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of Title Company located at 901 Mariners Island Boulevard, Suite 380, San Mateo, CA 94404 on the date ("**Closing Date**") designated by Seller in writing ("**Notice of Closing Date**") delivered to Buyer and the Title Company not less than five (5) business days prior to the Closing Date so designated. The Seller may, by further Notice of Closing Date, extend the Closing Date. Closing shall occur on the Closing Date, subject to the provisions of Article 5 [Conditions Precedent]. Notwithstanding the foregoing, in no event shall the Closing Date occur until at least five (5) business days after the Buyer's Condition Precedent set forth in Section 5.1 (f) shall have been satisfied. In the event the Closing does not occur on the Closing Date, as extended, Title Company shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return to the depositor thereof items which may have been deposited hereunder. Any such return shall not, however, limit the provisions hereof or otherwise relieve either party hereto of any liability it may have for its wrongful failure to close.

## 6.3 Seller's Delivery of Documents

At or before the Closing, Seller shall deliver to City through escrow, the following:

- (a) a duly executed and acknowledged Deed;
- (b) a duly executed Bill of Sale;
- (c) a duly executed counterpart of the Assignment of Leases;
- (d) copies of duly executed tenant estoppel certificates as required pursuant to Subsection 5.1(b) hereof;
- (e) originals of the Approved Leases and any other items relating to the ownership or operation of the Property not previously delivered to City which are required to be delivered to Buyer at Closing under this Agreement;
- (f) a properly executed affidavit pursuant to Section 1445(b)(2) of the Federal Tax Code in the form attached hereto as Exhibit H, and on which City is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code;
- (g) a properly executed California Franchise Tax Board Form 590 certifying that Seller is a California resident if Seller is an individual or Seller has a permanent place of business in California or is qualified to do business in California if Seller is a corporation or other evidence satisfactory to City that Seller is exempt from the withholding requirements of Section 18662 of the State Tax Code;
- (h) such resolutions, authorizations, or other partnership documents or agreements relating to Seller and its partners as City or the Title Company may reasonably require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller;
- (i) closing statement in form and content satisfactory to City and Seller;

(j) the duly executed certificate regarding the continued accuracy of Seller's representations and warranties as required by Subsection 5.1(c) hereof;

(k) originals of the following documents to the extent such documents exist and are in the possession or control of Seller: structural calculations for the Improvements; site plans; certified copies of the as-built plans and specifications for the Improvements; recent inspection reports by Seller's engineers; service contracts; utility contracts; maintenance contracts; employment contracts, management contracts; brokerage and leasing commission agreements which may continue after Closing; certificates of occupancy; presently effective warranties or guaranties received by Seller from any contractors, subcontractors, suppliers or materialmen in connection with any construction, repair or alteration of the Improvements or any tenant improvements; insurance policies, insurance certificates of tenants, and reports of insurance carriers insuring the Property and each portion thereof respecting the claims history of the Property; environmental reports, studies, surveys, tests and assessments; soils and geotechnical reports; and any other contracts or documents of significance to the Property (collectively, the "**Documents**");

(l) a duly executed counterpart of the Remediation Funds Agreement and Escrow Instructions as further described in Section 8.6 below; and

(m) a duly executed counterpart of the Assignment of Owner Representations.

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

At or before the Closing, City shall deliver to Seller through escrow the following:

- (a) an acceptance of the Deed executed by City's Director of Property;
- (b) duly executed counterparts of the Assignment of Leases;
- (c) the Purchase Price, as provided in Article 2 hereof;
- (d) closing statement in form and content satisfactory to City and Seller;
- (e) a duly executed counterpart of the Remediation Funds Agreement and Escrow Instructions as further described in Section 8.6 below; and
- (f) a duly executed counterpart of the Assignment of Owner Representations.

#### 6.5 Other Documents

Seller and City shall each deposit such other instruments as are reasonably required by Title Company as escrow holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof, including, without limitation, an agreement (the "**Designation Agreement**") designating Title Company as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Federal Tax Code and the regulations promulgated thereunder, and executed by Seller, City and Title Company. The Designation Agreement shall be substantially in the form attached hereto as Exhibit I and, in any event, shall comply with the requirements of Section 6045(e) of the Federal Tax Code and the regulations promulgated thereunder.

7. **EXPENSES AND TAXES**

7.1 **Rent and Other Apportionments**

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

(a) **Rent**

Rent under the Approved Leases shall be apportioned as of the Closing Date, regardless of whether or not such rent has been paid to Seller. With respect to any rent arrearage arising under the Leases, after the Closing, City shall pay to Seller any rent actually collected which is applicable to the period preceding the Closing Date; provided, however, that all rent collected by City shall be applied first to all unpaid rent accruing on and after the Closing Date, and then to unpaid rent accruing prior to the Closing Date. City shall not be obligated to take any steps to recover any rent arrearage.

(b) **Leasing Costs**

Seller shall, or shall use commercially reasonable efforts to cause Owner to, pay all leasing commissions and tenant improvement costs accrued in connection with any Lease executed on or before the Closing (including, without limitation, leasing commissions attributable to expansion or extension options which are not exercised until after the Closing). City shall be entitled to a credit against the Purchase Price for the total sum of all security deposits paid to Seller by tenants under any Approved Leases, as well as for any free rent, operating expense abatements, or other unexpired concessions under any Approved Leases to the extent they apply to any period after the Closing.

(c) **Other Tenant Charges**

Where the Approved Leases contain tenant obligations for taxes, common area expenses, operating expenses or additional charges of any other nature, and where Seller shall have collected any portion thereof in excess of amounts owed by Seller for such items for the period prior to the Closing Date, there shall be an adjustment and credit given to City on the Closing Date for such excess amounts collected. City shall apply all such excess amounts to the charges owed by City for such items for the period after the Closing Date and, if required by the Leases, shall rebate or credit tenants with any remainder. If it is determined that the amount collected during Seller's ownership period exceeded expenses incurred during the same period by more than the amount previously credited to City at Closing, then Seller shall promptly pay the deficiency to City.

(d) **Utility Charges**

Seller shall cause all utility meters which are in Seller's name to be read, and will be responsible for the cost of all utilities used on such meters prior to the Closing Date. All utility deposits paid by Seller shall remain the property of Seller and City shall reasonably cooperate to cause such deposits to be returned to Seller to the extent Seller is entitled thereto.

(e) **Other Apportionments**

Amounts payable under any contracts assumed pursuant hereto, annual or periodic permit or inspection fees (calculated on the basis of the period covered), and liability for other normal Property operation and maintenance expenses and other recurring costs shall be apportioned as of the Closing Date.

## 7.2 Closing Costs

Seller shall pay (i) the cost of the Title Policy including the Survey and any endorsements reasonably requested by City; (ii) Escrow fees ; (iii) the cost of any transfer taxes applicable to the sale; and(iv) the sales tax on any Personal Property. Seller shall be responsible for all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured by the Property including, without limitation, any prepayment fees, penalties or charges. Any other costs and charges of the escrow for the sale not otherwise provided for in this Section or elsewhere in this Agreement shall be borne by Seller

## 7.3 Real Estate Taxes and Special Assessments

General real estate taxes payable for the tax year prior to year of Closing and all prior years shall be paid by Seller at or before the Closing. General real estate taxes payable for the tax year of the Closing shall be prorated through escrow by Seller and City as of the Closing Date. City acknowledges that in connection with the lot split Seller paid both installments of the fiscal year 2013-2014 taxes and that Seller shall be entitled to a credit for the portion of such taxes applicable to the period from and after the Closing. At or before the Closing, Seller shall pay the full amount of any special assessments against the Property, including, without limitation, interest payable thereon, applicable to the period prior to the Closing Date.

