

File No. 140783

Committee Item No. 2
Board Item No. 36

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date July 23, 2014

Board of Supervisors Meeting

Date July 29, 2014

Cmte Board

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Completed by: Linda Wong Date July 18, 2014
Completed by: Linda Wong Date 7/23/14

1 [Lease Renewal - Empress Hotel - 144 Eddy Street - Empress, LLC - \$60,687.03 Monthly In
2 Initial Year]

3 **Resolution retroactively authorizing the extension of the Lease between the City and**
4 **County of San Francisco, as Tenant, and Empress, LLC, as Landlord, for the Empress**
5 **Hotel located at 144 Eddy Street, consisting of approximately 41,490 square feet, for a**
6 **ten year term beginning July 1, 2014, at \$60,687.03 monthly in the initial year, for use by**
7 **the Department of Public Health.**

8
9 WHEREAS, The Department of Public Health operates the nationally recognized
10 "Direct Access to Housing" (DAH) program, which is designed to provide supportive housing
11 for chronically homeless San Francisco residents by having the City master lease privately
12 owned buildings and then sublease residential units in those building to individuals who are
13 chronically homeless; and

14 WHEREAS, Direct Access to Housing targets homeless people who are struggling with
15 complex medical and behavioral health conditions; and

16 WHEREAS, As part of DAH, in 2004, the City and County of San Francisco, Tenant,
17 and Empress LLC., Landlord, executed a lease dated May 1, 2004 (the "Lease"), authorized
18 by Board of Supervisors Resolution 368-04 for Premises commonly known as the Empress
19 Hotel located at 144 Eddy Street and consisting of approximately 41,490 sq. ft. and providing
20 approximately 90 residential units of housing for chronically homeless, very low income
21 individuals and associated support space; and

22 WHEREAS, The Housing and Urban Health (HUH) section of DPH provides the on-site
23 support services at the Empress Hotel focused on client centered case management, which
24 includes establishing service plans that address each tenant's unique needs and reduce
25 harmful behaviors; assisting tenants to access, maximize and maintain benefits; helping

1 tenants access and maintain or reconnect with medical and behavioral health services;
2 providing medication management and nursing services, through a registered nurse; providing
3 substance abuse, mental health, and life skills counseling; arranging for educational and
4 vocational connections; establishing and coordinating with outside services necessary to
5 maintain independent living, such as In Home Support Services; helping tenants secure food
6 and clothing; and, assisting tenants with any additional housing stability issues; and

7 WHEREAS, Affordable housing in San Francisco remains at an insufficient level,
8 declared as a crisis and the Empress Hotel provides such housing with a subsidy for some of
9 San Francisco's neediest populations; and

10 WHEREAS, The current Lease expires on June 30, 2014 and contains an option to
11 extend the Lease for another ten (10) years on the same terms and conditions except that the
12 Base Monthly Rental is to be adjusted to 95% of the market rental value; and

13 WHEREAS, Pursuant to the terms of the Lease, the Real Estate Division and the
14 Landlord have negotiated a simple continuation of the current rent structure for the ten (10)
15 year extension period, which will be \$60,687.03 (approximately \$17.55 per annually square
16 foot or \$674.30/month per residential unit) per month beginning July 1, 2014 with a
17 continuation of the existing annual increases as described in the Lease; and

18 WHEREAS, The Extension Term is subject to enactment of a resolution by the Board
19 of Supervisors and the Mayor, in their respective sole and absolute direction, approving and
20 authorizing such exercise; now, therefore, be it

21 RESOLVED, That in accordance with the recommendation of the Director of the
22 Department of Public Health and the Director of Property, that the Director of Property on
23 behalf of the City and County of San Francisco, as Tenant, be and is hereby authorized to
24 take all actions necessary to administratively extend the Lease (a copy of which is on file with
25 the Clerk of the Board of Supervisors in File No. 140783) at 144 Eddy Street, San

1 Francisco, California, for a further term of ten (10) years at an initial monthly Base Rent of
2 \$60,687.03; and, be it

3 FURTHER RESOLVED, That such Base Rent under the Lease shall continue to be
4 increased annually on July 1 based on percentage increase in the Consumer Price Index
5 (CPI) for the San Francisco area and to be not less than two percent (2%), nor more than four
6 percent (4%); and, be it

7 FURTHER RESOLVED, That the Lease shall continue to indemnify and hold harmless
8 the Landlord from, and agreeing to defend the Landlord against, any and all claims, costs and
9 expenses, including without limitation, reasonable attorney's fees, incurred as a result of City's
10 use of the premises, any default by the City in the performance of any of its obligations under
11 the Master Lease, or any acts or omissions of City, its agents or its subtenants in, on or about
12 the premises or the property on which the premises are located; and, be it

13 FURTHER RESOLVED, That the Director of Property shall be authorized to enter into
14 any additions, amendments or other modifications to the Lease (including, without limitations,
15 the exhibits) that the Director of Property determines, in consultation with the Department of
16 Public Health and the City Attorney, are in the best interests of the City, do not materially
17 increase the obligations or liabilities of the City, and are necessary or advisable to complete
18 the transaction and effectuate the purpose and intent of this resolution; and, be it

19 FURTHER RESOLVED, That any action taken by the Director of Property and other
20 officers of the City with respect to the Lease are hereby approved, confirmed and ratified; and
21 be it

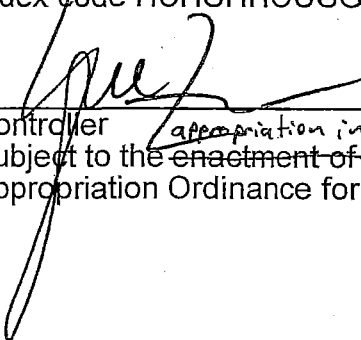
22 FURTHER RESOLVED, Said Lease shall be subject to certification as to funds by the
23 Controller, pursuant to Section 3.105 of the Charter; and, be it
24
25

1 FURTHER RESOLVED, That within thirty (30) days of the agreements being fully
2 executed by all parties, the Director of Real Estate shall provide the agreements to the Clerk
3 of the Board for inclusion into the official file.

4 Available: \$728,244.37
5 (Base Rent 7/1/14 to 6/30/15)

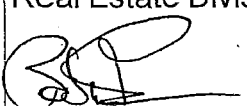
6 Grant Detail: HCH005/15 - \$451,055
7 Fund: CHS
8 Subfund: GNC
9 Index Code: HCHSHOUSINGR

10 General Fund: \$277,189.37
11 Index code HCHSHHOUSGGF

12 
13 Controller *appropriation in*
14 Subject to the enactment of the Annual
15 Appropriation Ordinance for FY 2014/2015

16 RECOMMENDED:

17 
18 Director
19 Real Estate Division

20 
21 Director
22 Department of Public Health
23
24
25

Supervisor Kim
BOARD OF SUPERVISORS



Edwin M. Lee, Mayor
Naomi M. Kelly, City Administrator



John Updike
Director of Real Estate

June 26, 2014

**Lease Renewal
144 Eddy Street
Department of Public Health**

Through Naomi Kelly,
City Administrator

Honorable Board of Supervisors
City & County of San Francisco
1 Dr. Carlton B. Goodlett Place
City Hall, Room 224
San Francisco, CA 94102

Dear Board Members:

Attached for your consideration is a Resolution authorizing the renewal of a lease of the Empress Hotel located at 144 Eddy Street, near Mason Street, for another ten year term for use by the Department of Public Health (DPH) for its Direct Access to Housing (DAH) program.

The DAH program provides clean and stable supportive housing for people who are chronically homeless and are struggling with complex medical and behavioral health conditions, including issues related to mental illness, substance abuse and/or HIV/AIDS.

The City and County of San Francisco and Empress LLC., Landlord, executed a lease dated May 1, 2004 (the "Lease"), authorized by Board of Supervisors Resolution 368-04 for 144 Eddy Street. The current rent \$59,039.82 per month, net of property expenses, and the lease currently expires on June 30, 2014.

The Empress Hotel has 90 residential units. There are approximately 18 units on each of the five residential floors, all with private baths or a bathroom shared between two units. The ground floor includes the lobby, an office, a fully accessible bathroom, a kitchen, and a laundry room. Also on the main level is an area of approximately 3,000 square feet that is used for support services and medical offices and a large community room for the building residents. The total building area is roughly 41,490 square feet.

The City contracts with the Tides Center's Delivering Innovation in Supportive Housing (DISH) project, to manage the day-to-day operations of the housing site. DISH was selected through an RFP to provide operations and property management (RFP29-2007) for 144 Eddy Street and five other Master Lease buildings. The DPH contract with Tides Center – DISH for property management services through June 30, 2018 was authorized by Board Resolution 37- 13.

The Housing and Urban Health section of DPH provides the on-site support services at the Empress Hotel and the other five master lease sites. The Support Services team has a focus on client centered case management, which includes establishing service plans that address each tenant's unique needs and reduce harmful behaviors; assisting tenants to access, maximize and maintain benefits; helping tenants access and maintain or reconnect with medical and behavioral health services; providing medication management and nursing services, through a registered nurse; providing substance abuse, mental health, and life skills counseling; arranging for educational and vocational connections; establishing and coordinating with outside services necessary to maintain independent living, such as In Home Support Services; helping tenants secure food and clothing; and, assisting tenants with any additional housing stability issues.

The existing Lease provides the City with an option to extend the Term for another ten (10) years on the same terms and conditions except that the Base Monthly Rental is to be adjusted to 95% of the market rental value. The City and Landlord have just recently negotiated the option rent to be simply a continuation of the CPI increase to the current rent which is deemed to be no greater than 95% of Fair Market Value. That agreement with the Landlord was reached on June 13, 2014. Thus, the need to submit retroactive legislation. The proposed Base Rent for the option period is \$60,687.03 per month (a 2.79% increase over the current rent of \$59,039.82 per month).

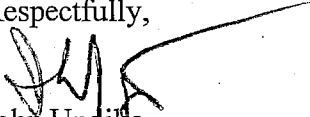
The option to extend the term of the lease is for 10 years (from July 1, 2014 to June 30, 2024). The proposed base rent of \$60,687.03 per month is approximately \$674.30 per housing unit. The proposed base rent would continue to increase annually on each July 1 based on the proportionate increase in the Consumers Price Index (C.P.I.) for the San Francisco area, with a minimum increase of 2% and a maximum increase of 4%.

62% (\$451,055) of the Base Rent is supported by an on-going HUD grant since 2004, and the remaining 38% is paid by the General Fund (\$277,189.36). Property operating expenses are paid by DISH under their 5 property contract. According to DPH, the DISH contract (including operating expenses) is funded through a HUD grant, MHSA funding, General Fund and projected rental income.

We recommend approval of the proposed lease extension authorizing legislation and would appreciate a hearing on this matter be scheduled at the Budget and Finance Committee in mid-July.

If you have any questions regarding the programs operated at 144 Eddy Street, please contact Wolfgang Stüwe, Project Manager, HUH Project Manager at 554- 2829 or Margot Antonetty, Acting Director of, HUH at 554-2642. For any questions regarding the program funding, please contact Terence Peñeda, HUH Finance Manager, HUH at 554-2561. For any questions regarding the lease extension, please contact Charlie Dunn, Senior Real Property Officer, Real Estate Division at 554-9861.

Respectfully,


John Updike
Director of Property

cc: Barbara Garcia, Director, Department of Public Health
Margot Antonetty, DPH – HUH
Wolfgang Stüwe, DPH – HUH
Terence Peñeda, DPH - HUH

MASTER LEASE

between

EMPRESS, LLC
as Owner/Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,
on behalf of the Department of Public Health,
as Tenant

For the lease of

Empress Hotel
144 Eddy Street
San Francisco, California 94102

May 1, 2004

MASTER LEASE

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- EXHIBIT A -- Floor Plan(s) of Premises**
- EXHIBIT B -- Inventory List of FF&E**
- EXHIBIT C -- Notice of Commencement Date**
- EXHIBIT D -- Construction Documents**
- EXHIBIT E -- Rent Roll of Existing Tenants**
- EXHIBIT F -- Standard Sublease Agreement**

MASTER LEASE

THIS MASTER LEASE (this "Lease"), dated for reference purposes only as of **May 1, 2004**, is by and between EMPRESS, LLC, a California limited liability company, as Owner ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, on behalf of the Department of Public Health ("City" or "Tenant").

Landlord and City hereby agree as follows:

1. BASIC LEASE INFORMATION

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

Lease Reference Date:	May 1, 2004
Landlord:	EMPRESS, LLC
Tenant:	CITY AND COUNTY OF SAN FRANCISCO, on behalf of the Department of Public Health
Building (Section 2.1):	Empress Hotel 144 Eddy Street San Francisco, California 94102
Premises (Section 2.1):	The entire building identified above, including but not limited to all 90 units, the commercial space, storage space, and basement.
Term (Section 3):	Estimated commencement date: July 1, 2004 Expiration date: Ten (10) years after Commencement Date
Extension Options (Section 3.3):	Two (2) additional terms of ten (10) years each, exercisable by City by notice to Landlord given not less than 120 days in advance, with rent adjusted to 95% of the then fair market rent pursuant to Section 4.3 (Base Rent During the Extended Terms).
Base Rent (Section 4.1):	Annual Base Rent: \$564,000, subject to increase in accordance with Section 4.2

Monthly payments: \$47,000 (\$500 per month per unit x 90 units plus \$2,000 per month for remainder of Premises), subject to increase in accordance with Section 4.2

Use (Section 5.1):

Tenant shall use the Premises for occupancy as residential dwellings for individual households ("Subtenants"), together with services generally associated with such use; including general administrative services.

Utilities (Section 9.1):

Tenant shall be responsible for all utilities.

Services (Section 9.2):

Tenant shall be responsible for janitorial services.

Notice Address of Landlord
(Section 23.1):

Empress, LLC
Vijay Patel, Managing Member
2 West Clay Park
San Francisco, CA 94121
Fax No. (415) ~~387-0609~~

with a copy to:

Law Offices of Andrew M. Zacks
235 Montgomery Street, #1130
San Francisco, CA 94104
Attn: Andrew M. Zacks
Fax No.: (415) 288-9755

Key Contact for Landlord:

Vijay Patel, Managing Member

Landlord Contact Telephone No.:

(415) 725-0126

Notice Address for Tenant
(Section 23.1):

Real Estate Department
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Steve Legnitto, Director of Property
Fax No.: (415) 554-9216

with a copy to:

Department of Public Health
City and County of San Francisco
101 Grove Street
San Francisco, CA 94102
Attn: Marc Trotz
Fax No.: (415) 554-2658

and to:

Office of the City Attorney
City Hall, Room 234

1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Amy Brown, Deputy City Attorney
Fax No.: (415) 554-4755

Key Contact for Tenant: Marc H. Trotz, Director of Housing
Development DPH-Housing and Urban Health

Tenant Contact Telephone No.: (415) 554-2565

Brokers (Section 23.10): Gary S. Cohen
TRI Commercial
One California Street, Suite 1200
San Francisco, CA 94111

Other Noteworthy Provisions (Section 22): First Right of Refusal to Purchase

2. PREMISES

2.1. Lease Premises

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, the building identified in the Basic Lease Information and shown on the floor plans attached hereto as Exhibit A (the "Premises") and the furniture, fixtures and equipment ("FF&E"), as more particularly described on the inventory list attached hereto as Exhibit B.

3. TERM

3.1. Term of Lease

The Premises are leased for a term (the "Term") commencing on the date specified in the Basic Lease Information as the estimated commencement date (the "Estimated Commencement Date"), or such later date as Landlord shall have delivered the Premises to City with Landlord's Work (as defined below) having been substantially completed by Landlord and accepted by City pursuant to Section 7.1, and City's Mayor and Board of Supervisors shall have approved the transaction contemplated by this Lease, in their respective sole and absolute discretion, as further provided in this Lease.