## 7.4 Post-Closing Reconciliation

If any of the foregoing prorations cannot be calculated accurately on the Closing Date, then they shall be calculated as soon after the Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent prorations shall promptly pay such sum to the other party.

## 7.5 Survival

The provisions of this Section shall survive the Closing.

## 8. COVENANTS, REPRESENTATIONS AND WARRANTIES

### 8.1 Representations and Warranties of Seller

Seller makes the following representations and warranties to Buyer which, unless expressly stated to the contrary herein, shall be true and correct as of the Effective date and true and correct in all material respects as of the Closing Date:

(a) To the best of Seller's knowledge, Seller has received no notices of outstanding violations of any laws, rules or regulations applicable to the Property, including, without limitation, any earthquake, life safety and handicap laws (including, but not limited to, the Americans with Disabilities Act).

(b) To the best of Seller's knowledge, the Leases, Documents and any other information furnished to City are all of the relevant documents and information pertaining to the condition and operation of the Property to the extent available to Seller, and are true, correct and complete copies of such documents.

(c) To the best of Seller's knowledge, no document or instrument furnished or to be furnished by the Seller to the City in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to



make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

(d) To the best of Seller's knowledge, no condemnation action is either instituted or planned to be instituted by any governmental or quasi-governmental agency other than City, which could detrimentally affect the use, operation or value of the Property.

(e) To the best of Seller's knowledge, all water, sewer, gas, electric, telephone, and drainage facilities and all other utilities required by law or by the normal use and operation of the Property are installed to the property lines of the Property and are adequate to service the Property.

(f) To the best of Seller's knowledge, there are no easements or rights of way which have been acquired by prescription or which are otherwise not of record with respect to the Property, and there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Property to gain access to other real property. To the best of Seller's knowledge, there are no disputes with regard to the location of any fence or other monument of the Property's boundary nor any claims or actions involving the location of any fence or boundary.

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

(h) To the best of Seller's knowledge, Owner is the legal and equitable owner of the Property, with full right to convey the same, and without limiting the generality of the foregoing, neither Seller nor, to the best of Seller's knowledge, Owner has granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Property.

(i) Seller is a limited liability company duly organized and validly existing under the laws of the State of California and is in good standing under the laws of the State of California; this Agreement and all documents executed by Seller which are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by Seller, are, or at the Closing will be, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, are, and at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

(j) Seller has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Seller has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(k) To the best of Seller's knowledge, there are no facts that would prevent City from using and operating the Property after Closing in the normal manner in which it is intended.

(l) Seller hereby represents and warrants to and covenants with City that the following statements are true and correct and will be true and correct as of the Closing Date:

(i) except as may be shown in the Seller's Environmental Disclosure, neither the Property nor to the best of Seller's knowledge any real estate adjacent to the Property is in violation of any Environmental Laws; (ii) the Property is not now nor to the best of Seller's knowledge has it ever been, used in any manner for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except as described in "Phase I Environmental Site Assessment, 1294 –1298 Shotwell Street, San Francisco, California," completed by Treadwell and Rollo on 8 December 2011 as Project No. 731576201; "Hazardous Materials Pre-Demolition Survey Report, 1296 Shotwell Avenue, San Francisco, California," completed by RGA Environmental on February 4, 2013, as Project No: OYSTER31930; "Environmental Site Characterization of the Property," completed by Treadwell and Rollo on March 6, 2013; and "Preliminary Estimate of Volume and Disposal Cost of Class I Fill Material," completed by Treadwell and Rollo on March 5, 2013; (together, "**Seller's Environmental Disclosure**"); (iii) except as may be shown in the Seller's Environmental Disclosure, there has been no release and there is no threatened release of any Hazardous Material in, on, under or about the Property; (iv) except as may be shown in the Seller's Environmental Disclosure, there have not been and there are not now any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under the Property, or if there have been or are any such tanks or wells located on the Property, their location, type, age and content has been specifically identified in Seller's Environmental Disclosure, they have been properly registered with all appropriate authorities, they are in full compliance with all applicable statutes, ordinances and regulations, and they have not resulted in the release or threatened release of any Hazardous Material into the environment; (v) except as may be shown in the Seller's Environmental Disclosure, the Property does not consist of any landfill or of any building materials that contain Hazardous Material; and (vi) except as may be shown in the Seller's Environmental Disclosure, the Property is not subject to any claim by any governmental regulatory agency or third party related to the release or threatened release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Property, or the migration of Hazardous Material from or to other property. As used herein, the following terms shall have the meanings below:

(i) "**Environmental Laws**" shall mean any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Property, including, without limitation, soil, air and groundwater conditions.

(ii) "**Hazardous Material**" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Improvements or are naturally occurring substances on or about the Property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

(iii) "**Release**" or "**threatened release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring,

emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under or about the Property. Release shall include, without limitation, "release" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

(m) At the time of Closing there will be no outstanding written or oral contracts made by Seller for any of the Improvements that have not been fully paid for and Seller shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Seller in respect of the Property prior to the time of Closing. There are no obligations in connection with the Property which will be binding upon City after Closing except for matters which are set forth in the Preliminary Report and except for the Approved Leases.

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

(o) No brokerage or similar fee is due or unpaid by Seller with respect to any Lease. To the best of Seller's knowledge, no brokerage or similar fee shall be due or payable on account of the exercise of, without limitation, any renewal, extension or expansion options arising under any Approved Leases.

(p) To the best of Seller's knowledge, the copies of the Leases and other related documents delivered by Seller to City contain all of the information pertaining to any rights of any parties to occupy the Property, including, without limitation, all information regarding any rent concessions, over-standard tenant improvement allowances or other inducements to lease. Except as shown in the Seller's Notice referenced in Section 5.1 (a) none of the tenants of the Property has indicated to Seller either orally or in writing its intent to terminate its respective Lease prior to expiration of the respective term of such Lease.

(q) To the best of Seller's knowledge, the lease (the "**Octaviano Lease**") entered into between Owner (as Landlord) and Octaviano Inc., Marvin John Octaviano and Leonida M. Octaviano (as Tenants) has been terminated and is of no further force or effect, all of tenant's rights under the Octaviano Lease (as amended) have been terminated, and as of the date of this Agreement, no third party has any right to occupy the portion of the Property associated with the Octaviano Lease.

## 8.2 Limitation on Representations, Warranties and Covenants of Seller

(a) For purposes of this Agreement and any document delivered at Closing, whenever the phrase "to Seller's knowledge," or "to the best of Seller's knowledge" or the "knowledge" of Seller or words of similar import are used, they shall be deemed to refer to facts within the actual knowledge only of Dean Givas and no other, at the times indicated only, without duty of inquiry whatsoever.

(b) Buyer acknowledges that the individual named above is named solely for the purpose of defining and narrowing the scope of Seller's knowledge and not for the purpose of imposing any liability on or creating any duties running from such individual to Buyer. Buyer covenants that it will bring no action of any kind against such individual, any shareholder, manager, officer partner or member of Seller, as applicable, or related to or arising out of these representations and warranties.