3.2. Commencement Date and Expiration Date

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date." If the Commencement Date occurs on a date other than the Estimated Commencement Date, then promptly thereafter Landlord shall deliver to City a notice substantially in the form of Exhibit C attached hereto,

confirming the actual Commencement Date, but Landlord's failure to do so shall not affect the actual Commencement Date.

3.3. Extension Options

City shall have the right to extend the Initial Term of this Lease (the "Extension Options") for two additional ten (10) year terms (the "Extended Terms"). The terms and conditions of such Extension Options shall be upon the same as set forth herein, except that Base Rent shall be as provided in Section 4.3 below. City may exercise the Extension Option, if at all by giving written notice to Landlord no later than one hundred and twenty (120) days prior to expiration of the Initial Term or first Extended Term, as applicable, provided, however, if City is in material default under this Lease on the date of giving such notice and fails to cure such default as provided in this Lease, Landlord may reject such exercise by delivering written notice thereof to City promptly after such failure to cure. Landlord acknowledges and agrees that City's notice of its intent to exercise an Extension Option shall be subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing the same, within sixty (60) days after Base Rent is determined pursuant to Section 4.3.

3.4. Termination

In addition to other termination rights specifically provided in this Lease, City shall have the right to terminate this Lease for any reason upon One Hundred Eighty (180) days prior written notice to Landlord. Such termination shall be effective as of the date indicated in such written notice, which date shall be at least One Hundred Eighty (180) days after the effective date of such notice, as described in Section 23.1. The parties' rights and obligations under this Lease shall terminate as of the date of such termination, except as otherwise expressly provided in this Lease. City agrees to comply with Section 20 hereunder if City exercises its right to terminate pursuant to this Section 3.4.

4. RENT

4.1. Base Rent

Beginning on the Commencement Date, City shall pay to Landlord during the Term the annual Base Rent specified in the Basic Lease Information (the "Base Rent"). The Base Rent shall be payable in equal consecutive monthly payments on or before the fifth (5th) day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice. City shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise provided in this Lease. If the Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

4.2. Base Rent for Second and Subsequent Years During the Initial Term.

On the first anniversary of the Commencement Date, and on each subsequent anniversary of the Commencement Date during the Term, the Base Rent payable under Section 4.1 for the next twelve (12) month period shall be the Base Rent during the previous 12-month period multiplied by a percentage equal to the percentage increase in the Consumer Price Index for all Urban Consumers (1982 - 84 = 100) published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco Metropolitan Area ("CPI") most recently published as of the end of the applicable 12-month period from the CPI most recently published as of the commencement of the applicable 12-month period (the "Adjustment Percentage"); provided that in no event shall the Adjustment Percentage for any 12-month period be less than two percent (2%) nor more than four percent (4%).

4.3. Base Rent During the Extended Terms.

The first year's Base Rent for any extended term shall not be less than the previous year's monthly rent. A new Base Rent shall be established at the beginning of any Extended Term at ninety-five percent (95%) of the then Fair Market Rent (as defined below) for the Premises.

For purposes hereof, "Fair Market Rent" shall be the prevailing market rate for space of comparable size and location to the Premises having recently been leased in other buildings similar in age, seismic condition, location and quality to the Premises. As used herein, the term "prevailing market rate" shall mean the base rental for such comparable space, taking into account all factors to make such spaces comparable to the Lease Premises, including but not limited to (i) any expense adjustments such as utilities paid, (ii) any additional rental and all other payments and escalations payable, (iii) floor location, access to natural light and size of the premises of such comparable space, (iv) the duration of the renewal term and the term of such comparable space, (v) free rent and any other tenant concessions offered under such comparable space, and (vi) tenant improvement allowances and other allowances offered by such comparable space.

Within thirty (30) days of Landlord's receipt of City's notice of its intent to exercise an Extension Option, pursuant to Section 3.3 above, Landlord shall provide written notice to City of Landlord's determination of its prevailing market rate along with reasonable substantiation for such rate, including, but not limited to, at least five (5) recent comparable lease transactions.

If City disputes Landlord's determination of the prevailing market rate, City shall so notify Landlord of the City's determination of prevailing market rate and reasonable substantiation for such rate within fourteen (14) days following Landlord's notice to City. If City and Landlord still disagree:

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

(b) If within this thirty (30) day period Landlord and City cannot reach agreement as to the prevailing market rate, they shall each select one appraiser.

(c) The two appraisers shall immediately select a third appraiser who is willing for a fee not to exceed \$5,000, in written notice to the parties, and within ten (10) days of his or her selection, choose either Landlord's and City's determination of the prevailing market rate and provide the reasoning for such selection.

(d) All appraisers specified above shall (i) be certified as an MAI appraiser and shall have had at least five (5) years experience within the previous ten (10) years as a real estate appraiser working in the area in San Francisco in which the Premises are located, with working knowledge of current rental rates and practices, and (ii) have not acted in any capacity for either party for at least the two (2) prior years. For purposes hereof, an "MAI" appraiser means an individual who holds an MAI designation conferred by, and is an independent member of, the American Institute of Real Estate Appraisers (or its successor organization, or in the event there is no successor organization, the organization and designation most similar). Each party shall pay for its own appraiser. Landlord shall pay the reasonable cost, if any, of the third appraiser so selected and City shall reimburse Landlord one half the actual and reasonable cost of such third appraiser.

(e) In the event the City's Director of Property does not believe the Board of Supervisors or the Mayor will approve, or if the Board of Supervisors or the Mayor does not approve, of the prevailing market rate as determined by the appraisal procedure specified above, the Director of Property may revoke the exercise of the Extension Option by City.

4.4. Payment of Real Estate Taxes

During the Term, Landlord shall be solely responsible for the Real Estate Taxes for the Premises. "Real Estate Taxes" means all taxes, assessments and charges levied upon or with respect to the Premises, other than those taxes attributable or due to Tenant's use and operation of the Premises as described in Section 4.5. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services thereof, service payments in lieu of taxes, and any tax, fee, or excise on the act of entering into this Lease or any other lease of space in the Premises or any part thereof, or on the rent payable under any lease or in connection with the business of renting space in the Premises, that are now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision thereof, public corporation, district, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes, whether or not now customary or in the contemplation of the parties on the date of this Lease.

4.5. Payment of Other Taxes

During the Term, City is solely responsible for the payment of all taxes, fees and charges attributable or due to the City's use and operation of Premises imposed by the United States of

America, the State of California or any political subdivision thereof, or the City and County of San Francisco, including but not limited to City's business license fees and renewal fees, transient taxes and other similar taxes, fees and charges, but only to the extent attributable to City's use and operation of the Premises. In addition, the City is responsible for payment of all personal property taxes attributable to the City's personal property, and any privilege tax, excise tax, gross receipts tax and commercial rent tax. If the City fails to pay any amounts due under this Section within thirty (30) days of when due, then the Landlord may pay any such amounts on the City's behalf. The City shall reimburse Landlord for such amounts paid with the next monthly payment of Base Rent payable no more than thirty (30) days after the payment made by Landlord.

5. USE

5.1. Permitted Use

City may use the Premises for the uses specified in the Basic Lease Information, and for no other use without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed.

5.2. Manner of Use

The City shall not cause or permit the Premises to be used in any way which constitutes a violation of any law, ordinance, or governmental regulation or order, or which constitutes a nuisance or waste.

5.3. Interference with Use

If City's use of any of the Premises or access thereto is materially and adversely interrupted as a result of the Premises being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than City's default hereunder, then Landlord shall immediately undertake all commercially reasonable steps to correct such condition. In the event such condition continues for twenty (20) days, the Rent payable hereunder shall then be abated based on the extent to which such condition renders any portion of the Premises untenable. If any such default by Landlord shall continue for thirty (30) days or more after City's use is interrupted and impairs City's ability to carry on its business in the Premises, then City shall have the right, without limiting any of its other rights hereunder, to immediately terminate this Lease, unless Landlord supplies City with evidence reasonably satisfactory to City that City's normal and safe use will be restored within sixty (60) days of the date City's use was interrupted, and such use is actually restored within such 60-day period. Nothing in this Section shall limit City's rights with respect to any disruption due to casualty pursuant to Section 12 (Damage and Destruction) hereof.

6. DELIVERY AND ACCEPTANCE OF PREMISES

6.1. Condition of the Premises

As of the Commencement Date, Landlord shall deliver the Premises and the FF&E to Tenant clean and free of debris on the Commencement Date, with all items on the punch list prepared by Landlord and City fully repaired. Each unit shall have clean carpets and walls, and shall have a code-compliant sprinkler system. The FF&E shall be located in the units, common areas or other portions of the Premises as indicated on Exhibit B and shall be in code condition.

6.2. Acceptance of the Premises

Following the inspection and completion of the punch list items described in Section 7.1, City shall accept the Premises in its condition, which date shall constitute the Commencement Date, subject to its existing physical condition and all recorded matters, laws, ordinances and governmental regulations and orders. Except as provided herein, City acknowledges that neither Landlord nor any agent of Landlord has made any representation as to the condition of the Premises or the suitability of the Premises for City's intended use. City represents and warrants that City has made its own inspection of and inquiry regarding the condition of the Premises and is not relying on any representations of Landlord, except as expressly provided herein, or any broker with respect thereto. It is expressly understood and agreed by the parties that nothing contained in this Lease, or in any manner expressed or implied, is to be construed as in any way prohibiting, restricting or limiting Landlord's right to use, rent or lease any other property owned, managed or leased by Landlord, for any purpose or use, whether or not such purpose or use be in competition, direct or otherwise, with the use for which the Premises is to be operated by the City.

6.3. Condition and Maintenance by Tenant

Tenant shall be deemed to have agreed by accepting occupancy that the improvements existing on the Premises as of the date of this Lease, are for the purposes of Tenant's intended use, in good order, condition and repair. Tenant, at Tenant's expense, shall at all times keep the improvements existing on Premises as of the date of this Lease, and those improvements subsequently constructed by Tenant upon the Premises (including maintenance of exterior entrances, all glass and show window moldings and all partitions, doors, door jambs, door closers, door hardware, ceilings, walls, floor coverings, concrete slab, fixtures, equipment and appurtenances, thereof including electrical, lighting, heating and plumbing, plumbing fixtures, and any air conditioning system, including leaks around ducts, pipes, vents or other parts of the air conditioning, heating, or plumbing systems which protrude through the roof) in good working order, condition and repair, including reasonable painting as determined by Landlord (ordinary wear and tear and damage by unavoidable casualty excepted).

Tenant, at Tenant's expense, shall obtain and keep in full force and effect maintenance contracts for the Premises' heating and air conditioning system and elevator with maintenance companies approved by Landlord in writing. Tenant agrees to provide Landlord with a copy of the maintenance contracts and any renewals thereof and must obtain Landlord's written approval to the terms thereof. Tenant, at Tenant's expense, shall also obtain annual inspections and

certifications or permits for the backflow prevention valve, the boiler and the elevator serving the Premises and shall provide Landlord with a copy of such annual certifications.

6.4. Maintenance by Landlord

Except as otherwise noted in Section 8.1(a), Tenant hereby assumes all responsibility for all repair, maintenance and replacement of any improvements currently existing on the Premises, or those constructed in the future and it is expressly agreed that Landlord shall have no liability whatsoever for any maintenance, repair or replacement of any portion of any improvement located on or upon the Premises at any time during the Lease, as it may be extended.

6.5. Indemnification

Tenant shall indemnify Landlord (and its shareholders, partners, owners, Agents, contractors, servants, officers, directors, employees, licensees) and save it harmless from and against any and all claims, demands, actions, damages, liability and expense (including reasonable attorney's fees and costs of investigation with respect to any claim, demand or action) in connection with loss of life, personal injury and/or damage to property arising from or out of the occupancy or use by Tenant, or occasioned wholly or in part by any act or omission of Tenant, its Agents, contractors, employees, servants, subtenants or concessionaires, or any accident, injury or damage, howsoever and whomsoever caused, to any person or property, occurring in or about the Premises. This indemnification shall not apply to damages resulting from the gross negligence or willful acts or omissions of Landlord or its authorized representatives. In case Landlord, shall without fault on its part, be made a party to any litigation commenced by or against the Tenant, then Tenant shall protect and hold Landlord harmless and shall pay all costs and expenses incurred or paid by Landlord in connection with such litigation. City shall have the right, at its sole option, to defend any such litigation by attorneys in the City Office of the City Attorney, by other attorneys, or both.

6.6. Loss or Damage

Landlord shall not be liable for any damage to property or Tenant or others located on the Premises, or in the Project, loss of or damage to any property or Tenant or of others by theft or otherwise unless such loss or damage result from the gross negligence or willful acts or omissions of Landlord or its Agents. Landlord shall not be liable for any injury or damage to persons or property resulting from fire, earthquake, flood, explosions, falling plaster, steam, gas, electricity, water, rain or snow, or leaks from any part of the Premises or from pipes, appliances, plumbing works or by any other cause of whatever nature. Landlord shall not be liable for any such damage caused by any other tenants or persons in the Premises, occupants of adjacent property of the Project, or the public, or caused by operations in construction of any private, public or quasi-public work. Notwithstanding the above, this Section shall not apply where such damage, loss or injury is caused by the willful misconduct or gross negligence of the Landlord.

7. ALTERATIONS

7.1. Landlord's Work

(a) Construction Documents. Landlord, through its contractor approved by City, shall perform the work identified in Exhibit D attached hereto (the "Landlord's Work"), at Landlord's sole cost not to exceed One Hundred and Seventy-Five Thousand Dollars (\$175,000). In the event the costs of Landlord's Work exceeds this amount, City may either provide the additional required funds or revise the scope of Landlord's Work accordingly. Promptly following the execution of this Lease, City shall cause an architect to prepare plans, specifications and working drawings ("Construction Documents") for the Landlord's Work. Landlord shall submit the Construction Documents to City for its approval, which shall not be unreasonably withheld or delayed. If City disapproves the Construction Documents, or any portion thereof, then City shall promptly notify Landlord thereof and of the revisions that City reasonably requires in order to obtain City's approval. If the parties have not agreed upon the Construction Documents within thirty (30) days following the execution of this Lease, then either party may terminate this Lease by providing written notice of termination to the other party. The parties agree that all costs incurred in this transaction shall be borne by the respective parties incurring the expense should termination under this Section 7.1(a) occur.

(b) Permits. Landlord shall secure and pay for any building and other permits and approvals, fees, and inspections necessary for the proper performance and completion of the Landlord's Work. Notwithstanding the foregoing, in the event that Landlord, after using its best efforts, is unable to obtain all necessary permits, approvals and licenses required to construct the Landlord's Work within one hundred twenty (120) days after the Effective Date, City shall have the right to terminate this Lease upon written notice to Landlord. Landlord shall be responsible for arranging for all inspections required by City's Bureau of Building Inspection.

(c) Construction. Immediately upon Landlord's procurement of all necessary permits and approvals, Landlord shall commence construction and shall cause the Landlord's Work to be completed in a good and professional manner in accordance with sound building practice. Landlord shall comply with and give notices required by all applicable laws and regulations.

(d) Construction Schedule. Landlord shall keep City apprised on a regular basis of the progress of construction. City shall have the right upon reasonable advance oral or written notice to Landlord to enter the Premises at reasonable times to inspect the Premises, provided such inspections do not unreasonably interfere with the construction. Landlord or its representative may accompany City during any such inspection. When construction progress so permits, but not less than fifteen (15) days in advance of completion, Landlord shall notify City of the approximate date on which the Landlord's Work will be substantially completed. Landlord shall revise such notice as appropriate from time to time and shall immediately notify City when the Landlord's Work is in fact substantially completed and the Premises are ready for occupancy by City. On such date or other mutually agreeable date as soon as practicable thereafter, City and its authorized representatives shall have the right to accompany Landlord or its architect on an inspection of the Premises.

(e) **Substantial Completion.** The Landlord's Work shall be deemed to be "substantially completed" when the Landlord's Work shall have been sufficiently completed in accordance with the approved Construction Documents so that City and Subtenants can occupy the Premises for their intended purposes. City may accept part of the Premises as suitable for occupancy while Landlord completes the Landlord's Work in remaining areas, and City's Base Rent shall commence with respect to the portions of the Premises that are accepted by City. City may, at its option, approve the Landlord's Work even though there may remain minor details that must be completed. Landlord shall diligently pursue to completion all such details. Notwithstanding the foregoing, City shall have the right to present to Landlord within thirty (30) days after acceptance of all of the Premises, or as soon thereafter as practicable, a written punch list consisting of any items that have not been finished in accordance with the Construction Documents. Landlord shall promptly complete all defective or incomplete items identified in such punch list, and shall in any event complete all items within thirty (30) days after the delivery of such list. City's failure to include any item on such list shall not alter the Landlord's responsibility hereunder to complete all Landlord's Work in accordance with the approved Construction Documents, nor constitute any waiver of any latent defects.

(f) **Regulatory Approvals.** No approval by City or any of its Agents of the Construction Documents or completion of the Landlord's Work for purposes of this Lease shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises, and nothing herein shall limit Landlord's obligations to obtain all such approvals.

7.2. Alterations by City

During the Term, City shall not make or permit any alterations, installations, additions or improvements (collectively, "Alterations") to the Premises that cost more than Ten Thousand Dollars (\$10,000.00) per Alteration, without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold or delay. However, the installation of furnishings, fixtures, equipment or decorative improvements, none of which affect the Major Systems (as defined below) or structural integrity of the Premises, and the repainting and re-carpeting of the Premises shall not constitute Alterations requiring Landlord's consent. Any Alterations shall be made at City's cost in compliance with applicable Laws (as defined below). Landlord shall, without cost to itself, cooperate with City in securing building and other permits and authorizations needed in connection with any Alterations. City agrees to provide Landlord with copies of said permits and authorizations within ten (10) days of written request by Landlord to City. Landlord shall not be entitled to any construction or other administrative fee in connection with any Alteration. City shall not be required to remove any Alterations upon the expiration or sooner termination of this Lease unless Landlord notifies City in writing at the time Landlord approves such Alterations that they must be removed at the Expiration Date. To the extent those individuals or entities performing any Alterations to the Premises are not covered by the City's self-insurance, as described in Section 17.1, the City shall require that any such individual or entity obtain and maintain commercially customary and reasonable insurance with respect to such Alterations, which insurance shall name the Landlord and its lender(s) (as identified by Landlord) as additional insureds. Following the completion of any Alterations for which Landlord's consent is required under this Section, the City shall provide to the Landlord copies of final signed off or approved permits and authorizations, plans and specifications and as-built

drawings, if any, for such Alterations, together with proof of either the City's financial responsibility for such Alterations or payment made to third parties for such Alterations. City agrees to provide copies of final signed off or approved permits and authorizations for all alterations done or made by City.

7.3. Title to Improvements

Except for City's Personal Property (as defined in the next Section), all appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in the Premises as of the Commencement Date or during the Term shall be and remain Landlord's property. City may not remove such property unless Landlord consents thereto.

7.4. City's Personal Property

All furniture, furnishings, equipment, trade fixtures and articles of movable personal property installed in the Premises by or for the account of City and that can be removed without damage to the Premises (collectively, "City's Personal Property") shall be and remain City's property. City's Personal Property shall not include any of the FF&E listed on Exhibit B. At any time during the Term or at the expiration thereof, City may remove any of City's Personal Property provided City shall repair any damage to the Premises resulting therefrom. Upon the expiration or earlier termination of this Lease, City shall remove City's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises), below. Landlord acknowledges that some of City's Personal Property may be financed by an equipment lease financing otherwise subjected to a security interest, or owned by an equipment company and leased to City. Landlord, upon City's reasonable request, shall execute and deliver any document reasonably required by any supplier, lessor, or lender in connection with the installation in the Premises of any items of City's Personal Property, pursuant to which Landlord waives any rights it may have or acquire with respect to City's Personal Property, so long as the supplier, equipment lessor or lender agrees that it (i) will remove the Property from the Premises on or before the Expiration Date (but if it does not remove City's Personal Property within such time it shall have waived any rights it may have had to City's Personal Property), and (ii) will repair any damage caused by the removal of City's Personal Property. Landlord shall recognize the rights of a supplier, lessor or lender who has an interest in any items of City's Personal Property to enter the Premises and remove such property at any time during the Term. Nothing in this section shall require the Landlord to subordinate its interest in the Premises.

7.5. Alteration by Landlord

Landlord shall use its commercially reasonable efforts to minimize interference with or disruption to City's use and occupancy of the Premises during any alterations, installations, additions or improvements to the Premises. Landlord shall promptly remedy, to the extent commercially reasonable, any such interference or disruption upon receiving City's notice thereof.

8. REPAIRS AND MAINTENANCE

8.1. Landlord's Obligations

(a) Landlord shall, at Landlord's sole cost and expense, regardless of the cost, (i) maintain, replace, repair and keep the Premises's foundation, interior and exterior roof, trusses and support system, structural walls, all exterior walls and surfaces (except graffiti and painting required solely for aesthetic purposes), fire safety/sprinkler system, and main sewer and water and gas pipes (i.e., the pipes connected to the utility delivery system) in a water-proof, leak-free, good condition and repair, except and to the extent any such maintenance, replacement or repair is required due to any Alterations completed by City pursuant to Section 7.2 without Landlord's approval, or due to any willful misconduct or negligent act or omission of the City or any Subtenants, whereby in such case, the City shall at its sole cost and expense, regardless of the cost, maintain and replace, repair any and such items; and (ii) promptly and diligently make any structural seismic, engineering and other upgrades or improvements to the Premises as are required by any law, statute, ordinance, rule or regulation now in force or hereafter adopted by any governmental body or agency. Notwithstanding the foregoing, Landlord's obligations under this subsection shall not extend to the extent that any maintenance or repairs are the result of any gross negligence or intentional vandalism by Tenant or any of Tenant's agents, invitees, subtenants, occupants or employees.

(b) Major/Minor Repairs. The provisions of this Subsection b. shall apply only to the elevator, HVAC (including, without limitation, the boiler), electrical and plumbing systems (other than the main sewer and water and gas pipes and the fire safety/sprinkler system) within the Premises (collectively, the "Major Systems"). If during a one-year period established from the Commencement Date of the Lease, the aggregate cost of maintenance and/or structure or systems repair of the "Major Systems" exceeds Twelve Thousand, Five Hundred Dollars (\$12,500), Landlord shall be responsible for the costs and performance of such maintenance and repairs over and above the Twelve Thousand, Five Hundred Dollars (\$12,500), except to the extent that any maintenance or repairs are the result of any gross negligence or intentional vandalism by Tenant or any of Tenant's agents, invitees, subtenants, occupants or employees.

(c) Tenant shall notify Landlord in writing pursuant to Section 23.1 of this Lease of the necessity of any maintenance or repairs under Subsection (a). Within ten (10) days of receipt of such notice, Landlord shall commence any required maintenance or repairs and shall notify Tenant of Landlord's anticipated schedule for performing any of said required maintenance or repairs. Landlord shall use its commercially reasonable efforts to complete all such maintenance or repairs as promptly as possible, and shall, in consultation with Tenant but at Landlord's sole expense, take commercially reasonable interim measures to ensure the habitability of the affected portions of the Premises pending completion of such maintenance activities or repairs.

8.2. City's Obligations

(a) Except to the extent that maintenance or repair responsibilities are assigned by this Lease to Landlord, City shall, at City's expense, keep the Premises in good repair, in a clean

condition, and properly maintained at all times. City shall maintain records which reflect maintenance performed on the Premises, and shall make those records available to Landlord for inspection at Landlord's reasonable request.

(b) Tenant shall be responsible for the cost of routine maintenance and repair of systems and facilities other than Major Systems (hereinafter, "Non-Major Repairs") in the Premises. Notwithstanding the foregoing, Tenant's obligations under this subparagraph shall not extend to maintenance or uninsured costs of repair of systems or facilities required on account of a casualty event such as fire, earthquake, flood, or other act of God.

(c) Where the aggregate cost of maintenance and/or structure or systems repair of the Major Systems is less than or equal to Twelve Thousand, Five Hundred Dollars (\$12,500), or where and to the extent such maintenance or repairs are the result of City's failure to obtain and keep in full force and effect the maintenance contracts required under Section 6.3, any Alterations completed by City pursuant to Section 7.2 without Landlord's approval, or any gross negligence or intentional vandalism by Tenant or any of Tenant's agents, invitees, subtenants, occupants or employees, Tenant shall be solely responsible for the costs and performance of such repairs.

8.3. Liens

(a) City shall keep the Premises free from liens arising out of any work performed, material furnished or obligations incurred by City during the Term. Landlord shall have the right to post on the Premises any notices permitted or required by law or that are needed for the protection of Landlord or the Premises from mechanics' and material suppliers' liens. City shall give Landlord at least ten (10) days' prior written notice of commencement of any repair or construction by City on the Premises that costs more than Two Thousand Five Hundred Dollars (\$2,500.00) per repair or construction.

(b) Should any claim or lien be filed against, or should City learn of any intention of any third party to file any claim or lien, or should any action be commenced affecting the Premises and/or Landlord's interest in the Premises, City shall give Landlord notice of such lien or intention or action within ten (10) days after City receives notice of the same. In the event that City shall not, within thirty (30) days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such a lien or filing of a bond in favor of any lien claimant. All such sums paid by Landlord and all expenses incurred by it in connection therewith, including any reasonable and actual attorney's fees and costs, shall be payable to Landlord by the City as Additional Charges with the next monthly payment of Base Rent payable no more than thirty (30) days after the payment made by Landlord.

9. UTILITIES AND SERVICES

9.1. Utilities

City shall be responsible, at City's expense, for contracting directly with and paying or causing to be contracted with and paid all service providers for all utilities necessary for City's intended uses, including gas, electricity, water, sewer service, garbage collection and telephone.

9.2. Services

City is responsible for contracting for and paying the cost of linen service, maid/janitorial service, security, and any other services necessary for City's use of the Premises under this Lease. Landlord shall be solely responsible for terminating or, at City's request, assigning to Tenant (if assignable without cost or liability to Landlord), prior to the Commencement Date any contracts or other arrangements for such services, without any cost or liability to City, including but not limited to the contract for elevator maintenance. City shall maintain a contract for elevator maintenance through the Term. The Landlord shall not be responsible or liable for any damages resulting from any failure or interruption of services.

9.3. Disruption in Essential Utilities or Services

In the event of any of the sanitary, electrical, heating, air conditioning, water, elevator, or other essential services serving the Premises (collectively, "Essential Services") are disrupted for any reason other than City's failure to timely pay for such services and such disruption continues for any reason for a continuous period of ninety (90) days and such failure materially interferes with City's ability to carry on its business in the Premises, then City may immediately terminate this Lease upon written notice to Landlord.

10. COMPLIANCE WITH LAWS; PREMISES CONDITION

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

Landlord represents and warrants to City to the best of Landlord's knowledge, without any independent investigation, and covenants with City, as follows: (a) the following areas along the path of travel to the Premises are now, and as of the Commencement Date will be, in compliance with the requirements of the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities (collectively, "Disabilities Laws"): the entryway to the Premises, the ground floor bathroom in the Premises, and the ground floor common area in the Premises; (b) the Premises, the common areas and Major Systems serving the Premises are now, and as of the Commencement Date will be, in full compliance with all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to fire and life safety (collectively, "Life Safety Laws"); and (c) there are not now, and as of the Commencement Date will not be, any material physical or mechanical defects in the Premises or the Major Systems that would materially adversely affect City's intended use of the Premises. Landlord shall at all times during the Term maintain, at its cost, the Premises, common areas and the Major Systems serving the Premises in compliance with applicable present or future Seismic Safety Laws.

10.2. City's Compliance with Laws; Indemnity

City shall use the Premises during the Term in compliance with applicable Laws. Subject to Landlord's obligations under Section 10.1, City shall make any alterations, additions or other modifications in order to comply with applicable Laws where such modifications are not otherwise Landlord's responsibility under this Lease. City shall be responsible for complying with any requirement of the Disabilities Laws relating to the placement of City's furniture or other City personal property and the operation of any programs in the Premises, other than any requirement relating to the physical structure, fixtures and permanent improvements of the Premises or portions of the Premises along the path of travel to the Premises, which are Landlord's obligation as provided in Section 10.1 above. City shall also be responsible for any building upgrades required in order to comply with Disability Laws which result directly from City's leasing of the Premises or any changes City makes in and to the Premises. Without limiting Section 16.1 (City's Indemnity), City shall indemnify Landlord against any and all Claims arising out of City's failure to comply with all applicable Laws as provided in this Section.

11. SUBORDINATION

This Lease is and shall be subject and subordinate to the following (each an "Encumbrance"): (a) any reciprocal easement agreements and ground leases or other underlying leases that may now exist or hereafter be executed affecting Landlord's interest in the Premises, or any portion thereof, and (b) the lien of any mortgage or deed of trust that may now exist or hereafter be executed by Landlord in any amount for which any part of the Premises, any ground leases or underlying leases, or Landlord's interest or estate therein, is specified as security; provided that as a condition to any such Encumbrance, the holder of the Encumbrance shall, at City's request, enter into a subordination and nondisturbance agreement with City in a form then commercially reasonable. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated to this Lease any Encumbrance, provided that the Landlord provides to the City a nondisturbance and attornment agreement in form and substance approved by the City, which approval shall not be unreasonably withheld or delayed, from the holder of any such Encumbrance. In the event that any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, City shall pay subsequent Rent and attorn to and become the tenant of such successor Landlord, at the option of such successor-in-interest, provided that City has received proper written notice of such succession and the name and address of the successor landlord, and further provided that, in the case of any Encumbrance hereafter executed, as a condition to such attornment the holder of such Encumbrance shall, at City's request, agree that so long as City is not in default hereunder, such holder shall recognize this Lease and shall not disturb City in its possession of the Premises for any reason other than one that would entitle Landlord to terminate this Lease or otherwise dispossess City of the Premises in accordance with the terms hereof. The provisions of this Section shall be self-operative and no further instrument shall be required other than as provided in this Section. City agrees, however, to execute upon request by Landlord and in a form reasonably acceptable to City, any additional documents evidencing the priority or subordination of this Lease with respect to any such Encumbrance as provided herein. If City fails to do so within ten (10) business days after written request, City hereby makes, constitutes and irrevocably appoints Landlord, or any transferee or successor of Landlord, the attorney-in-fact of City to execute and deliver any such instrument or document.

In that case, the Landlord shall promptly provide to the City an executed copy of any such document.

12. DAMAGE AND DESTRUCTION

If the Premises or any Major Systems are damaged by fire or other casualty, Landlord shall repair the same without delay if permits are not required under applicable laws for such repairs. Landlord shall repair such damage by fire or other casualty within sixty (60) days after Landlord obtains all necessary permits for such repairs and insurance proceeds attributable to such damage, but not later than two hundred ten (210) days after the date of such damage (the "Repair Period"). During any repair under this Section, this Lease shall remain in full force and effect, except that City shall be entitled to an abatement of Rent while such repairs are being made. Such abatement in Rent shall be based upon the extent to which such damage and the making of such repairs renders the Premises untenantable. Landlord's repairs shall not include, and the Rent shall not be abated as a result of, any damage by fire or other cause to City's Personal Property or any damage caused by the negligence or willful misconduct of City, its Agents or Subtenants.