(c) The representations and warranties of Seller set forth in Section 8.1 will survive the Closing for a period of twenty four (24) months. Buyer will not have any right to bring any action against Seller as a result of any untruth or inaccuracy of such representations and warranties or any breach thereof unless such action is commenced within such twenty four (24) month period. In addition, except for fraud or an intentional misrepresentation by Seller, in no event shall Seller's liability (including, without limitation, claims for indemnification, defense and attorney's fees) for all such breaches exceed, in the aggregate, Five Hundred Thousand Dollars (\$500,000.00) ("**Liability Limit**"). Seller shall have no liability with respect to any of Seller's representations and warranties herein if, prior to the Closing, Buyer has actual knowledge of any breach of a representation or warranty of Seller herein, or Buyer obtains actual knowledge (from whatever source, including, without limitation, written disclosure by Seller or Seller's agents and employees) that contradicts any of Seller's representations and warranties herein, and Buyer nevertheless consummates the transaction contemplated by this Agreement.

## 8.3 Indemnities of Seller

(a) Subject to the Liability Limit, Seller on behalf of itself and its successors and assigns, hereby agrees to indemnify, defend and hold harmless City, its Agents and their respective successors and assigns, from and against any and all liabilities, claims, demands, damages, liens, costs, penalties, losses and expenses, including, without limitation, reasonable attorneys' and consultants' fees, resulting from any misrepresentation or breach of warranty made by Seller in Section 8.1 of this Agreement or in any document, certificate, or exhibit given or delivered to City pursuant to or in connection with this Agreement. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material. The indemnification provisions of this Section 8.3 (a) shall survive the Closing for a period of twenty four (24) months.

(b) Subject to the Liability Limit, in addition, and notwithstanding the scope of the warranty set forth in Section 8.1 (q), Seller on behalf of itself and its successors and assigns, hereby agree to indemnify, defend and hold harmless City, its Agents and their respective successors and assigns, from and against any and all liabilities, claims, demands, damages, liens, costs, penalties, losses and expenses, including, without limitation, reasonable

attorneys' and consultants' fees, arising out of any claim or demand by Octaviano, Inc., Marvin John Octaviano and Leonida M. Octaviano, or any of them, asserting that the Octaviano Lease has not terminated and/or that they or any one or more of them has an existing right to use or occupy any portion of the Property. The indemnification provisions of this Section 8.3 (b) shall survive the Closing for a period of twenty four (24) months.

#### 8.4 Representations, Warranties and Covenants of Buyer

Buyer makes the following representations and warranties to Seller which, unless expressly stated to the contrary herein, shall be true and correct as of the Effective Date and true and correct in all material respects as of the Closing Date:

(a) Subject to Section 5.1(f) of this Agreement, the execution and delivery of this Agreement and the performance of Buyer's obligations hereunder have been or will be duly authorized by all necessary action on the part of Buyer and this Agreement constitutes the legal, valid and binding obligation of Buyer.

**(b) EXCEPT FOR THE MATTERS SET FORTH IN SECTION 8.1, 8.3 AND THE OWNER'S PSA, BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY OF SELLER'S AGENTS OR REPRESENTATIVES, AND BUYER HEREBY ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS HAVE BEEN MADE. EXCEPT FOR THE MATTERS SET FORTH IN SECTION 8.1, 8.3 AND THE OWNER'S PSA, SELLER SPECIFICALLY DISCLAIMS, AND NEITHER IT NOR ANY OTHER PERSON ACTING ON SELLER'S BEHALF IS MAKING, ANY REPRESENTATION, WARRANTY OR ASSURANCE WHATSOEVER TO BUYER AND NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EITHER EXPRESS OR IMPLIED, ARE MADE BY SELLER OR RELIED UPON BY BUYER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN OR MARKETABILITY OF THE PROPERTY, OR ANY PORTION THEREOF, INCLUDING BUT NOT LIMITED TO (a) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (b) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (c) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (d) ANY RIGHTS OF BUYER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, (e) ANY CLAIM BY BUYER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN, LATENT OR PATENT, WITH RESPECT TO THE IMPROVEMENTS, (f) THE FINANCIAL CONDITION OR PROSPECTS OF THE PROPERTY AND (g) THE COMPLIANCE OR LACK THEREOF OF THE REAL PROPERTY OR THE IMPROVEMENTS WITH GOVERNMENTAL REGULATIONS, IT BEING THE EXPRESS INTENTION OF SELLER AND BUYER THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PROPERTY WILL BE CONVEYED AND TRANSFERRED TO BUYER IN ITS PRESENT CONDITION AND STATE OF REPAIR, "AS IS" AND "WHERE IS", WITH ALL FAULTS. BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, BUYER WILL ACCEPT THE PROPERTY, "AS IS, WHERE IS," WITH ALL FAULTS. BUYER FURTHER ACKNOWLEDGES AND AGREES**

**THAT OTHER THAN THE OWNER'S PSA, THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY, BY SELLER, ANY AGENT OF SELLER OR ANY THIRD PARTY. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO HEREIN. BUYER, WITH BUYER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS AGREEMENT, AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF. BUYER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH HEREIN ARE AN INTEGRAL PART OF THIS AGREEMENT. THE TERMS AND CONDITIONS OF THIS SECTION 8.4 (c) WILL EXPRESSLY SURVIVE THE CLOSING AND WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS**

### **8.5 Release of Seller**

Upon Closing, except for its indemnification obligations and liability for a breach of a representation or warranty as set forth in this Agreement, and except for allegations of fraud or intentional misconduct, Seller is released from all responsibility and liability to Buyer regarding the condition (including the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever. In that connection, Buyer, on behalf of itself, its successors, assigns and successors-in-interest and such other persons and entities, waives the benefit of California Civil Code Section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

### **8.6 Remediation Agreement, Remediation Funds and Remediation Escrow Agreement**

In February 2013, Treadwell and Rollo ("**Treadwell**") conducted an Environmental Site Characterization of the Property, published on March 6, 2013, in order to evaluate potential contaminated soil at the Property. Treadwell collected soil samples of the fill materials from five environmental borings, conducted chemical testing of selected samples, and evaluated the results. The report found soluble lead concentrations exceeding the State of California waste criteria in two borings, necessitating disposal to a Class I facility in the event that the future development of the Property will require excavation of approximately 10 feet below the ground surface. On March 5, 2013, Treadwell issued a memorandum to Seller, entitled "Preliminary Estimate of Volume and Disposal Cost of Class I Fill Material" in which Treadwell estimated the

costs of 500 tons of hazardous materials disposal to a Class I facility. Seller has agreed with Buyer to provide an allowance toward transportation and disposal costs. The terms and conditions of the agreement between Seller and Buyer are set forth in the Remediation Funds Agreement and Escrow Instructions (“**Remediation Funds Agreement**”) which is attached hereto as Exhibit K and will be executed and delivered by the parties at Closing as provided herein.

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

### **9.1 Risk of Loss**

If any of the Property is damaged or destroyed prior to the Closing Date, or if condemnation proceedings are commenced against any of the Property, then the rights and obligations of Seller and City hereunder shall be as follows:

(a) If the Owner PSA is terminated by reason of any such occurrence, this Agreement shall terminate and Seller and Buyer shall be released from all obligations hereunder except for those which expressly survive termination.