If permits are required under applicable laws for the repairs, within twenty (20) days after the date of the damage by fire or other casualty, Landlord shall notify City whether or not, in Landlord's reasonable judgment made in good faith, such repairs can be made within the Repair Period. If such repairs cannot be made within the Repair Period, then either party hereto may, by written notice to the other given within thirty (30) days after the date of such damage, terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Landlord. In case of termination, the Rent shall be reduced from the date of such damage by a proportionate amount based upon the extent to which such damage renders the Premises untenantable, and City shall pay such reduced Rent up to the date of termination. Landlord shall refund to City any Rent previously paid in excess of the amount discussed in this Paragraph or for any period of time subsequent to such date of termination.

The Repair Period under this Section 12 shall be extended for such longer period as reasonably necessary for the Landlord to complete required repairs, if and to the extent that the Landlord demonstrates that despite its reasonable good faith efforts, it is unable to complete a required repair within the Repair Period.

Notwithstanding the foregoing, in the event the Premises are damaged or destroyed by reason of flood or earthquake, and such damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Landlord is required to carry hereunder (excluding any deductible, for which Landlord shall be responsible), Landlord may terminate this Lease by written notice to City within thirty (30) days of the date Landlord receives written notice that such damage is not covered by insurance. Such notice from Landlord shall include adequate written evidence of the denial of insurance coverage. If Landlord does not elect to terminate this Lease as provided above, the Lease shall remain in full force and effect, and Landlord shall repair and restore the Premises as provided above.

The parties intend that the provisions of this Section govern fully their rights and obligations in the event of damage or destruction, and Landlord and City each hereby waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

13. EMINENT DOMAIN

13.1. Definitions

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

(b) "Date of Taking" means the earlier of (i) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

(c) "Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

13.2. General

If during the Term there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and Landlord intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

13.3. Total Taking; Automatic Termination

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

13.4. Partial Taking; Election to Terminate

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety if all of the following exist: (A) the partial Taking, in City's reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City's normal operations in the Premises, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but Landlord is unwilling or unable to cure such condition, and (C) City elects to terminate.

(b) In the case of a partial Taking of a substantial portion of the Premises, and if subsection (a) above does not apply, City and Landlord shall each have the right to terminate this Lease by written notice to the other within thirty (30) days after the Date of Taking, provided that, as a condition to City's right to terminate, the portion of the Premises taken shall, in City's reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City's normal operations in the Premises.

(c) Either party electing to terminate under the provisions of this Section 13.4 shall do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

13.5. Rent; Award

Upon termination of this Lease pursuant to an election under Section 13.4 above, then: (i) City's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 13.6 below for any period during which this Lease continues in effect after the Date of Taking, and (ii) Landlord shall be entitled to the entire Award in connection therewith, except that City shall receive that portion of the Award, if any, made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

13.6. Partial Taking; Continuation of Lease

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 13.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Rent shall be reduced by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (b) Landlord shall be entitled to the entire Award in connection therewith, provided that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

13.7. Temporary Taking

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and City shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, City shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the proportion of the total Rent owing by City for the period of the Taking, where such proportion is equal to the proportion of the square footage of the Premises subject to the Taking.

14. ASSIGNMENT AND SUBLETTING

14.1. General

City shall have the right, without Landlord's consent or approval, to sublet all or any portion of the units in the Premises, as set forth in Section 14.2 below. Subject to Landlord's prior written consent, which consent may not be unreasonably withheld or delayed, City shall have the right to sublet the entire Premises as a whole ("Premises Sublease"), or to assign its rights and obligations under this Lease, to any person or entity (a) whose activities and business at the Premises shall be comparable in nature to the activities of City at the Premises prior to such Premises Sublease or assignment, and (b) who shall conduct such activities and business at the Premises pursuant to an agreement with the City and County of San Francisco or other governmental entity, and (c) who shall have experience in the operation and maintenance of affordable housing consistent with the use of the Premises described in this Lease. If Landlord consents to an assignment or Premises Sublease pursuant to this Section 14.1, then the Rent chargeable to such sublessee or assignee shall be calculated in accordance with Section 4 of this Lease, and City shall pay Landlord reasonable actual fees, not to exceed One Thousand Five Hundred Dollars (\$1,500) incurred in connection with the processing of documents necessary to the giving of such consent. No subletting of all or any portion of the Premises or assignment shall release City's obligation or alter the primary liability of City to pay the Rent and to perform all other obligations to be performed by City hereunder, except as otherwise expressly permitted by Landlord in writing. Should City sublet or assign its interest, City shall continue to make all payments directly to Landlord, Landlord shall not accept funds from any entity other than City, and there shall be no privity of contract between Landlord and City's assignee and/or sublessee, except as otherwise expressly permitted by Landlord in writing. City shall promptly deliver to Landlord a fully executed copy of any assignment or Premises Sublease. Any Premises Sublease or assignment between City and a third party shall explicitly state that the agreement is subject to and controlled by all terms of this Lease.

14.2. Subtenants

During the Term, City shall have the right to sublet the units in the Premises to individual subtenant rental households (the "Subtenants"). Landlord shall have no right to determine the amount of the sublease payments from the Subtenants nor receive any portion of such sublease payments. In addition, Landlord shall have no right to determine the eligible Subtenants. The Subtenants shall include Existing Tenants and New Subtenants, as further described below:

(a) "Existing Tenants" are those households currently occupying units as of the Commencement Date, as indicated on the Rent Roll attached as Exhibit E to this Lease. Landlord shall deliver to City, at least five (5) days prior to the Commencement Date, a true and correct copy of any lease or other rental agreements, if any, with respect to each Existing Tenant, or, if no such agreement exists, a description of the agreement under which each Existing Tenant is occupying the Premises. Upon the Commencement Date all then Existing Tenants of Landlord shall become Subtenants of City. At least five (5) days prior to the Commencement Date, Landlord shall deliver to the City a rent roll for the Premises, including the unit number, the names of occupants of each unit, the rental charges currently payable for each unit, the status of rental payments for each unit, and the amount of security deposits held by Landlord for each unit. On or before the Commencement Date Landlord shall transfer all security deposits paid by Existing Tenants to City. Landlord shall be responsible, at its cost, for evicting any of its Existing Tenants who are in arrears on any rent obligations as of the Commencement Date, and City shall not pay rent on those units occupied by those Existing Tenants for whom Landlord is

responsible for evicting so long as such units are not vacated. City shall provide full cooperation in Landlord's efforts to evict Existing Tenants, including but not limited to providing access to the Premises for process servers and any information City knows regarding the customs and habits of Existing Tenants at the Premises. Landlord shall be responsible for any claims made by Existing Tenants for any security deposits where Landlord has intentionally misrepresented the existence or amount of any security deposit.

(b) "New Subtenants" are those Subtenants from time to time selected by City. City's subleases, a copy of the standard form of which is attached hereto as Exhibit F, with Subtenants shall specify, and require New Subtenants to acknowledge, the extent to which their payment of rent is subsidized by the City in connection with the City's lease of the Premises, and that upon expiration or earlier termination of City's Lease with Landlord, New Subtenants who still occupy units at the Premises (i) shall become direct tenants of Landlord without such rent subsidy, and (ii) each New Subtenant's total rent charges for a particular unit shall be subject to adjustment to the amount provided in Section 20.2. City's subleases with New Subtenants shall explicitly state that the subleases are subject to and controlled by all terms of this Lease.

(c) Once per year, the City shall meet with each of its Subtenants and confirm with each Subtenant the Subtenant's annual subsidy from governmental agencies (the "Confirmation Meeting"). At this meeting, City shall reconfirm in writing with each Subtenant of the subsidies provided to the Subtenants, including the information that the actual rent for the unit is higher than that which the Subtenant pays directly as a result of the City's subsidy. Accordingly, after each annual Confirmation Meeting, the City shall provide to Landlord a copy of this re-confirmation of actual unit rent between City and its Subtenants.

(d) At the time of rent payment by the Subtenants to City, City shall provide receipts for said payment to each Subtenant. The receipts shall reflect the total rent due for the unit and the breakdown between the subsidy from the City and the payment from the individual Subtenants.

14.3. Landlord's Right to Assign

Landlord may assign its rights and obligations under the Lease to any trustee or beneficiary of Landlord upon reasonable advance notice to City, provided that any such assignee expressly assumes all such rights and obligations and agrees to recognize the City's rights as the tenant under this Lease. Any such assignment shall not be subject to Section 22 hereof.

14.4. City's Indemnity

City shall indemnify, defend, protect and hold Landlord free and harmless from and against any and all claims asserted against Landlord or its agents arising from any breach by City of this Section 14 that occurs during the Term of this Lease.

15. DEFAULT; REMEDIES

15.1. Events of Default by City

Any of the following shall constitute an event of default by City hereunder:

(a) City's failure to make any timely payment of Rent and to cure such nonpayment within five (5) days after the date when due; provided that with respect to the first monthly payment of Rent after the beginning of each new fiscal year of the City, City shall have twenty (20) days to cure any such nonpayment;

(b) City abandons the Premises (within the meaning of California Civil Code Section 1951.3);

(c) City's failure to perform any other covenant or obligation of City hereunder (not involving the payment of money) and to cure such non-performance within thirty (30) days of the date of receipt of notice thereof from Landlord, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if City commences such cure within such period and completes such cure within sixty (60) days.

15.2. Landlord's Remedies

Upon the occurrence of any event of default by City that is not cured within the applicable grace period as provided above, Landlord shall have all rights and remedies available pursuant to law or granted hereunder, including the following:

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate City's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that City proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2.

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

15.3. Landlord's Default

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of City's other cure rights under this Lease) City may, at its sole option, cure such default at Landlord's expense if such default continues after thirty (30) days from the date City gives notice to Landlord of City's intention to perform such cure. However, in the case of a default which for causes beyond Landlord's control (excluding any financial inability to perform) cannot with due diligence be cured within such 30-day period, such 30-day period shall be extended if Landlord, promptly upon receipt of City's notice, advises City of Landlord's intention to take all

steps required to cure such default, and Landlord promptly commences such cure and diligently prosecutes the same to completion. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the cure period provided above, then, whether or not City elects to cure Landlord's default as provided herein, the Base Rent and any other charges hereunder shall be abated based on the extent to which such default renders all or any portion of the Premises untenable. Notwithstanding the foregoing, if any such default by Landlord continues for sixty (60) days and impairs City's ability to carry on its business in the Premises, then City shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days after the expiration of such 60-day period. City's rights hereunder and under Section 5.2 (Interference with Use) and Section 9.3 (Disruption in Essential Services), shall not limit in any way any of its other rights and remedies hereunder or at law or in equity.

16. INDEMNITIES

16.1. Mutual Indemnification

Landlord shall indemnify, defend, protect and hold City free and harmless from and against any and all claims asserted against City resulting from any breach of this Lease by Landlord. City shall indemnify, defend, protect and hold Landlord free and harmless from and against any and all claims asserted against Landlord resulting from any breach of this Lease by City.

17. INSURANCE

17.1. City's Self-Insurance

City maintains a program of self-insurance. Landlord agrees that City shall not be required to carry any third-party comprehensive general liability insurance or other insurance with respect to this Lease. City assumes the risk of damage to any of City's Personal Property.

17.2. Landlord's Insurance

At all times during the Term, Landlord shall keep the Premises (excluding the land upon which it is located) and Major Systems insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under an all risk insurance policy in an amount equal to one hundred percent of the full insurance replacement value thereof, excluding coverages for earthquake or flood. Landlord shall, prior to the Commencement Date and thereafter within thirty (30) days prior to the expiration of such policy, provide to City an original certificate of insurance issued by the insurance carrier, evidencing the insurance required above. The certificate shall expressly provide that the policy is not cancelable or subject to reduction of coverage or otherwise be subject to modification except after thirty (30) days prior written notice to City. Landlord hereby waives any rights against City for loss or damage to the Premises or any other part thereof, to the extent covered by Landlord's property insurance.

18. ACCESS BY LANDLORD

Landlord reserves for itself and any designated Agent the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord shall use commercially reasonable efforts, but shall not be required, to give any prior notice), after giving City at least twenty four (24) hours' advance written or oral notice, for the purpose of (i) inspecting the Premises, (ii) supplying any service to be provided by Landlord hereunder, (iii) showing the Premises to any prospective purchasers, mortgagees or, during the last six (6) months of the Term of this Lease, tenants, (iv) posting notices of non-responsibility, and (v) altering, improving or repairing the Premises and any portion of the Premises in accordance with this Lease, and Landlord may for that purpose erect, use and maintain necessary structures in and through the Premises where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, and further provided that City's use shall not be unreasonably interfered with.

19. ESTOPPEL CERTIFICATES

Either party, from time to time during the Term upon not less than ten (10) days' prior written notice from the other party, shall execute, acknowledge and deliver to the other party, or such persons or entities designated by such other party, a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the date to which Rent has been paid, and (e) any other information that may be reasonably required. If City fails to do so within ten (10) business days after written request, City hereby makes, constitutes and irrevocably appoints Landlord, or any transferee or successor of Landlord, the attorney-in-fact of City to execute and deliver any such instrument or document. In that case, the Landlord shall promptly provide to the City an executed copy of any such document.

20. SURRENDER OF PREMISES

20.1. Surrender of Premises

Upon the expiration or sooner termination of this Lease, City shall surrender the Premises to Landlord in good order and condition, reasonable use and wear and damage by fire or other casualty excepted. On or prior to the Expiration Date, City shall remove from the Premises all of City's Personal Property and any Alterations City desires or is required to remove from the Premises pursuant to the provisions of Section 7.1 (Alterations by City), above. City shall repair or pay the cost of repairing any damage to the Premises resulting from such removal. City's obligations under this Section shall survive the expiration or earlier termination of this Lease. Upon surrender of the Premises, City shall not be required to repair or replace any mattresses or other bedroom furniture that is damaged due to ordinary wear and tear.

20.2. Status of Subtenants on Surrender

(a) Landlord agrees that, upon the expiration or earlier termination of this Lease for whatever reason, any then existing Subtenants whose sublease agreement contain the rent

provision required by Section 14.2(a) of this Lease will automatically become direct tenants of the Landlord. Upon expiration of the Lease, City will transfer to Landlord any security deposits held by the City from any Subtenant. The parties hereto acknowledge and agree that, upon the expiration or earlier termination of this Lease, the rent chargeable by Landlord to then existing Subtenants who become direct tenants of Landlord is subject to adjustment to an amount equal to the applicable Fair Market Rent (FMR) for "zero bedroom" (studio) as then determined by the Department of Housing and Urban Development and as published by the Federal Register.

20.3. Mutual Indemnity.

(a) Landlord shall indemnify, defend, protect and hold City and its Agents free and harmless from and against any and all claims by Subtenants asserted against City or its Agents and arising from events that occur either before the Commencement Date or after the expiration or termination of this Lease; unless and except to the extent such claims are based upon acts of City.

(b) City shall indemnify, defend, protect and hold Landlord and its Agents free and harmless from and against any and all claims by Subtenants asserted against Landlord or its Agents and arising from events that occur during the Term of this Lease, unless and except to the extent such claims are based upon acts of Landlord.

21. HAZARDOUS MATERIALS

21.1. Definitions

As used in this Lease, the following terms shall have the meanings hereinafter set forth:

(a) "Environmental Laws" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Material, whether now in effect or hereafter adopted.

(b) "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. Sections 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; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Premises or are naturally occurring substances on or about the Premises; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "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 the Premises, or in, on, under or about the Premises.

21.2. Landlord's Representations and Covenants

Landlord represents and warrants to City that, to the best of Landlord's knowledge, without any independent inquiry, the following statements are true and correct and will be true and correct as of the Commencement Date (a) the Premises are not in violation of any Environmental Laws; (b) the Premises are not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited quantities as is customary in office or residential use, which limited use has been and is in compliance with Environmental Laws; (c) the Premises does not consist of any landfill or contain any underground storage tanks; (d) the Premises does not consist of any non-encapsulated asbestos-containing materials or building materials that contain any other Hazardous Material; (e) the Premises do not contain any lead-based paints that have not been painted over by non lead-based paint; (f) there is no Release of any Hazardous Material in, on or under the Premises; and (g) the Premises are not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including, 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, or under the Premises, or the migration of Hazardous Material from or to other real property. In performing its obligations under this Lease, Landlord shall comply with all Environmental Laws applicable to such obligations that could affect the health, safety and welfare of City's employees or City's use, occupancy or enjoyment of the Premises for their intended purposes.

21.3. Landlord's Environmental Indemnity

Without limiting Landlord's Indemnity in Section 16.2 (Landlord's Indemnity), above, Landlord shall indemnify City and its Agents against any and all Claims arising during or for a period of three (3) years after expiration of the Term of this Lease (a) as a result of any breach of any of Landlord's representations, warranties or covenants in the preceding Section, or (b) in connection with any presence or Release of Hazardous Material in, on or under the Premises, unless City, its Subtenants or its Agents caused such Release.

21.4. City's Covenants

The City agrees to comply with all Environmental Laws related to its use of the Premises. Neither City nor its Agents shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or throughout the Premises, or transported to or from the Premises, in violation of any Environmental Laws, provided that City may use such substances in such limited amounts as is customary in office or residential use so long as such use is in compliance with all applicable Environmental Laws. In the event Landlord, in its reasonable judgment, has reason to believe that any Hazardous Substances have been brought upon, used or disposed of in or about the Premises by City, its Subtenants or its Agents with or without Landlord's consent, Landlord shall be entitled, at reasonable intervals during the Term, in Landlord's sole discretion, to have an environmental audit report, including, without limitation, a Phase I and Phase II report, performed, the costs and expenses of which shall be the sole responsibility of and paid by Landlord within twenty (20) days after receipt of written demand from landlord. City shall reimburse Landlord for the reasonable and actual costs of such

report(s) if and to the extent Tenant has caused or permitted such Hazardous Substances to have been bought upon, used or disposed of in or about the Premises.

21.5. City's Environmental Indemnity

If City breaches its obligations contained in the preceding Section 21.4, or if City or its Agents cause the Release of Hazardous Material from, in, on or about the Premises (collectively, a "Hazardous Materials Violation"), then City shall indemnify Landlord against any and all Claims arising during or after the Term of this Lease as a result of any Hazardous Materials Violation, except to the extent Landlord or its Agents is responsible for the Hazardous Materials Violation. The City's obligations under this Section shall include defending Landlord against any cost, expense, loss, demand, claim or liability, including, without limitation, reasonable and actual attorneys' fees and disbursements and costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal or restorative work required by any federal, state or local governmental agency or political subdivision resulting from a Hazardous Materials Violation. The foregoing indemnity shall not include any Claims resulting from the non-negligent aggravation by City, its Agents or Invitees or Subtenants of physical conditions of the Premises existing prior to City's occupancy.

22. SPECIAL PROVISIONS

22.1. Transfer of Landlord's Interest; First Right of Refusal to Purchase

(a) Landlord shall have the right to transfer its interest in the Property or the Building, subject to the conditions set forth herein.

(b) In the event Landlord receives an offer to purchase the Property or Building at a price, terms and conditions acceptable to the Landlord, Landlord shall first offer the Property or Building to the City at the same price, under the same conditions and terms as the prior offer. Said purchase terms shall be contained in a written notice ("Notification") from Landlord to City. Within five (5) business days of receipt of such an offer, Landlord shall send Notification by certified mail, receipt requested, to City. The City shall have forty-five (45) days from the Notification date by Landlord to accept the offer to purchase at the price, terms and conditions contained in the Notification, subject to subsequent approval by the City's Board of Supervisor and Mayor.

(c) City's offer to purchase shall be subject to the approval of the Board of Supervisors and the Mayor within sixty (60) days of execution of a Purchase and Sale Agreement and otherwise upon the other business terms contained herein.

City shall have sixty (60) days from the date of execution of the Purchase and Sale Agreement to perform, at its sole cost, a due diligence investigation. Landlord shall cooperate in affecting this investigation. Close of escrow shall occur on or before sixty (60) days from the date of City's notice of the approval by City's Board of Supervisors and Mayor of the purchase and, in any event, shall occur no later than one hundred and sixty (160) days after full execution of the Purchase and Sale Agreement, unless the parties mutually agree to extend such time. The purchase price paid at close of escrow shall be adjusted in the following manner:

At close of escrow City shall pay for the cost of the premium of the extended coverage title insurance policy, the escrow fees, and all other typical closing expenses incurred by a buyer. Landlord shall pay transfer taxes and all other typical closing expenses incurred by a seller. Landlord shall deliver the following (among other customary items) through a mutually agreeable escrow company:

(i) a grant deed conveying ALTA insurable title subject only to taxes not yet due and payable, existing leasehold interests, and other exceptions acceptable to City,

(ii) executed estoppel certificates and assignment of leases, if applicable,

(iii) a bill of sale for all personal property on the Property, and

(iv) a written disclosure of all known facts (including any and all property inspection reports) which would affect the marketability or City's intended use of the Property or Building.

If City does not agree to purchase the property for the purchase price, terms and conditions contained in the Notification, then this right of first refusal shall terminate and Landlord shall be free to sell the Property or Building to any person whomever and upon any terms whatsoever without any obligation to City except as set forth below in subsection (d) below); provided, however, that Landlord may sell the Premises to any potential buyer who is willing to pay a gross purchase price (an amount determined without regard to any brokerage commission liability, but reduced by any Landlord credits or give backs to the potential buyer for such items as existing building conditions or tenant improvements hereinafter referred to as "Gross Purchase Price") less than the amount of Landlord's offer to sell to City or of any City's counteroffer only after first affording City the right to purchase the Premises at the same Gross Purchase Price. City shall have one (1) day less than the number of days within which Landlord is permitted to accept the proposal of the potential buyer, to agree in writing to purchase the Premises at the same Gross Purchase Price and thereafter to complete the transaction in the manner required by this Section.

This first right of refusal shall terminate and be of no further effect if a sale of the Premises to a third party is consummated in accordance with the foregoing provisions.

(d) In the event the Landlord transfers the Premises to a third party, Landlord shall deliver to City an express assumption of all Landlord's obligations under this Lease fully executed by the proposed transferee and in a form reasonably acceptable to the City. No consent from City under this Section shall be required for any transfer of all or any part of Landlord's ownership to any member of Landlord's family, either as individuals or in trust for the benefit of any family member, or to any LLC or corporation in which Landlord is a member or partner.

23. GENERAL PROVISIONS

23.1. Notices

Except as otherwise specifically provided in this Lease, any notice given under this Lease shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, to: (a) City at Tenant's address set forth in the Basic Lease Information; or (b) Landlord at Landlord's address set forth in the Basic Lease Information; or (c) such other address as either Landlord or City may designate as its new address for such purpose by notice given to the other in accordance with this Section. Any notice hereunder shall be deemed to have been given and received two (2) days after the date when it is mailed if sent by first-class, certified mail, one day after the date when it is mailed if sent by Express Mail, or upon the date personal delivery is made.

23.2. No Implied Waiver

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

23.3. Force Majeure

The occurrence of any of the following events shall excuse performance of such obligations of Landlord or City as are rendered impossible to perform while such event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes therefore; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental actions; civil commotions; fire or other casualty; and other causes beyond the reasonable control of the party obligated to perform. The occurrence of such events shall excuse performance only in the event that the party to be excused from performance has provided notice to the other party within thirty (30) days after the occurrence or commencement of the event or events.

23.4. Amendments

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, the Director of Property, or his or her designee shall be authorized to provide such

approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of Landlord and City and may be made upon the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease (i) changing the legal description of the Premises, (ii) increasing the Term, (iii) increasing the Rent, (iv) changing the general use of the Premises from the use authorized under Section 5.1 of this Lease, and (vi) any other amendment or modification which materially increases the City's liabilities or financial obligations under this Lease shall additionally require the approval of the City's Board of Supervisors.

23.5. Authority

Landlord represents and warrants to City that the execution and delivery of this Lease by Landlord has been duly authorized and does not violate any provision of any agreement, law or regulation to which Landlord or the Premises is subject.

23.6. Parties and Their Agents; Approvals

If applicable, the word "Landlord" as used in this Lease shall include the plural as well as the singular. As used in this Lease, the term "Agents" when used with respect to either party shall include the Agents, employees, officers and contractors of such party. All approvals, consents or other determinations permitted or required by City under this Lease shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject to any applicable limitations in the City's Charter and Administrative Code.

23.7. Interpretation of Lease

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intent and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Except as otherwise specifically provided herein, wherever in this Lease Landlord or City is required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval of consent shall be stated in reasonable detail in writing. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

23.8. Successors and Assigns

Subject to the provisions of Section 14 relating to assignment and subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and City and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Lease, including but not limited to any management agent with which the City may contract for management of the Premises.

23.9. Management

The City intends to contract with a management agent for the management of the Premises in accordance with this Lease. However, the City's obligations under this Lease are not contingent on the existence or validity of any such arrangement. In the event of any inconsistency between the terms of this Lease and any management contract, the terms of this Lease shall control.

23.10. Brokers

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein, except for the broker, if any, identified in the Basic Lease Information, whose commission, if any is due, shall be the sole responsibility of Landlord pursuant to a separate written agreement between Landlord and such broker, and City shall have no liability therefore. In the event that any other 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 claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

23.11. Severability

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, 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 Lease shall be valid and be enforceable to the full extent permitted by law.

23.12. Governing Law

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

23.13. Entire Agreement

The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) 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 written or oral agreements or understandings. The parties further intend that this Lease shall constitute

the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease.

23.14. Attorneys' Fees

In the event that either Landlord or City fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Agreement, reasonable fees of attorneys of 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.

23.15. Holding Over

Should City hold over in possession of the Premises after the expiration of the Term with Landlord's consent, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a month-to-month tenancy. Such tenancy shall be on all the terms and conditions set forth in this Lease and at the monthly Base Rent in effect during the last month of the Term of the Lease or such other rental as Landlord and City may mutually agree in writing as a condition to Landlord's consent to such holding over, and City shall continue as a month-to-month tenant until the tenancy shall be terminated by Landlord giving City or City giving Landlord at least thirty (30) days' prior written notice of termination. Should City hold over, the rent payable by City during the period of such holding over shall be one hundred and twenty-five percent (125%) of the monthly Base Rent in effect during the last month of the Term of this Lease, and such tenancy shall otherwise be on the terms and conditions contained herein, except that the Term of this Lease shall be on a month-to-month basis. In the event City holds over in possession of the Premises after expiration of the Term, City agrees to indemnify Landlord for any costs reasonably and actually incurred by Landlord as a direct result of the City's holding over.

23.16. Cumulative Remedies

All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

23.17. Time of Essence

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

23.18. Survival of Indemnities

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it effect any provision of this Lease that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee and continues at all times thereafter.

23.19. Signs/Structures

City may erect or post signs on or about the Premises subject to Landlord's prior approval as provided below. Landlord reserves the right to review the placement, design, and plan for any such sign prior to its erection or posting and agrees that the approval thereof shall not be unreasonably withheld or delayed. If City contracts with an outside contractor for signage, the contract must terminate upon City's termination of this Lease and all signage must be removed from the Premises upon Lease termination.

23.20. Quiet Enjoyment and Title

Landlord covenants and represents that it has full right, power and authority to grant the leasehold estate hereunder, and covenants that City, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term of this Lease as against all persons or entities claiming by and through Landlord or on account of any action, inaction or agreement of Landlord or its Agents. Without limiting the provisions of Section 16.2 (Indemnities), Landlord agrees to indemnify City and its Agents against Claims arising out of any assertion that would interfere with City's right to quiet enjoyment as provided in this Section.

23.21. Bankruptcy

Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. Landlord and City agree that City's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services, facilities and amenities of the Premises as provided herein, and that if any of such services, facilities or amenities are terminated, or materially limited or restricted on account of any such case or proceeding, or for any other reason, then in addition to any other remedies provided in this Lease, City shall have the right to contract directly with any third-party provider of such services, facilities or amenities to obtain the same.

23.22. Transfer of Landlord's Interest

Landlord shall have the right to transfer its interest in the Premises or this Lease to any other financially responsible person or entity. In the event of any such transfer, Landlord shall be relieved, upon notice to City of the name and address of Landlord's successors, of any

obligations accruing hereunder from and after the date of such transfer and upon delivering to City an express assumption by the transferee of all of Landlord's obligations hereunder.

23.23. 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 Landlord, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Landlord, its successors and assigns, or for any obligation of City under this Lease, except and to the extent of any gross negligence or willful misconduct of any such individual or entity.

23.24. MacBride Principles - Northern Ireland

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

23.25. Controller's Certification of Funds

The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the Charter of the City and County of San Francisco. Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by City under this Agreement unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the Charter of the City and County of San Francisco, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Lease commences, sufficient funds for the payment of Rent and any other payments required under this Lease are not appropriated, then City may terminate this Lease, without penalty, liability or expense of any kind to City, as of the last date on which sufficient funds are appropriated. City shall use its reasonable efforts to give Landlord reasonable advance notice of such termination.

23.26. Prevailing Wages for Construction Work

Landlord agrees that any person performing labor in the construction of any improvements to the Premises which Landlord provides under this Lease shall be paid not less than the highest prevailing rate of wages and that Landlord shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord further agrees that, as to the construction of such improvements under this Lease, Landlord shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code that

relate to payment of prevailing wages. Landlord shall require any contractor to provide, and shall deliver to City every two weeks during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any improvements to the Premises.

23.27. Non Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

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

(b) Subcontracts

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

(c) Non-Discrimination in Benefits

Landlord does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits specified above within the United States, between employees with domestic partners and employees with spouses, and/or between domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the condition set forth in Section 12.B2(b) of the San Francisco Administrative Code.

(d) HRC Form

As a condition to this Lease, Landlord shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Landlord hereby represents that prior to execution of the Lease: (i) Landlord executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (ii) the HRC approved such form.

(e) Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of property to City are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Landlord shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Landlord understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Landlord and/or deducted from any payments due Landlord.

23.28. Tropical Hardwood and Virgin Redwood Ban

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

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

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

23.29. First Source Hiring Ordinance

The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after the City and County of San Francisco Department of Public Health adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Landlord shall enter into a First Source Hiring Agreement meeting applicable requirements of Section 83.9 of the First Source Hiring Ordinance in connection with certain building permit applications.

23.30. Bicycle Storage Facilities

Section 155.1 of the San Francisco Planning Code ("Code") requires the City to provide, at no cost to Landlord and if City funds are available, bicycle storage at all City-leased buildings

for City employees occupying the building and/or members of the public when the City's premises are open to the public. In the event public or private donations, grants or other funds become available at any time during the Term, City shall have the option, by giving a 60-day advance written notice to Landlord, to include parking stalls which meet the requirement of the Code in the Premises; provided that City may not make any structural changes to the Premises without Landlord's prior consent. Landlord, at no cost to Landlord, shall reasonably cooperate with City regarding implementation of the Code. The bicycle storage facilities shall be installed at the expense of the City and only in the City's leased Premises.

23.31. Notification of Limitations on Contributions

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

23.32. Counterparts

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

23.33. Effective Date

The date on which this Lease shall become effective (the "Effective Date") is the date upon which (i) City's Mayor and Board of Supervisors, in their sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable laws and (ii) this Lease is duly executed by the parties hereto.