(b) If the Owner PSA is not terminated by reason of such occurrence, this Agreement shall remain in full force and effect and City shall acquire the Property upon the terms and conditions set forth herein and Seller shall assign to City at Closing all of Seller's right, title and interest in and to all proceeds of insurance on account of such damage or destruction pursuant to an instrument satisfactory to City.

(c) If the Owner PSA is not terminated by reason of such occurrence, and if condemnation proceedings are commenced against any of the Property, then, City shall have the right, at its election, either to terminate this Agreement in its entirety or to not terminate this Agreement and purchase the Property. City shall have fifteen (15) days after Seller notifies City that an event described in this Subsection (c) has occurred to make such election by delivery to Seller of an election notice. City's failure to deliver such notice within such fifteen (15)-day period shall be deemed City's election not to terminate this Agreement. If this Agreement is terminated by City's delivery of notice of termination to Seller, then City and Seller shall each be released from all obligations hereunder except for those which expressly survive termination. If City elects or is deemed to have elected not to terminate this Agreement, this Agreement shall remain in full force and effect, City shall acquire the Property upon the terms and conditions set forth herein and Seller shall assign to City at Closing all of Seller's right, title and interest in and to all condemnation awards.

### **9.2 Possession**

Possession of the Property shall be delivered to City on the Closing Date.

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

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

Between the Effective Date and the Closing hereunder, Seller shall use commercially reasonable efforts to cause Owner to maintain the Property in substantially its current condition, reasonable wear and tear excepted, and otherwise operate the Property in the same manner as the Property was maintained by the Owner prior to the Effective Date. For the purposes of this Section 10.1 only, “commercially reasonable efforts” shall include but not be limited to enforcing the Owner covenants set forth in the Owner PSA.

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

After the date this Agreement is executed by Seller, Seller shall not waive any rights of Seller under any Lease, without in each instance obtaining City's prior written consent thereto, which consent in the case of any Lease shall include approval of the financial condition of the proposed tenant, the configuration of the space to be leased, and the terms of such Lease or contract. City agrees that it shall not unreasonably withhold or delay any such consent. Seller shall terminate prior to the Closing, at no cost or expense to City, any and all management agreements affecting the Property that City does not agree in writing prior to the Closing to assume. In addition, after the date this Agreement is executed by Seller, Seller shall use commercially reasonable efforts to prevent Owner from entering into any Lease or contract, or any amendment thereof, or permit any tenant of the Property to enter into any sublease, assignment or agreement pertaining to the Property, without in each instance obtaining City's prior written consent thereto, which consent in the case of any Lease shall include approval of the financial condition of the proposed tenant, the configuration of the space to be leased, and the terms of such Lease or contract.

## 11. GENERAL PROVISIONS

### 11.1 Notices

Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, against receipt, (ii) one (1) day after being deposited with a reliable overnight courier service, or (iii) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

City:

Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: 1296 Shotwell  
Facsimile No.: (415) 552-9216

with copy to:

Evan Gross  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Re: 1296 Shotwell  
Facsimile No.: (415) 554-4755



Seller:

2558 Mission LLC  
c/o Oyster Development Corp.  
355 1st Street, #809  
San Francisco, CA 94105  
Attention: Dean Givas  
Facsimile No.: (415) 447-8578

With a copy to:

Tricon Fund IX LP  
c/o Tricon Capital Group, Inc.  
1067 Yonge Street  
Toronto, Ontario, Canada M4W2L2  
Attention: Jonathan Ellenzweig

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above. For convenience of the parties, copies of notices may also be given by telefacsimile, to the telephone number listed above, or such other numbers as may be provided from time to time. However, neither party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

### **11.2 Brokers and Finders**

No party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the purchase and sale contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive the Closing.

### **11.3 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

### **11.4 Amendments**

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

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

All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Closing, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond any termination of this Agreement.

### **11.6 Governing Law**

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

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

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

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

The term "Seller" as used herein shall include the plural as well as the singular. If there is more than one (1) Seller, then the obligations under this Agreement imposed on Seller shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through City's Director of Property unless otherwise provided herein, subject to applicable law.

### **11.9 Interpretation of Agreement**

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

### **11.10 Attorneys' Fees**

In the event that any party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Agreement, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include,

without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

#### **11.11 Sunshine Ordinance**

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

#### **11.12 Conflicts of Interest**

Through its execution of this Agreement, Seller acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Seller becomes aware of any such fact during the term of this Agreement, it shall immediately notify the City.

#### **11.13 Notification of Limitations on Contributions**

Through its execution of this Agreement, Seller acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Seller acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Seller each further acknowledges that the prohibition on contributions applies to Seller, each member of Seller's board of directors, and Seller's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Seller; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Seller. Additionally, Seller acknowledges that Seller must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Seller further agrees to provide to City the names of each person, entity or committee described above.

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

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

### 11.15 Earned Income Credit (EIC) Forms

San Francisco Administrative Code Section 12O requires that employers provide their employees with IRS Form W-5 (Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(a) Seller shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Seller or Developer has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Seller; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in Subsection (a) of this Section shall constitute a material breach by Seller of the terms of this Agreement. If, within thirty (30) days after Seller receives written notice of such a breach, Seller fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Seller fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(c) Any Subcontract entered into by Seller shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

### 11.16 Counterparts

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

### 11.17 Effective Date

As used herein, the term "**Effective Date**" shall mean the date on which the City's Board of Supervisors and Mayor enact a resolution approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

### 11.18 Severability

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

**11.19 Cooperative Drafting.**

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

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

*[SIGNATURES ON FOLLOWING PAGES]*

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

SELLER:

2558 MISSION LLC  
a California limited liability company

By: Van Ness Clay Corp.,  
a California corporation  
Its Managing Member

By: \_\_\_\_\_  
Dean Givas  
President

CITY:

CITY AND COUNTY OF  
SAN FRANCISCO, a municipal corporation

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Evan A. Gross  
Deputy City Attorney

Title Company agrees to act as escrow holder in accordance with the terms of this Agreement and to execute the Designation Agreement (attached hereto as Exhibit J) and act as the Reporting Person (as such term is defined in the Designation Agreement). Title Company's failure to execute below shall not invalidate the Agreement between City, Seller and Developer.

TITLE COMPANY:

FIRST AMERICAN TITLE INSURANCE  
COMPANY

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

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

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

**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

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

Parcel A, Assessor's Block No. 6571, Lot No. 51 as shown on Parcel Map No. 7207, filed April 25, 2013 in Book 48 of Parcel Maps, at Pages 130 & 131, in the Office of the Recorder of the City and County of San Francisco, State of California, and more particularly described as follows:

Beginning at a point on the westerly line of Shotwell Street (59.09 feet wide), distant thereon North 04°15'00" West, 30.02 feet from the intersection of the southerly line of Cesar Chavez Street (100.00 feet wide) and the westerly line of Shotwell Street (59.09 feet wide); thence North 84°25'49" West, 101.36 feet; thence 04°15'00" West, 25.74 feet; thence North 14°49'38" East, 107.24 feet; thence North 88°41'39" East, 64.91 feet to the westerly line of Shotwell Street; thence along said westerly line South 04°15'00" East, 141.04 feet to the Point of Beginning.

Being a portion of Mission Block No. 200. Containing 11,672.2 sq. ft.