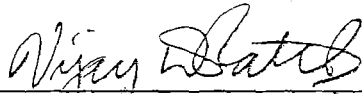
23.34. Certification by Landlord.

By executing this Lease, Landlord certifies that Landlord nor any of its officers or members have been suspended, disciplined or debarred by, or prohibited from contracting with any federal, state or local governmental agency. In the event Landlord or any of its officers or members have 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 Lease. Landlord acknowledges that this certification is a material term of the Lease.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL THE CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.


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

LANDLORD: EMPRESS, LLC

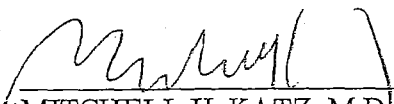
BY: 
ITS: managing member

BY: _____
ITS: _____

CITY: CITY AND COUNTY OF SAN FRANCISCO
a municipal corporation

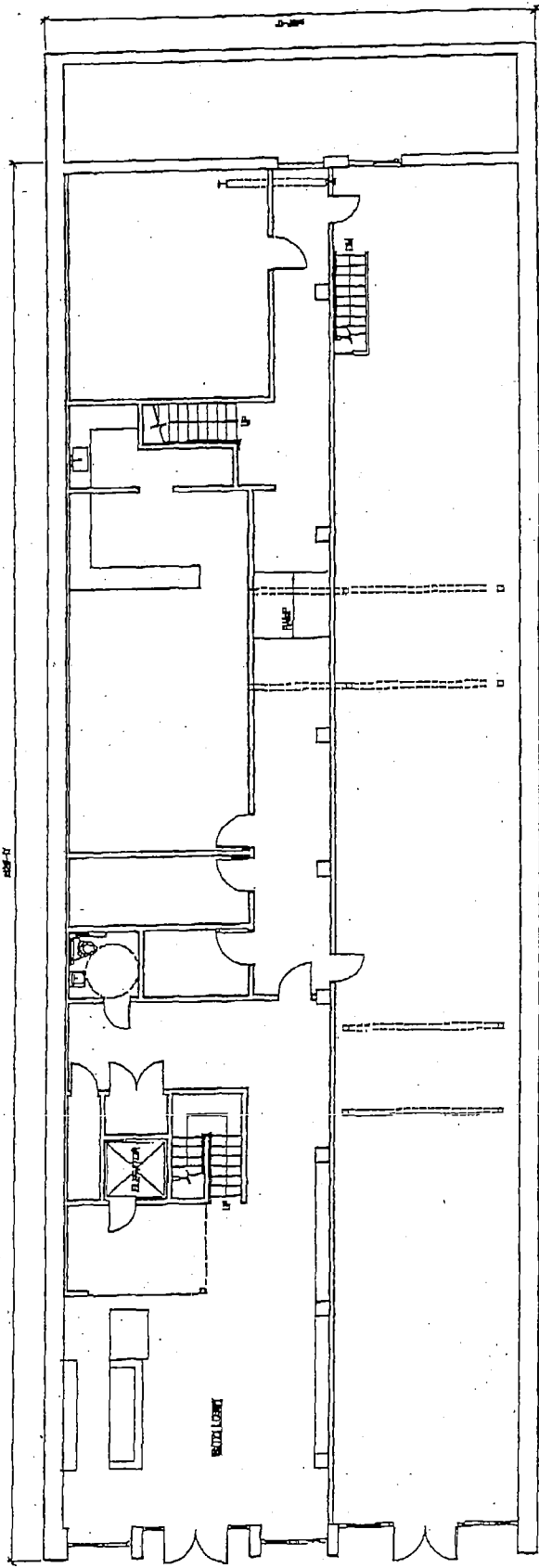

STEVE LEGNITTO
Director of Property

RECOMMENDED:


MITCHELL H. KATZ, M.D.
Director of Health,
Department of Public Health

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

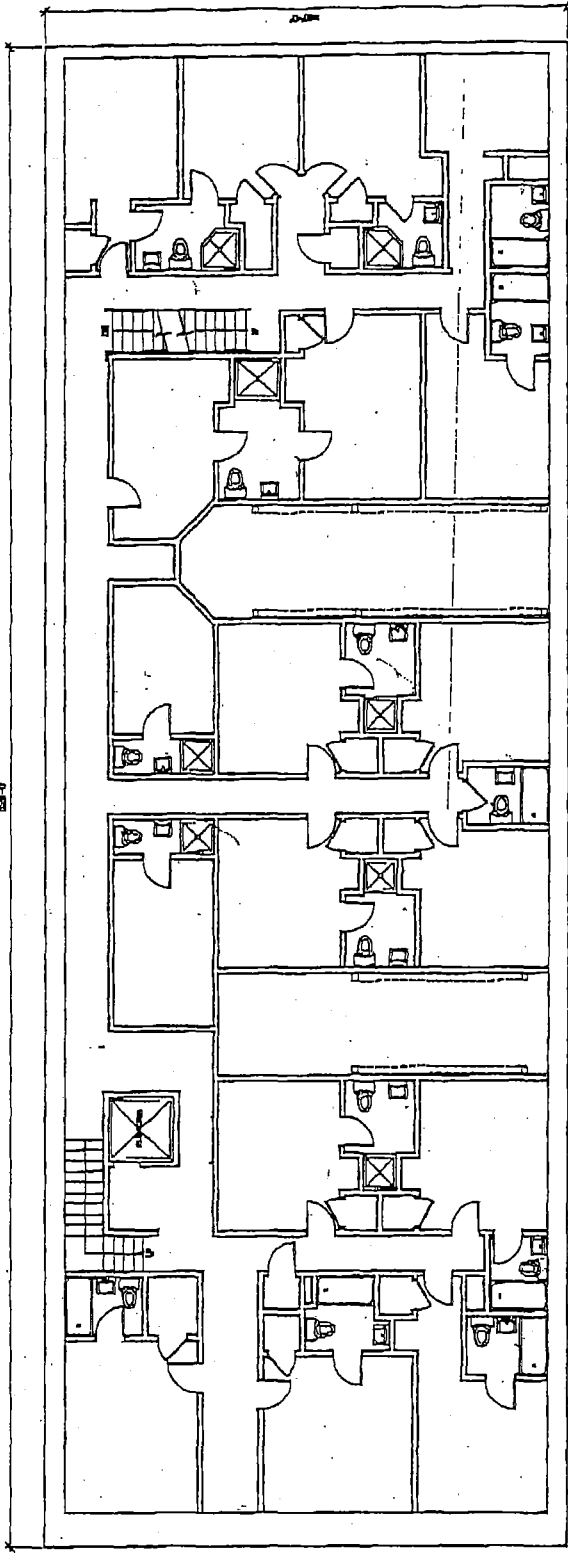
By Amy L Brewer
Deputy City Attorney



Empress Hotel
144 Eddy Street

1ST Floor Plan

1ST FLOOR PLAN
 11-98



Empress Hotel
144 Eddy Street

Typical Floor Plan
Floors 2 through 6


 SECOND FLOOR PLAN
 11-14

**Inventory List of FF & E
San Francisco Empress Hotel
144 Eddy Street
San Francisco, California**

Items in this list pertain either to the unoccupied residential units or to the common space. The currently occupied 39 units have a mixture of items in them; some belonging to the hotel owner and some belonging to the current tenants. The master tenant does not claim any of the items in the rooms of the current tenants.

FF & E	Number
Front Desk	1
Common space furniture	Various chairs and tables
Wall pictures	Various
Night stands	50
Dressers	50
Bedside Lamps	50
Phone System	1
Telephones	50

[Date]

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

RE: Acknowledgement of Commencement Date, Lease Between
_____ (Landlord), and the CITY AND COUNTY OF
SAN FRANCISCO (Tenant), for premises known as _____
located at _____

Dear Mr. Legnitto:

This letter will confirm that for all purposes of the Lease, the Commencement Date
(as defined in Section 3.2 of the Lease) is _____, 2004.

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

Very truly yours,

By _____
Title _____

Accepted and Agreed:

By _____
Director of Property

Dated _____

Construction documents are not yet available as of May 21, 2004

EXHIBIT D
CONSTRUCTION DOCUMENTS

3038

**San Francisco Empress Hotel
144 Eddy Street
San Francisco, California**

	<u>ROOM</u>	<u>MONTHLY</u>
1	200	\$1100
2	201	1000
3	202	1191
4	205	500
5	300	0
6	301	866
7	302	700
8	304	1083
9	305	975
10	310	800
11	315	700
12	316	700
13	318	0
14	400	1100
15	402	450
16	403	225
17	406	720
18	408	700
19	410	0
20	411	1408
21	412	0
22	417	400
23	501	0
24	502	0
25	505	800
26	506	1100
27	510	700
28	511	1408
29	512	0
30	515	800
31	517	1300
32	518	0
33	603	1000
34	604	800
35	606	975
36	614	900
37	615	975
38	617	1300
39	618	0

EXHIBIT E
RENT ROLL OF EXISTING TENANTS



**DIRECT ACCESS TO HOUSING (DAH) PROGRAM
TENANT LEASE AGREEMENT**

1. PARTIES AND THE DWELLING UNIT:

The parties to this Agreement are _____, (Management) as managing agent for the City and County of San Francisco Department of Public Health, Master Lessee for _____ (referred to as the "Management" or "Management") and _____ (referred to as the "Resident"). The Management leases to the Resident the dwelling unit number _____ (the "Unit") in the building known as (name of building) _____ at _____ San Francisco, California (the "Building"). (street address of the "Building").

2. LENGTH OF TIME/TERM:

The initial terms of this Agreement shall begin on _____ and end at midnight on _____. After the initial term ends, this Agreement will continue for successive terms of thirty (30) days, unless terminated as permitted by Paragraphs 19 or 20 of this Agreement.

3. RENT:

- A. The monthly rent for the Unit ("Rent") is \$ _____. This amount is equal to the "Fair Market Rent" for a studio bedroom (0 bedroom) unit as published by the U.S. Department of Housing and Urban Development pursuant to Section 8 (c)(1) of the United States Housing Act of 1937 (the "HUD Fair Market Rent"). The Rent will be adjusted annually based on changes in the HUD Fair Market Rent published by HUD. The portion of the Rent payable by the Resident is described in Subsections (C) and (D) below.
- B. The City is master leasing the _____ (name of building) from the owner of the _____ (name of building). The City is, in turn, subleasing the Unit to the Resident pursuant to this Agreement. The term of the Master Lease ("Master Lease Term") is through _____, but may expire earlier under the provisions of the Master Lease.
- C. The Resident acknowledges that, during the Master Lease Term, the City's Department of Public Health shall subsidize payment of a portion of the Rent, so that

DRAFT

Resident Initials _____

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EXHIBIT F
STANDARD SUBLEASE

if the Resident is leasing the Unit during the Master Lease Term, the share of Rent which the Resident must pay shall not exceed fifty percent (50%) of the actual gross income of the Resident, as specified in Section 3(D) (the "Resident's Share of Rent"). Once the Master Lease Term expires, the City will no longer provide any rental subsidies to Residents of the Building.

- D. During the initial term of this Agreement, the "Resident's share of Rent" shall be _____ Dollars (\$ _____) per month, which shall not exceed the Rent set forth in paragraph 3(A) above. The Resident's Share of Rent shall be adjusted annually based upon changes in the Resident's income as shown in annual income certifications under Section 4 of this Agreement. The Resident's Share of Rent may be adjusted prior to annual income certifications as described in Section 4(C). In order to assure the financial feasibility of the project and to avoid evictions for non-payment of Rent, such Resident will be required to participate in the modified rent payment program. Resident will pay fifty percent (50%) of their income in Resident's Share of Rent through a third party payment system provided by the _____ or through another mechanism upon prior approval by the City.
- E. During the Master Lease Term, the Unit will not be subject to the San Francisco Rent Stabilization and Authorization Ordinance (the "Rent Control Ordinance").
- F. The situation may occur where the term of this Agreement extends beyond the Master Lease Term. If the Resident occupies a Unit following expiration of the Master Lease Term, then upon expiration of the Master Lease Term, the Unit shall be subject to the Rent Control Ordinance and Resident shall become a direct tenant of the owner of the _____ (name of building), and shall be fully responsible for the payment of the entire Rent for the Unit without any further assistance or subsidy from the City. The Resident's obligation to pay the entire Rent shall commence on the first day of the month following the expiration or termination of the Master Lease. The Management will provide the Resident with at least thirty (30) days' prior written notice of the expiration of the Master Lease Term. Such notice will indicate the Rent, which will be payable by the Resident upon expiration of the Master Lease Term, which shall be the HUD Fair Market Rent then in effect for a studio (0 bedroom) unit as provided in Section 3 (A).
- G. The termination of the Master Lease will not automatically terminate this Agreement. However, the Resident acknowledges that if he/she does not pay the Rent as indicated in this notice, the owner of the _____ (name of building) will be legally entitled to terminate the Resident's tenancy in accordance with state and local law.

4. INCOME CERTIFICATION AND RECERTIFICATION:

- A. Resident eligibility for occupancy of the Unit is based on information that Resident has provided to Management regarding Resident household income and assets. Each year, prior to renewal of the Rental Agreement, within thirty (30) days after receiving notice from Management, Resident agrees to provide updated information on a form

Management provides Resident. Resident agrees that all such information regarding household income and assets provided to Management is and will be true, complete and correct to the best of Resident's knowledge. Resident further agrees that failure to provide such information, or providing false or misleading information, may result in the termination of Resident's occupancy and eviction from the Unit. If Resident fails to provide the required information on time, Resident will nonetheless be liable for any rent adjustment pursuant to Subsection B below from the effective date of the new Rental below from the effective date of the new Rental Agreement or Rental Agreement amendment. Resident agrees that all information supplied by Resident shall be subject to verification by Management.

- B. The Management shall provide at least thirty (30) days' written notice prior to the effective date of any annual adjustments to the Rent or the Resident's Share of Rent, based upon changes in the Resident's income as shown in annual income certifications. Any such adjustments shall be reflected in a written Agreement or amendment to this Agreement between the Management and the Resident.
- C. Resident shall immediately notify Management of any change in Resident's gross income. Following notification by Resident of a change in Resident's gross income, Management shall recalculate Resident's Share of Rent in accordance with Section 3(C). Resident's obligation to pay the adjusted Resident's Share of Rent shall commence on the sixtieth (60th) day from the date on the written notice from Management to Resident, or if the sixtieth (60th) day should be on a day that is not the first day of the month, then on the first (1st) day of the following month.

5. TERMINATION OF DPH SUBSIDY:

- A. The Resident understands that the subsidy made available on his/her behalf may be terminated, as set forth in Sections 5(B) and 5(C), if any one event provided below occurs. Termination of the subsidy means that the Master Lessee may remove the assistance under certain conditions and the Resident's rent will be the monthly rent for the unit described in Section 3(A).
 - (1) When the City's Master Lease of the Building expires and the City opts to discontinue the Master Lease Program.
 - (2) The Resident refuses to abide by the requirement for Third Party Rent Payee as provided in Section 3(D) as part of the condition of acceptance in the building after the Resident has signed the lease and moved into the unit.
 - (3) The Resident refuses to provide proof of income or income re-certification on the designated period as provided under Section 4.
 - (4) Behavior by the Resident that endangers the safety and security of Resident and/or Tenants and Resident fails to work with Support Services and/or Management on a plan to address the behavior. Any documentation from Management related to tenancy issues will be copied to Support Services.
 - (5) Repeated disregard of house rules by the Resident and failure to work with Management to address the problems.
 - (6) Resident's failure to perform any obligation of Resident under this Agreement and such failure continues for fifteen (15) days after the date of written notice

by Management, provided that if such default is not capable of cure within such 15-day period, Resident shall have a reasonable period to complete such cure if Resident promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion within thirty (30) days after the receipt of notice of default from Management. Management shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any failures on Resident's part to and after the second notice in any calendar year, any subsequent failure by Resident to perform any obligation hereunder during such 12-month period shall constitute grounds for immediate termination of the DPH subsidy and/or eviction.