**DRAFT**  
**5-6-2013**

**EXHIBIT B**  
**PERSONAL PROPERTY DESCRIPTION**  
**[TO COME FROM SELLER]**

**EXHIBIT C**

**GRANT DEED**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

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

The undersigned hereby declares this instrument to be  
exempt from Recording Fees (CA Govt. Code § 27383)  
and Documentary Transfer Tax (CA Rev. & Tax Code  
§ 11922 and S.F. Bus. & Tax Reg. Code § 1105)

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

**GRANT DEED**

(Assessor's Parcel No. \_\_\_\_\_)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
THOMAS F. MURPHY AND MARTINA MURPHY, TRUSTEES OF THE MURPHY TRUST  
UDT DATED OCTOBER 3, 2003, hereby grant to the CITY AND COUNTY OF  
SAN FRANCISCO, a municipal corporation, the real property located in the City and County of  
San Francisco, State of California, described on Exhibit A attached hereto and made a part  
hereof (the "Property").

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

*[SIGNATURES ON FOLLOWING PAGE]*

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Thomas F. Murphy, Trustee of the Murphy  
Trust UDT dated October, 03, 2003

\_\_\_\_\_  
Martina Murphy, Trustee of the Murphy  
Trust UDT dated October 03, 2003

State of California            )  
  ) ss  
County of San Francisco    )

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

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

WITNESS my hand and official seal.

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

---

CERTIFICATE OF ACCEPTANCE

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

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

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

Director of Property

EXHIBIT D

**BILL OF SALE & ASSIGNMENT OF INTANGIBLES**

For good and valuable consideration the receipt of which is hereby acknowledged, THOMAS F. MURPHY AND MARTINA MURPHY, TRUSTEES OF THE MURPHY TRUST UDT DATED OCTOBER 3, 2003 ("**Seller**"), does hereby sell, transfer, assign and convey to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**Buyer**"), all Personal Property and Intangibles owned by Seller (each as defined in the Purchase and Sale Agreement and Joint Escrow Instructions between Seller and 2558 MISSION LLC, a California limited liability company dated September 29, 2011) and located on or in and used in connection with the Land and Improvements (as such terms are defined in that certain Agreement of Purchase and Sale of Real Estate dated as of May 1, 2013, between 2558 MISSION LLC, a California limited liability company and Buyer.

Seller does hereby represent to Buyer that Seller is the lawful owner of such Personal Property and Intangibles, that such Personal Property and Intangibles are free and clear of all encumbrances, and that Seller has good right to sell the same as aforesaid and will warrant and defend the title thereto unto Buyer, its successors and assigns, against the claims and demands of all persons whomsoever.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

SELLER:

\_\_\_\_\_  
Thomas F. Murphy, Trustee of the Murphy  
Trust UDT dated October, 03,2003

\_\_\_\_\_  
Martina Murphy, Trustee of the Murphy  
Trust UDT dated October 03, 2003

**EXHIBIT E**  
**INTENTIONALLY OMITTED**

**EXHIBIT F**

**ASSIGNMENT OF LEASES**

THIS ASSIGNMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between THOMAS F. MURPHY AND MARTINA MURPHY, TRUSTEES OF THE MURPHY TRUST UDT DATED OCTOBER 3, 2003 ("Assignor"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Assignee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date (as defined below), Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, claim and interest in and under certain leases executed with respect to that certain real property commonly known as 1296 Shotwell Street, San Francisco, CA (the "Property") as more fully described in Schedule 1 attached hereto (collectively, the "Leases").

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. Assignor represents and warrants that as of the date of this Assignment and the Effective Date, there are no assignments of or agreements to assign the Leases to any other party except 2558 Mission LLC, a California limited liability company ("Mission"), who consents to this Assignment.
2. Assignor hereby agrees to indemnify Assignee against and hold Assignee harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), originating prior to the Effective Date (as defined below) and arising out of the landlord's obligations under the Leases.
3. Except as otherwise set forth in the Purchase Agreement (as defined below), effective as of the Effective Date (as defined below), Assignee hereby assumes all of the landlord's obligations under the Leases and agrees to indemnify Assignor against and hold Assignor harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), originating on or subsequent to the Effective Date (as defined below) and arising out of the landlord's obligations under the Leases.
4. Any rental and other payments under the Leases shall be prorated between the parties as provided in the Purchase and Sale Agreement and Joint Escrow Instructions between Assignor, as Seller, and Mission, as Purchaser, dated as of September 29, 2011 (the "Purchase Agreement").
5. In the event of any litigation between Assignor and Assignee arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, attorneys' fees.
6. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.
7. This Assignment shall be governed by and construed in accordance with the laws of the State of California.
8. For purposes of this Assignment, the "Effective Date" shall be the date of the Closing (as defined in the Purchase Agreement).



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

*[SIGNATURES ON FOLLOWING PAGE]*

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

ASSIGNOR:

\_\_\_\_\_  
Thomas F. Murphy, Trustee of the Murphy  
Trust UDT dated October, 03, 2003

\_\_\_\_\_  
Martina Murphy, Trustee of the Murphy  
Trust UDT dated October 03, 2003

CITY AND COUNTY OF  
SAN FRANCISCO, a municipal corporation

By: \_\_\_\_\_  
John Updike, Director of Property

ASSIGNEE:

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Evan A. Gross  
Deputy City Attorney

EXHIBIT G

TENANT'S ESTOPPEL CERTIFICATE

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

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

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

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

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

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

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

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

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

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

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

CURRENT MONTHLY PAYMENTS:

\_\_\_\_\_

BASE RENTAL:

\_\_\_\_\_

TAXES:

\_\_\_\_\_

OP. EXP. CAP:

\_\_\_\_\_

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

SECURITY DEPOSIT:

\_\_\_\_\_

THE UNDERSIGNED, AS TENANT OF THE ABOVE REFERENCED PREMISES ("PREMISES") UNDER THE LEASE DATED AS OF THE ABOVE-REFERENCED LEASE DATE, BETWEEN \_\_\_\_\_ ("LANDLORD") AND TENANT, HEREBY CERTIFIES, REPRESENTS AND WARRANTS TO THE CITY AND COUNTY OF SAN FRANCISCO ("CITY"), AND ITS ASSIGNEES, AS FOLLOWS:

1. Accuracy. All of the information specified above and elsewhere in this Certificate is accurate as of the date hereof.
2. Lease. The copy of the Lease attached hereto as Exhibit A is a true and correct copy of the Lease. The Lease is valid and in full force and effect. The Lease contains all of the understandings and agreements between Landlord and Tenant and has not been amended, supplemented or changed by letter agreement or otherwise, except as follows (if none, indicate so by writing "NONE" below):
3. Premises. The Premises consist of \_\_\_\_\_, and Tenant does not have any options to expand the Premises except as follows (if none, indicate so by writing "NONE" below):