(7) Such other behavior by Resident that, in the opinion of Management and Support Services and upon the review by the Dept. of Public Health-Housing and Urban Health, disturb any other Residents of the building.

B. A subsidy may be terminated only upon approval of the Dept. of Public Health-Housing and Urban Health.

C. A Resident whose subsidy has been recommended for termination by Management shall be provided 30-day notice prior to effectivity of the subsidy termination. During such 30-day period the Resident may appeal the subsidy withdrawal to the Dept. of Public Health-Housing and Urban Health by contacting the designated Program Manager. A decision shall be made by DPH-HUH prior to the expiration of the 30-day period and such decision shall be final.

6. CHARGES FOR LATE PAYMENTS AND RETURNED CHECKS:

If the Resident does not pay the full amount of the Resident's Share of Rent shown in paragraph 3(A) by the end of the 5th business day of the month, the resident shall pay a late fee of \$10.00 (ten dollars) on the 6th business day of the month, (or other date mutually agreed upon in writing between Management and Resident.) The Management may not terminate this Agreement for failure to pay late charges, but may terminate this Agreement for non-payment of Rent, as explained in paragraph 20. The Management may collect a fee of \$20.00 (twenty dollars) on any check returned for insufficient funds. The charges discussed in this paragraph are in addition to the regular monthly Rent payable by the Resident.

7. CONDITION OF THE DWELLING UNIT:

By signing this Agreement, the Resident acknowledges that the Unit is safe, clean and in good condition. The Resident agrees that all furniture, appliances and equipment in the Unit are in good working order. The Resident also agrees that the Management has made no promise to decorate, alter or improve the Unit.

8. CHARGES FOR UTILITIES:

All utilities, (i.e. electric, gas for heat & hot water, garbage/trash removal, water and sewer), are included within the monthly rental amount.

9. SECURITY DEPOSITS:

The Resident has deposited \$ _____, (equal to one month's Resident's share of rent at time of move-in), with the Management. The Management will hold this security deposit for the period the Resident occupies the Unit. After the Resident has moved from the Unit the Management will determine whether the Resident is eligible for a refund of any or all of the security deposit. The amount of the refund will be determined in accordance with the following conditions and procedures:

- A. The Management will refund to the Resident the amount of the security deposit less any amount needed to pay the cost of:
 1. Unpaid Resident's share of Rent;
 2. Damages that are not due to normal wear and tear;
 3. Charges for late payment of Rent and returned checks, as described in paragraph 6;
 4. Charges for non-returned keys, as described in paragraph 10; and,
 5. Excessive cleaning costs, such as removing trash and cleaning, repairing or replacing furniture, appliances and carpets abused beyond normal wear and tear.

- B. The Management agrees to refund the amount computed in paragraph 9(A) within three weeks (21 days) after the Resident has permanently moved out of the Unit, returned possession of the Unit to the Management, and given her/his new address to the Management (or has made arrangements to pick up the refund at the office.). The Management will also give the Resident a written list of charges that were subtracted from the deposit. If the Resident disagrees with the Management concerning the amounts deducted and asks to meet with the Management, the Management agrees to meet with the Resident and informally discuss the disputed charges. If the Management determines that any amounts were wrongfully deducted from the security deposit, Management shall, within forth-eight (48) hours, refund that amount to the Resident.

- C. The Resident understands that the Management will not count or apply the Security Deposit toward the last month's Rent or toward repair charges owned by Resident in accordance with paragraph 12.

10. KEYS AND LOCKS:

The Resident agrees to not install additional or different locks or gates on any doors or windows of the Unit without written permission of the Management. If the Management approves the Resident's request to install such locks, the Resident agrees to provide the Management with a key for each lock. When this agreement ends, the Resident agrees to return all keys to the Unit to the Management. The Management may charge the Resident \$5.00 (five dollars) for each key not returned.

11. MAINTENANCE:

A. The Management agrees to:

1. Regularly clean all common areas of the Building
2. Maintain the common areas and facilities in a safe condition;
3. Arrange for collection and removal of trash and garbage;
4. Maintain all equipment and appliances in safe and working order;
5. Make necessary repairs with reasonable promptness;
6. Maintain exterior lighting in good working order;
7. Provide extermination services as necessary; and
8. Maintain exterior and sidewalks (i.e. remove litter, debris, etc.).

B. The Resident agrees to:

1. Keep the Unit clean;
2. Use any appliances, fixtures and equipment in a safe manner and only for the purpose for which they are intended;
3. Not litter the grounds or common areas of the Building;
4. Not destroy, deface, damage or remove any part of the Unit, common area, or Building grounds;
5. Give the Management prompt notice of any defects in the plumbing, fixtures, appliances, heating equipment or any other part of the Unit or related facilities; and,
6. Remove garbage and other waste from the Unit in a clean and safe manner to the area designated by the Management.

12. DAMAGES:

Whenever carelessness, misuse, or neglect on the part of the Resident, her/his family or visitors cause damage, the Resident agrees to pay:

- A. The cost of all repairs, within a reasonable timeframe established by the Management, after receipt of the Management's demand for the repair charges; and
- B. Rent for the period the Unit is damaged, whether or not the Unit is habitable.

13. RESTRICTIONS ON ALTERATIONS:

The Resident agrees not to do any of the following without first obtaining the Management's written permission, which Management may give in its sole discretion:

- A. Change or remove any part of the furniture, fixtures, any appliances or equipment from the Unit;
- B. Paint or install wallpaper or Contact paper in the Unit;
- C. Attach awnings or window guards in the Unit;

- D. Attach or place any fixtures, signs, or fences on the Building, the common areas, or the Building grounds;
- E. Attach any shelves, or other permanent improvements in the Unit; or,
- F. Place any aerials, antennas or other electrical connections on or from the Unit.

14. DAMAGE TO TENANT'S PROPERTY:

Management shall not be liable to Resident or any other person or entity for any damage to their person or property caused by water, rain, snow, frost, fire, storm and accidents, or by breakage, stoppage, or leakage of water, gas, heating and sewer pipes or plumbing, upon, about, or adjacent to the Building, excepting damage caused by Management's negligence. Without limiting the foregoing, Management shall not be liable for any damage occasioned by bursting or leaking or running pipes or tanks or receptacles or by leakage through the roof, windows or any doors. Moreover, Management shall not be liable for any such damage arising from acts of the other occupants of the Building or the owners or occupants of adjoining properties.

15. GENERAL RESTRICTIONS:

The Resident must live in the Unit and the Unit must be the Resident's ONLY place of residence. The Resident shall use the Unit only as a private dwelling unit for himself/herself. The Resident may not permit another individual access to the Unit without obtaining the prior written permission of the Management. The Resident agrees not to:

- A. Sublet or assign the Unit, or any part of the Unit;
- B. Use the Unit for any unlawful purpose;
- C. Engage or permit unlawful activities in the Unit, the common areas or on the Building grounds;
- D. This Building has a No Pet Policy. The Resident shall not have pets or animals of any kind in the Unit except as provided in Addendum D attached hereto;
- E. Make or permit noises or acts that will disturb the rights or comfort of neighbors. The Resident agrees to keep the volume of any radio, phonograph, television or musical instrument at a level, which will not disturb the neighbors; or
- F. Put or permit to be put any signs in common areas or on the exterior of the building without Management's consent.

16. HOUSE RULES:

The Resident agrees to obey the House Rules, which are set forth in Addendum A attached hereto. The Resident agrees to obey additional rules established after the effective date of this Agreement if:

- A. The rules are reasonably related to the safety, care and cleanliness of the Building and the safety, comfort and convenience of the Residents; and,
- B. The Resident receives written notice prior to the proposed rule at least thirty (30) days before the rule is enforced.

17. ACCESS BY MANAGEMENT:

The Management agrees to enter the Unit only during reasonable hours, to provide reasonable advance notice of her/his intent to enter the Unit, and to enter the Unit only after receiving the Resident's consent to do so, except when emergency situations make such notice impossible or except under paragraph C below.

- A. The Resident agrees to permit the Management, his/her agents or other persons, when authorized by the Management, to enter the Unit for the purpose of making reasonable repairs and periodic inspections;
- B. After the Resident has given a 30-Day Notice of Intent to Move, the Resident agrees to permit the Management to show the Unit to prospective tenants during reasonable hours; and,
- C. If the Resident moves before the end of her/his 30-Day Notice, the Management may enter the unit to decorate, remodel, alter or otherwise prepare the Unit for re-occupancy.

18. RIGHT TO RELOCATE:

In the event that Resident occupies a double unit with member(s) of his household and such member(s) vacates the double unit so that Resident is the only remaining occupant, Resident shall immediately notify Management of such vacation. Management shall have the right to relocate Resident to a single unit in the Building, if available, upon thirty (30) days written notice to Resident. The Rent and the Resident's Share of Rent shall be adjusted accordingly. Management and Resident shall immediately execute an amendment to this Agreement stating the relocation of the Unit and the changes to the Rent and the Resident's Share of Rent.

19. CHANGE IN RENTAL AGREEMENT:

The Management may change the terms and conditions of this agreement upon thirty (30) days' notice pursuant to California Civil Code Section 827.

20. TERMINATION OF TENANCY:

- A. To terminate this Agreement, the Resident must give the Management at least thirty (30) days' written notice before moving from the Unit. If the Resident does not give a full 30 days' notice, the Resident shall be liable for the rent up to the end of the 30 days for which notice was required or to the date the unit is re-rented, whichever comes first.
- B. Any termination of this Agreement by the Management must be carried out in accordance with State and local law and the terms of this Agreement. The Management may terminate this Agreement only for:
1. The Resident's material non-compliance with the terms of this Agreement;
 2. The Resident's material failure to carry out obligations under any State Management and Tenant Act; or,
 3. Other good cause, as defined under the Rent Control Ordinance.

Material non-compliance includes, but is not limited to, non-payment of rent beyond any grace period available under State law; failure to reimburse the Management for repairs made under paragraph 12 of this Agreement; repeated late payment of rent; permitting unauthorized persons to live in the Unit; serious or repeated damage to the Unit or common areas; creation of physical hazards; serious or repeated interference with the rights and quiet enjoyment of other residents; and giving the Management false information regarding income or other factors considered in determining the Resident's eligibility to live in the Unit.

- C. If the Management proposed to terminate this Agreement, the Management agrees to give the Resident written notice of the proposed termination. The Resident has ten days upon receipt of the termination notice to meet and discuss the matter with the Management. Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. All termination notices must:
1. Specify the date this Agreement will be terminated; and
 2. State the grounds for termination with enough detail for the Resident to prepare a defense.

The Resident has the right of a court hearing and will be evicted only as a result of a judicial judgment.

- D. If an eviction is initiated, the Management agrees to rely only upon the grounds cited in the termination notice required by paragraph 20(C).

21. HAZARDS:

The Resident shall not undertake, or permit her/his family or guests to undertake, any hazardous acts or do anything that will increase the project's insurance premiums. If the unit is damaged by fire, wind, or rain to the extent that the unit cannot be lived in, and the damage is not caused or made worse by the Resident, the Resident will be responsible for

rent only up to the date of the destruction. Additional rent will not accrue until the unit has been repaired to a livable condition.

22. GOVERNING LAW:

This Lease Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by applicable laws of the United States, State of California and the City and County of San Francisco.

23. CONTENTS OF THIS AGREEMENT:

This Agreement, its Attachments and Addenda make up the entire Agreement between the Resident and the Management regarding the unit. If any Court declares a particular provision of this Agreement to be invalid or illegal, all other terms of this Agreement will remain in effect and both the Management and the Resident will continue to be bound by them.

24. ATTACHMENTS AND ADDENDUMS TO THE AGREEMENT:

The Resident certifies that she/he has received a copy of this Agreement and the following checked Attachments and Addenda are part of this Agreement.

<input checked="" type="checkbox"/>	Addendum A:	House Rules
<input checked="" type="checkbox"/>	Addendum B:	Policy on Drug and Alcohol Use
<input checked="" type="checkbox"/>	Addendum C:	Policy on Overnight Guests
<input checked="" type="checkbox"/>	Addendum D:	Pet Policy/Pet Agreement

25. SIGNATURES:

RESIDENT:

NAME: _____

SIGNATURE: _____

DATE: _____

**AGENT FOR MANAGEMENT
AND THE CITY AND COUNTY OF SAN FRANCISCO:**

NAME: _____

TITLE: _____

SIGNATURE _____

DATE: _____

HOUSE RULES

Addendum A to the Lease Agreement

- 1) Residency shall be terminated and/or notification of appropriate law enforcement agencies shall occur for any residents whose behavior violates any local, State or federal civil or criminal laws.
- 2) Residents shall not disturb others with excessive noise (i.e., music, TV, and loud voices) emitting from the resident's unit at any time. The following quiet hours shall be enforced in the building:

Sunday through Thursday – 10 p.m. to 8 a.m.
Friday through Saturday – 11 p.m. to 8 a.m.
- 3) Residents are encouraged to treat their units as their homes. However, any alterations to the premises must be approved by the Management. Residents may not change their door locks or add additional locks. If a tenant loses his/her keys, he/she shall be charged for the cost of new keys, and/or services charges.
- 4) The hallways, stairways, and common areas of the building shall not be obstructed by residents or their guests at any time. Violators may be subject to prosecution and/or a fine.
- 5) Residents may not post notices, signs or drawings on any wall or door of the building without permission of the Management.
- 6) Residents and guests may not interfere with the work of vendors and/or staff.
- 7) A resident or guest may not tamper with any mechanical or structural building component. (e.g., heating apparatus, smoke alarms, sprinkler systems, and conduit pipe). Violation of this rule is considered grievous and will result in termination of your lease.
- 8) All common areas are to be considered "shared space". Leaving a mess or damaging a common area is prohibited. "Borrowing" articles from common areas shall be considered to be theft. Residents will be held solely responsible for their actions and will be held responsible for the loss or damages caused by their guest/s or themselves.
- 9) Management will not be held responsible for the loss or damage of personal property on the premises.
- 10) Alcoholic beverages and illicit drugs are not permitted in the common areas.
- 11) Residents may not display or hang any personal belongings outside any of the exterior windows, fire escapes, or doors of the building. This includes, but is not

limited to the drying of clothes, towels and linens, and other items. Residents may not throw anything out of the windows of building.

- 12) Smoking is permitted only in the hotel resident's rooms. The observance of all local, state and federal smoking rules and regulations will be required of each resident and his/her guests. No smoking of any kind is permitted in the common areas, hallways, or elevators. Smoke alarms are placed through out the building and will sound an alarm when smoke is detected. Any violation of the local smoking ordinances will result in prosecution and/or fines imposed. Other disciplinary action may also be invoked.
- 13) Smoke detectors may not be disabled at any time. If a resident's smoke detector is not functioning correctly, the resident must inform management immediately.
- 14) Community areas shall be open during the posted hours. Specific rules will apply as posted.
- 15) Hot plates, electric frying pans or other cooking appliances are not permitted in the units. The following are the only approved appliances: (1) low voltage microwaves, (2) crock pots and/or (3) coffee makers.
- 16) Trash must be disposed of appropriately. Please do not overload the trash bins and have the courtesy to pick up any trash that falls on the floor. Do not pour liquids into the trash containers. Please be sure to completely extinguish cigarettes and do not place flammable items into the trash.
- 17) Residents are required to keep their rooms in a clean, orderly, safe and sanitary condition at all times. There will be monthly pest control service to all rooms and all public areas of the building. A letter from your health practitioner will be required if a resident is unable to have his/her room serviced.

Furthermore, Management will inspect each unit regularly for conformity with health, safety and fire codes. Management will provide residents with twenty-four (24) hour written notice prior to the inspections, which will be performed during the normal business hours, except in the case of an emergency.