4. Acceptance of Premises. Tenant has accepted possession of the Premises and is currently occupying the Premises. There are no unreimbursed expenses due Tenant including, but not limited to, capital expense reimbursements.
5. Lease Term. The term of the Lease commenced and will expire on the dates specified above, subject to the following options to renew or rights to terminate the Lease (if none, indicate so by writing "NONE" below):
6. Rental Escalations. The current monthly base rental specified above is subject to the following escalation adjustments (if none, indicate so by writing "NONE" below):
7. No Defaults/Claims. Neither Tenant nor Landlord under the Lease is in default under any terms of the Lease nor has any event occurred which with the passage of time (after notice, if any, required under the Lease) would become an event of default under the Lease. Tenant has no claims, counterclaims, defenses or setoffs against Landlord arising from the Lease, nor is Tenant entitled to any concession, rebate, allowance or free rent for any period after this certification. Tenant has no complaints or disputes with Landlord regarding the overall operation and maintenance of the property within which the Premises are located (the "Property"), or otherwise.
8. No Advance Payments. No rent has been paid in advance by Tenant except for the current month's rent.
9. No Purchase Rights. Tenant has no option to purchase, or right of first refusal to purchase, the Premises, the Property or any interest therein (if none, indicate so by writing "NONE" below):
10. Notification by Tenant. From the date of this Certificate and continuing until, Tenant agrees to notify City immediately of the occurrence of any event or the discovery of any fact that would make any representation contained in this Certificate inaccurate as of the date hereof or as of any future date.
11. No Sublease/Assignment. Tenant has not entered into any sublease, assignment or any other agreement transferring any of its interest in the Lease or the Premises.
12. No Notice. Tenant has not received notice of any assignment, hypothecation, mortgage, or pledge of Landlord's interest in the Lease or the rents or other payments payable thereunder, except those listed below (if none, indicate so by writing "NONE" below):
13. Hazardous Materials. Tenant has not used, treated, stored, disposed of or released any Hazardous Materials on or about the Premises or the Property. Tenant does not have any permits, registrations or identification numbers issued by the United States Environmental Protection Agency or by any state, county, municipal or administrative agencies with respect to its operation on the Premises, except for any stated below, and except as stated below no such governmental permits, registrations or identification numbers are required with respect to Tenant's operations on the Premises. For the purposes hereof, the term "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the

California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids, and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

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

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

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

EXECUTED BY TENANT ON THE DATE FIRST WRITTEN ABOVE.

By:

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

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

By:

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

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

EXHIBIT H

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

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the transferee of certain real property located in the City and County of San Francisco, California, that withholding of tax is not required upon the disposition of such U.S. real property interest by 2558 Mission LLC, a California limited liability company ("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

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

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

3. Transferor's office address is c/o Oyster Development Corp., 355 1<sup>st</sup> Street, #809, San Francisco, CA 94105, Attention: Dean Givas

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

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

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

On behalf of:

2558 MISSION LLC,

a California limited liability company

By: Van Ness Clay Corp.,

a California corporation

Its Managing Member

\_\_\_\_\_  
Name: Dean Givas

Its: President



**EXHIBIT I**  
**DESIGNATION AGREEMENT**

This DESIGNATION AGREEMENT (the "Agreement") dated as of \_\_\_\_\_, 20\_\_\_\_, is by and among 2558 Mission LLC, a California limited liability company ("Seller"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), and \_\_\_\_\_ TITLE INSURANCE COMPANY ("Title Company").

A. Pursuant to that certain Purchase Agreement entered into by and amongst Seller and City, dated \_\_\_\_\_, 20\_\_\_\_ (the "Purchase Agreement"), Seller has agreed to sell to City, and City has agreed to purchase from Seller, certain real property located in City and County of San Francisco, California, more particularly described in Exhibit A attached hereto (the "Property"). The purchase and sale of the Property is sometimes hereinbelow referred to below as the "Transaction").

B. Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the "Reporting Requirements") require an information return to be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Transaction.

C. Pursuant to Subsection 2(b)(i) of the Purchase Agreement, an escrow has been opened with Title Company, Escrow No. \_\_\_\_\_, through which the Transaction will be or is being accomplished. Title Company is either (i) the person responsible for closing the Transaction (as described in the Reporting Requirements) or (ii) the disbursing title or escrow company that is most significant in terms of gross proceeds disbursed in connection with the Transaction (as described in the Reporting Requirements).

D. Seller and City and Title Company desire to designate Title Company as the "Reporting Person" (as defined in the "Reporting Requirements") with respect to the Transactions.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller, Developer, City and Title Company agree as follows:

1. Title Company is hereby designated as the Reporting Person for the Transaction. Title Company shall perform all duties that are required by the Reporting Requirements to be performed by the Reporting Person for the Transaction.

2. Seller and City shall furnish to Title Company, in a timely manner, any information requested by Title Company and necessary for Title Company to perform its duties as Reporting Person for the transaction.

3. Title Company hereby requests Seller to furnish to Title Company Seller's correct taxpayer identification number. Seller acknowledges that any failure by Seller to provide Title Company with Seller's correct taxpayer identification number may subject Seller to civil or criminal penalties imposed by law. Accordingly, Seller hereby certifies to Title Company, under penalties of perjury, that Seller's correct taxpayer identification number is \_\_\_\_\_.

4. The names and addresses of the parties hereto are as follows:

SELLER:

2558 Mission LLC

c/o Oyster Development Corp.  
355 1st Street, #809  
San Francisco, CA 94105  
Attention: Dean Givas

CITY:

Director of Property  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Facsimile No.: ( ) \_\_\_\_\_

TITLE COMPANY:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile No.: ( ) \_\_\_\_\_

5. Each of the parties hereto shall retain this Agreement for a period of four (4) years following the calendar year during which the date of closing of the Transaction occurs.

*[SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date and year first above written.

SELLER:

2558 MISSION LLC,  
a California limited liability company

By: Van Ness Clay Corp.,  
a California corporation  
Its Managing Member

By: \_\_\_\_\_  
Name: Dean Givas  
Its: President

CITY:

CITY AND COUNTY OF  
SAN FRANCISCO, a municipal corporation

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property

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

Title Company:

\_\_\_\_\_ TITLE  
INSURANCE COMPANY

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

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

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

EXHIBIT J

ASSIGNMENT OF OWNER REPRESENTATIONS

THIS ASSIGNMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and between 2558 Mission LLC, a California limited liability company ("Assignor"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Assignee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date (as defined below), Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, claim and interest in the Seller's representations and warranties set forth in Article 5 of the Purchase and Sale Agreement and Joint Escrow Instructions between THOMAS F. MURPHY AND MARTINA MURPHY, TRUSTEES OF THE MURPHY TRUST UDT DATED OCTOBER 03, 2003, as Seller, and Assignor, as Purchaser, dated as of September 29, 2011 (the "Owner PSA").

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. Effective as of the Effective Date (as defined below), Assignor hereby assigns and transfers, and Assignee hereby assumes, all of Assignor's rights and interest in the representations and warranties provided by the "Seller" in Article 5 of the Owner PSA (the "Owner Representations").
2. Assignor hereby agrees to reasonably cooperate in good faith, at no expense to Assignor (including but not limited to all costs associated with any litigation brought by Assignee arising out of a breach of the Owner's Representations), with Assignee in any effort by Assignee to enforce the terms of the Owner Representations prior to expiration of the Survival Period (as defined in the Owner PSA), including but not limited to being named as a party in any litigation brought by Assignee arising out of a breach of the Owner's Representations.
3. In the event of any litigation between Assignor and Assignee arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, attorneys' fees.
4. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.
5. This Assignment shall be governed by and construed in accordance with the laws of the State of California.
6. For purposes of this Assignment, the "Effective Date" shall be the date of the Closing (as defined in the Purchase Agreement).
7. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

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

ASSIGNOR:

2558 MISSION LLC,  
a California limited liability company

By:

Van Ness Clay Corp.,  
a California corporation

Its: Managing Member

By:

\_\_\_\_\_  
Name: Dean Givas

Its: President

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By:

John Updike, Director of Property

a

By:

[NAME]

Its:

By:

[NAME]

Its:

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

By:

John Updike, Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:

Evan A. Gross

Deputy City Attorney



ACKNOWLEDGED AND CONSENTED TO BY:

Thomas F. Murphy, Trustee of the Murphy  
Trust UDT dated October, 03,2003

Martina Murphy, Trustee of the Murphy  
Trust UDT dated October 03, 2003

## EXHIBIT K

### REMEDIATION FUNDS AGREEMENT AND ESCROW INSTRUCTIONS

THIS REMEDIATION FUNDS AGREEMENT (this "**Agreement**") is entered into as of May \_\_\_\_\_, 2013 by and among the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), 2558 MISSION LLC, a California limited liability company ("**Developer**"), and \_\_\_\_\_ ("**Escrow Agent**").

#### RECITALS

A. Developer and City have entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions (the "**Purchase Agreement**") for the transfer from Developer to City of that certain real property known as 1296 Shotwell Street, Assessor's Block [x], Lot [x], located in the City and County of San Francisco and shown on the map attached hereto as Exhibit A (the "**Property**").

B. In February 2013, Treadwell and Rollo ("**Treadwell**") conducted an Environmental Site Characterization of the Property, published on March 6, 2013, attached hereto as Exhibit B, in order to evaluate potential contaminated soil at the Property. Treadwell collected soil samples of the fill materials from five environmental borings, conducted chemical testing of selected samples, and evaluated the results.

C. The report found soluble lead concentrations exceeding the State of California waste criteria in two borings, necessitating disposal to a Class I facility in the event that the future development of the Property will require excavation of approximately 10 feet below the ground surface.

D. On March 5, 2013, Treadwell issued a memorandum to Developer, entitled "Preliminary Estimate of Volume and Disposal Cost of Class I Fill Material," attached hereto as Exhibit C ("**Treadwell Memorandum**"), in which Treadwell estimated the costs of 500 tons of hazardous materials disposal to a Class I facility.

E. As part of the Purchase Agreement, Developer has agreed to contribute funds towards the costs to transport and dispose of Class I fill excavated and removed from the Property, as more particularly described in this Agreement.

F. Developer and City now wish to enter into this Agreement to set forth the terms regarding the manner in which the funds contributed by Developer will be disbursed by Escrow Agent to City or Developer in accordance with this Agreement.

G. Capitalized terms not otherwise defined in this Agreement shall have the meanings given to such terms in the Purchase Agreement.

#### AGREEMENT

NOW, THEREFORE, in consideration of and in reliance on the mutual promises and undertakings herein made and made in the Purchase Agreement and the mutual benefits to be derived therefrom, Developer, City and Escrow Agent agree as follows:

1. Remediation Funds. On or prior to the Closing Date, Developer shall deposit Ninety Two Thousand Two Hundred Thirty Dollars (\$92,230) (the "**Remediation Funds**") with Escrow Agent. Developer and City hereby agree that consistent with the Treadwell Memorandum, the Remediation Funds are sufficient to cover the costs for the transportation and offsite disposal (namely, the dump fees and generator fees exclusive, however, of all costs of excavation) of the Class I fill in approximately 500 tons of lead-contaminated soil at the Property to the level necessary to comply with Environmental



Laws (the “**Soil Disposal**”); provided, however, that Developer does not guaranty that the Remediation Funds will cover all such costs.

2. Remediation Escrow Account. The Remediation Funds shall be held by Escrow Agent in an interest-bearing account (the “**Remediation Escrow Account**”), and all interest thereon shall be deemed a part of the Remediation Funds. All costs and expenses of Escrow Agent with respect to the establishment, holding and administering of the Remediation Escrow Account shall be paid by Developer.
3. Use of Remediation Funds. The Remediation Funds shall be made available to the City to pay for the Soil Disposal.
4. Disbursement of Remediation Funds. Developer and City agree that the Escrow Agent is hereby authorized to disburse the Remediation Funds as follows:
  - (a) Upon completion of the Soil Disposal, Escrow Agent shall release to City that portion of the Remediation Funds that is sufficient to cover the cost of the Soil Disposal, as evidenced by invoices of contractors submitted by City to Developer and Escrow Agent which relate solely to the Class I fill. Developer shall have no obligation to increase the amount of the Remediation Funds if they are insufficient to cover the actual costs of the Soil Disposal.
  - (b) Any unused remaining Remediation Funds after disbursement under (a) above shall be disbursed to Developer.
  - (c) In the event the Soil Disposal is not completed by December 31, 2018, then upon demand of Developer, Escrow Agent shall disburse the Remediation Funds to Developer.
5. Term of Agreement. The obligations and rights under this Agreement shall survive the termination of the Purchase Agreement; provided however that upon disbursement of all of the Remediation Funds pursuant to Section 4 above, the Remediation Escrow Account shall be closed and this Agreement and all rights and obligations hereunder shall terminate.
6. Obligations of Escrow Agent. By joining herein, Escrow Agent undertakes only to perform the specific duties and obligations imposed on the Escrow Agent under the terms of this Agreement. Developer and City hereby agree and acknowledge that Escrow Agent shall not at any time be held liable for actions taken or omitted to be taken under this Agreement, except for liability related to the gross negligence or willful misconduct of Escrow Agent. If any controversy arises between the parties to this Agreement, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, Escrow Agent will not be required to determine the controversy or to take any action regarding it. Escrow Agent may hold all documents and funds and may wait for settlement of any such controversy by (a) final appropriate legal proceedings; or (b) by written agreement and notification in writing thereof by Developer and City. In such event, unless due to the gross negligence or willful misconduct of Escrow Agent, Escrow Agent will not be liable for interest or damages. Furthermore, Escrow Agent may at its

option, file an action of interpleader requiring the parties to answer and litigate any claims and rights among themselves. Escrow Agent is authorized to deposit with the clerk of the court all documents and funds held in escrow, except all costs, expenses, charges and reasonable attorney fees incurred by Escrow Agent due to the interpleader action and which Developer and City jointly and severally agree to pay.

7. Miscellaneous.

(a) Notices. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, (c) United States mail, postage prepaid, certified mail, return receipt requested, or (d) legible facsimile transmission, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given upon receipt or refusal to accept delivery, or, in the case of facsimile transmission, as of the date of the facsimile transmission provided that an original of such facsimile is also sent to the intended address by means described in clauses (a), (b) or (c) above. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

If to City:                           Real Estate Division  
  City and County of San Francisco  
  25 Van Ness Avenue, Suite 400  
  San Francisco, CA 94102  
  Attn: Director of Property  
  Telephone No. (415) 554-9875  
  Facsimile No. (415) 552-9216

If to Developer:                           2558 Mission LLC  
  c/o Oyster Development Corp.  
  355 1st Street, #809  
  San Francisco, CA 94105  
  Attention: Dean Givas  
  Facsimile No.: (415) 447-8578

**With copy to:**

Tricon Fund IX LP  
c/o Tricon Capital Group, Inc.  
1067 Yonge Street  
Toronto, Ontario, Canada M4W2L2  
Attention: Jonathan Ellenzweig

If to Escrow Agent: First American Title Company\_\_\_\_  
901 Mariner's Island Blvd  
Suite 380  
San Mateo, CA 94404  
(650) 356-1732

(b) Attorneys' Fees. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants or agreements contained herein, then in that event, the prevailing party in such action or dispute, whether by formal judgment or out of court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including actual attorneys' fees. For purposes hereof and for purposes set forth herein, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding the City's use of its own attorneys.

(c) Entire Agreement and Amendments. This Agreement constitutes the entire understanding between the parties hereto with respect to the transaction contemplated herein and supersedes any and all prior arrangements or understandings between the parties with respect thereto. Any amendment or modification of the provisions of this Agreement shall only be effective upon execution and delivery, by all parties hereto, of a writing incorporating all of the terms of such amendment or modification. No oral amendment or modification of this Agreement shall be binding on any party.

(d) Choice of Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California and the Charter of City and County of San Francisco.

(e) Successors. The provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties hereto.

(f) Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Agreement shall be made against either party except on the basis of a written instrument executed by or on behalf of such party, unless expressly provided to the contrary in the Agreement. The party for whose benefit a condition is herein inserted shall have the unilateral right to waive such condition.

(g) Further Actions. The parties agree to execute such further documents, and take such further actions, as may reasonably be required to carry out the provisions of this Agreement.

(h) Validity of Provisions. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provisions of this Agreement but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein and the same shall be enforceable to the fullest extent permitted by law.

(i) Counterparts. This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed

by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single instrument.

(j) Business Days. In the event any date described in this Agreement relative to the performance of actions hereunder by City, Developer and/or Escrow Agent falls on a Saturday, Sunday or legal holiday, such date shall be deemed postponed until the next business day thereafter.

(k) 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. Seller and Escrow Agent each acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

(l) Non Discrimination In City And County Of San Francisco Contracts.

(i) In the performance of this Agreement, Developer and Escrow Agent each 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, height, weight or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Developer or Escrow Agent, respectively, in any of such party'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 such party.

(ii) If applicable, Developer and Escrow Agent each shall include in any subcontract with an environmental consultant relating to this Agreement a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above.

(m) Tropical Hardwoods And Virgin Redwoods. 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 product.

(n) Conflicts Of Interests. Developer and Escrow Agent each states that it is familiar with the provisions of Section 15.103 and C8.105 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Developer and Escrow Agent each further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Developer or Escrow Agent, respectively, believes any officer or employee of the City presently has or will have in this Agreement or in the performance thereof.

(o) Taxpayer Notification of Limitations on Contributions. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 et. seq., and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving 1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; 2) any employment for compensation; or 3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: 1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; 2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or 3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded. Developer and Escrow Agent each understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Developer or Escrow Agent except as provided under the Conduct Code. Developer and Escrow Agent each agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this contract. Upon request, Developer and Escrow Agent each agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Developer and Escrow Agent with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City, Escrow Agent or Developer of this contract. Notwithstanding anything to the contrary in this contract, no party hereto shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

(p) General Provisions. (a) Except as expressly provided to the contrary, all approvals, consents and determinations to be made by City hereunder may be made in the reasonable discretion of City. (b) The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. (c) Time is of the essence in all matters relating to this Agreement. (d) If Developer or Escrow Agent, respectively, consists of more than one person then the obligations of each such person shall be joint and several. (e) Developer or Escrow Agent may not record this Agreement or any memorandum hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

DEVELOPER:

2558 MISSION LLC  
a California limited liability company

By: Van Ness Clay Corp.,  
a California corporation  
Its Managing Member

By: \_\_\_\_\_  
Dean Givas  
President

CITY:

City and County of San Francisco,  
a municipal corporation

By: \_\_\_\_\_  
John Updike, Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Evan A. Gross  
Deputy City Attorney

Miller, Alisa

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**From:** Evan.Gross@sfgov.org  
**Sent:** Friday, May 10, 2013 9:20 AM  
**Subject:** RE: File 130420: "Approved As To Form"

Hi Alisa - the agreement for this deal is not finalized yet, which is why I did not sign it approved as to form. The agreement included with the resolution is substantially completed though.

Evan A. Gross  
Deputy City Attorney  
Office of City Attorney Dennis Herrera  
City Hall, Rm. 234  
1 Dr. Carlton B. Goodlett Pl.  
San Francisco, CA 94102-4682  
415-554-4648 (p)  
415-554-4755 (f)

This email may contain privileged or confidential information. If you are not the intended recipient, please reply to this email to inform me of your receipt and then destroy all copies. Thanks.

**From:** "Miller, Alisa" <[alisa.miller@sfgov.org](mailto:alisa.miller@sfgov.org)>  
**To:** "Gross, Evan" <[evan.gross@sfgov.org](mailto:evan.gross@sfgov.org)>, "Givner, Jon" <[jon.givner@sfgov.org](mailto:jon.givner@sfgov.org)>,  
**Cc:** "Updike, John" <[john.updike@sfgov.org](mailto:john.updike@sfgov.org)>, "Ely, Lydia" <[lydia.ely@sfgov.org](mailto:lydia.ely@sfgov.org)>  
**Date:** 05/10/2013 08:54 AM  
**Subject:** File 130420: "Approved As To Form"

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Good Morning,

The Agreement for the 1294-8 Shotwell Street Land Dedication I received is not signed "Approved As To Form." Can you confirm the status of an "Approved" version for the file?

*Alisa Miller*

Assistant Clerk  
Board of Supervisors  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244  
San Francisco, CA 94102  
(415) 554-4447 | (415) 554-7714 fax  
[alisa.miller@sfgov.org](mailto:alisa.miller@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)

Complete a Board of Supervisors Customer Satisfaction form by clicking [HERE](#).

# 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):**

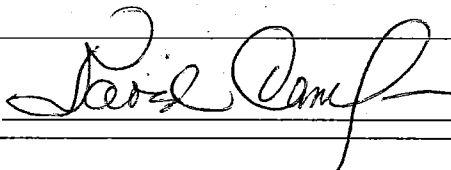
Campos

**Subject:**

Real Property Conveyance - Land Dedication - 1294-8 Shotwell Street - Inclusionary Affordable Housing

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

[Empty box for text listing]

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

130420 ✓



**FORM SFEC-126:**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): <b>Members, Board of Supervisors</b>	City elective office(s) held: <b>Members, Board of Supervisors</b>
<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: <b>2558 MISSION LLC</b>	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor.</i>	
2558 Mission LLC is owned 99% by SF Housing 1 LLC and 1% by Van Ness Clay Corporation, which is the Managing Member. SF Housing 1 LLC is owned 100% by Dean and Ysaira Givas Irrevocable Trust, which is 100% owned by Dean Givas and Ysaira Givas. Van Ness Clay Corp. is owned by Dean Givas who is the sole officer and director.	
The only board member and owner for these entities is Dean Givas except for the Trust which includes Ysaira Givas.	
Contractor address: c/o Oyster Development Corp. – 355 1 <sup>st</sup> Street #809 – San Francisco, CA 94105 – Attn: Dean Givas	
Date that contract was approved:	Amount of contract: \$1
Describe the nature of the contract that was approved: The 1296 Shotwell Street site is conveyed for the price of \$1 to the City in lieu of inclusionary housing requirements for 2558 Mission Street, as per Planning Code 419.5.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors

Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