- 18) Residents are encouraged to discuss any problems or questions they may have regarding their residency in the building with either the property management administrator (manager) or support services staff. Management agrees to cooperate and work with support staff to properly mediate and resolve disputes.
- 19) Residents shall immediately report all needed repairs to the Administrator or front desk clerks in writing. Repair requests should include granting permission to enter your room by maintenance staff and/or outside contractors (vendors) with the exception of emergency repairs. (Emergency repairs include any *life-threatening* situation including floods, fire or acts of God.)

- 20) Residents are requested to conserve water and electricity. Please report any change in normal operation of plumbing or electricity to the front desk clerks or Management immediately upon discovery.
- 21) Residents may not enter the front desk area for any reason. Requests to see the Administrator or Assistant can be made through the desk clerks. Please describe your request in detail if possible. Personal matters should not be disclosed to the front desk clerks.
- 22) The Hotel will not accept any COD or postage due packages for any resident.
- 23) The activities of visitors (guests) are the responsibility of the resident at all times. Actions by visitors are subject to all provisions of the Lease and House Rules. Non-compliance by the guest(s) with the House Rules and/or lease may result in that person(s) being removed from the building.
- 24) All visitors must register and sign in with the front desk clerk before being permitted to enter the building. There is a limit of **two (2) guests per resident** during the **daytime** and **one (1) overnight guest per unit**. Visitors (guests) not staying overnight must leave the building by 10:00 p.m. Sunday to Thursday and by 11:00 p.m. Friday to Saturdays.
- 25) All visitors (guests) must have a valid driver's license from any state, a California I.D., or a passport containing a photograph before being permitted to visit resident floors. People without I.D. may visit with residents in the lobby area only and will remain subject to all lease and house rules. The desk clerk will retain the photo I.D. until the resident escorts the visitor back to the front desk to sign out. Management reserves the right to refuse entry to any guest at any time.
- 26) Visitors must remain in the unit that they have signed to visit. If a visitor wishes to visit another resident, s/he must come to the lobby with the tenant originally visited and sign in for the other unit. The resident whom the guest is visiting must escort that guest to any portion of the building that is not the resident's room. If a visitor is found to be outside of the designated room, s/he will be removed from the building.
- 27) Visitors (guests) who appear intoxicated or under the influence of any controlled substance will not be admitted into the building. Guests who are violent, abusive, uncooperative with Management/support staff, seen engaging in criminal activity, or who violate the House Rules will be barred from entry to the building.
- 28) Any attempts to "sneak" a guest into the building is prohibited and is grounds for eviction.
- 29) Residents will not be permitted to sign in visitors (guests) for other residents.
- 30) In the event of any resident violating the House Rules regarding visitors and overnight guests, the following will be invoked:

- a. The first offense will result in revocation of visiting privileges for two (2) weeks;
 - b. The second offense will result in revocation of visiting privileges for four (4) weeks;
 - c. The third violation will result in the termination of visiting privileges for six (6) months.
 - d. Additional violations will result in termination of the resident's lease.
- 31) Residents are asked to cooperate in keeping the building secure. All exterior doors shall be closed and locked when necessary. Keys are not allowed to be given out or loaned to others. Flagrant or deliberate breaches of security are a serious matter and shall be deemed grounds for eviction.
- 32) For Drug and Alcohol policies, please refer to the Hotel Policy on Drug and Alcohol use. (Addendum B to the Lease Agreement).
- 33) For overnight guest policies please refer to Hotel Overnight Guest Policy (addendum C to the Lease Agreement).
- 34) The house rules are subject to change/revision by Management. Any change will be submitted to residents 60 days prior to change.

I read and understand these House Rules and agree to abide by them.

RESIDENT

DATE

ADMINISTRATOR

DATE

Hotel Policy on Drug and Alcohol Use

Addendum B to the Lease Agreement

The Hotel recognizes that legal and illegal drug use is part of the world we live in. The Hotel does not support illegal drug use. It is the goal of the Hotel staff to minimize the harmful affects of drug use on each individual and community as a whole. As a part of harm reduction, the Hotel does not allow unacceptable behaviors resulting from the misuse of mind-altering substances. The Hotel staff recognizes that some people abstain from drugs and alcohol while others actively use drugs and alcohol. The Hotel aim to create an environment where individuals can openly discuss their use without fear of judgment in order to choose their own path with respect to the community. The staff of the Hotel will engage residents in conversations about their use of drugs, alcohol and/or the misuse of prescription medications, addressing the effects of substances on the resident's life and the community. Because alcohol and drug use can harm a community, the following policy must be respected when resident's use and misuse of drugs and/or alcohol occur.

Please read and initial each section below:

_____ Absolutely no drug dealing, distribution or manufacturing will be allowed at The Hotel. This includes the buying and selling of any illegal drug or prescription medication on or immediately surrounding the building by you or your guest/visitor.

_____ No illegal drugs, alcohol or smoking in the community areas at any time. This includes the lobby, hallways, staff lounge, elevator and the area in front of the building.

_____ Disruptive behavior due to intoxication will not be tolerated in public and private areas.

_____ The Hotel will not allow "drug seeking" behavior in the community. This includes, but is not limited to, knocking on residents' doors to borrow or request money, threatening other residents or staff, and having high volume visitor traffic to your unit.

_____ Resident must respect the rights of other residents and staff to the peaceful enjoyment of the premises. This means that Resident's substance use may not disturb other residents. This includes, but is not limited to, making excessive noise, leaving alcohol, drugs, or drug paraphernalia in public areas, having an excessive number of visitors or having substances available or visible to residents or staff.

_____ Substance use cannot interfere with the payment of rent and other financial responsibilities.

_____ Resident is responsible for ensuring that his/her visitors/guests comply with the above standards.

_____ If Resident's substance use becomes problematic to the community, or if it appears that substance use is endangering his/her housing status, substance use counseling may be arranged through the Support Services staff to prevent the termination of the Resident's subsidy and/or eviction.

I understand that Federal Law prohibits the use, sale, distribution, manufacturing, and possession of illegal drugs and the sale of prescription medication. I understand that violation of this policy will result in letters or warning that will endanger my housing status at the Hotel. I have read the above rules and I understand them prior to signing.

RESIDENT

DATE

ADMINISTRATOR

DATE

The Hotel Policy on Overnight Guests

Addendum C to the Lease Agreement

In order to maintain a safe, secure and comfortable living environment for all residents, Management shall carefully and consistently implement the house rules concerning visitors (guests) on the property. Residents of the Hotel are welcome to have guests in their apartments with the following conditions. The activities of guests are the responsibility of the resident at all times. Actions by guests are subject to all provisions of the Lease and House Rules.

(1) All guests leaving during quiet hours will NOT be allowed to reenter the building. (Quiet hours are Sunday through Thursday 10 pm to 8am, and Friday through Saturday from 11 pm to 8 am.)

(2) All guests must have any valid state I.D. or a passport containing a photograph before being permitted to enter the building. The Front Desk Clerk will retain the photo I.D. until the resident escorts the visitor back to the front desk to sign out.

(3) Unescorted guests anywhere in the building are not permitted. Non-residents found in the building unescorted will be removed and may be subjected to further action by Management, including being barred from entry to the building in the future. Residents cannot leave the building without their guest(s). Management reserves the right to refuse entry to any guest at any time.

(4) Guests whose behavior is not appropriate will not be admitted into the building. Guests who are violent, abusive, uncooperative with Management/support staff, seen engaging in criminal activity, or who violate the House rules will be barred from entry to the building.

(5) Each resident will be allowed to have overnight guests up to eight (8) days per month. Exceptions will only be allowed except in extreme cases, pre-approved by Management in writing.

I understand that any violation of the above policy will result in letters of warning that will endanger my housing status. The following policy will be invoked: the first offense will result in revocation of visiting privileges for two (2) weeks beginning the first of the following month; the second offense will result in revocation of visiting privileges for four (4) weeks beginning the first of the following month; and a third offense will result in revocation of visiting privileges for six (6) months beginning the first of the following month. Additional violations may result in the termination of my lease.

I am signing to verify that I have read the above rules, fully understand them and agree to abide by them.

RESIDENT

DATE

Pet Policy Addendum D to Rental Agreement

- 1.) Hotel does not allow pets in the building or in the units except for reasonable accommodation.
- 2.) Tenants given permission to have a pet for reasonable accommodation will abide by and sign Hotel Pet Agreement (below).

Hotel Pet Agreement

This agreement forms a part of the Rental Agreement dated _____ by and between the Landlord and _____ (tenant's name).

Tenant(s) desires to keep a pet named _____ and described as a _____ in the dwelling he/she occupies under the Rental Agreement referred to above, and because this agreement specifically prohibits the keep of pets with the landlord's permission, the tenant(s) agrees to the following terms and conditions in exchange for this permission:

1. Tenant agrees to keep his/her pet under control at all times.
2. Tenant agrees to keep the pet on a leash or in a cage – and in the direct control of the owner – at all times while the pet is in common areas (hallways, elevators, stairways, etc.)
3. Tenant agrees not to leave the pet unattended for any unreasonable period.
4. Tenant agrees to dispose of their pet's droppings properly and quickly. [All cat litter will be placed in a plastic bag and securely tied before putting in the garbage chute.]
5. Tenant agrees to keep pet from causing discomfort or annoyance to others and will immediately remedy any complaints made through the Landlord or Landlord's Agent.
6. Tenant agrees to pay immediately for any damages, loss, or expense caused by their pet, and will add an additional \$ _____ to his/her Security Deposit, any of which may be used for cleaning or repairs when tenants vacate. [This added deposit will be returned to tenant within 30 days after that he/she no longer keeps this pet, with the subtraction of any amount required to cover damages or loss sustained by the property.]

7. Tenant agrees to remove his/her pet's offspring from the premises within six (6) weeks after birth. Tenant agrees to inform building manager immediately upon pet giving birth to offspring.
8. Tenant agrees and understands that this agreement and terms permit them to keep ONLY the one pet named and described above. No other pets will be kept for any period of time without the express written permission of the owner.
9. Tenant agrees to provide proof of vaccination (for cats – FVRCP; for dogs – rabies & DHOPP; or as modified by local law). Tenant will provide initial proof of vaccination prior to executing the Pet Addendum to the Lease, and annually thereafter to the building manager.
10. Tenant agrees to name a pet guardian who would take responsibility for the pet in case of an emergency (vacation, hospitalization, etc.).
11. Tenant agrees and understands that Landlord or Landlord's Agent reserves the right to revoke permission to keep the pet should tenant break the conditions of this agreement.

RESIDENT

DATE

ADMINISTRATOR

DATE

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. Reactivate File No. []
- 10. 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 Form.

Sponsor(s):

Supervisor Kim

Subject:

Renewal of Lease of Empress Hotel

The text is listed below or attached:

Please see attached.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)**

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): SF Board of Supervisors	City elective office(s) held: City and County of San Francisco; SF Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: 1145 Market Street L.P., a California Limited Partnership	
<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. Use additional pages as necessary.</i>	
<ol style="list-style-type: none"> 1. None 2. Vijay Patel & Ramilaben Patel 3. Hemant Patel (20%) 4. None 5. None. 	
Contractor address: #2 West Clay Park, San Francisco, CA 94121	
Date that contract was approved:	Amount of contract: \$8,743,379.80 (Maximum) over 10 years
Describe the nature of the contract that was approved: Lease extension for the Empress Hotel at 144 Eddy St. for the Department of Public Health	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form (Mayor, Edwin Lee)

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

Filer Information <i>(Please print clearly.)</i>	
Name of filer:	Contact telephone number:
Address:	E-mail:

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

Item 2 File 14-0783	Department: Department of Public Health
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EXECUTIVE SUMMARY**Legislative Objective**

- The proposed resolution will retroactively authorize the extension of the lease of the Empress Hotel located at 144 Eddy Street between DPH and Empress, LLC for a period of 10 years beginning on July 1, 2014 through June 30, 2024 for use by the Department of Public Health's Direct Access to Housing program. The first year rent is \$60,687.03 per month or \$728,244 per year.

Key Points

- On July 1, 2004, the Department of Public Health (DPH) leased the Empress Hotel at 144 Eddy Street from Empress LLC for use as supportive housing through DPH's Direct Access to Housing program for an original term of 10 years ending on June 30, 2014. The Empress Hotel contains 89 Single Resident Occupancy (SRO) units for chronically homeless adults with medical or behavioral health conditions and one manager's unit. The original lease includes an option to extend the term of the lease for an additional 10 years with an adjustment of the rent to 95% of fair market value.
- Property management services at the Empress Hotel are provided by the non-profit Tides Center's Delivering Innovation in Supportive Housing (DISH) selected by DPH through a Request for Proposal (RFP) process. The Empress Hotel is one of five master lease sites for which DISH is providing property management services under the contract.
- Since the initial year of the lease in 2004, U.S. Department Housing and Urban Development (HUD) McKinney Vento Homeless Assistance Act grant funds have paid 62% of the Empress Hotel's base rent, and the remaining 38% has been paid for by DPH.

Fiscal Impacts

- DPH will pay Empress, LLC an initial annual rent of \$728,244 for the period of July 1, 2014 through June 30, 2015, which is \$49,294 or 7.3% more than FY 2013-14 rent of \$678,950. According to the Real Estate Division, the first year rent of \$728,244 represents 95% of fair market value based on the department's evaluation of market rates.
- In subsequent lease years, the base rent will increase at the same rate as the Consumer Price Index with a minimum of 2% and a maximum of 4%.
- DPH anticipates the U.S. Department of Housing and Urban Development (HUD) McKinney Vento Homeless Assistance Act grant funds will contribute 62% of the base rent and DPH funds will pay the remaining 38% of the base rent in each upcoming lease year.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

Administrative Code Section 23.27 requires that leases in which the City is a tenant must be approved by resolution of the Board of Supervisors.

BACKGROUND

On July 1, 2004, the Department of Public Health (DPH), as tenant, leased the Empress Hotel at 144 Eddy Street from Empress LLC, as landlord, for use as supportive housing through DPH's Direct Access to Housing program. The Empress Hotel contains 89 Single Resident Occupancy (SRO) units for chronically homeless adults with medical or behavioral health conditions and one manager's unit.

The lease was for an initial term of 10 years, ending on June 30, 2014 (Resolution 368-04), and included two options to extend the lease for ten years for each extension, resulting in a total potential lease term of 30 years through June 30, 2034. Under the original lease, if the City exercises the option to extend the lease, the rent is adjusted to 95% of fair market value as determined by the Real Estate Division.

Property management services at the Empress Hotel are provided by the non-profit Tides Center's Delivering Innovation in Supportive Housing (DISH) selected by DPH through a Request for Proposal (RFP) process. The Empress Hotel is one of five master lease sites for which DISH is providing property management services under the contract.

Since the initial year of the lease in 2004, DPH has also received federal grant funds from the U.S. Department Housing and Urban Development (HUD) McKinney Vento Homeless Assistance Act¹ to pay a portion of the Empress Hotel's base rent. Since 2004, HUD funds have paid for 62% of the Empress Hotel's base rent, and the remaining 38% has been paid for by General Fund money appropriated to DPH.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would retroactively authorize the first of two ten-year options to extend the lease between DPH and Empress, LLC for the Empress Hotel located at 144 Eddy Street from July 1, 2014 through June 30, 2024 for use by the Department of Public Health's Direct Access to Housing program. According to Mr. Charlie Dunn, Senior Real Estate Officer at the Real Estate Division, DPH is submitting the proposed lease extension to the Board of Supervisors for retroactive approval because the City did not conclude negotiations with Empress, LLC for the lease extension until June 13, 2014.

The provisions of the lease extension are shown in Table 1 below.

¹ McKinney Vento Homeless Assistance Act of 1987 is a federal grant program run by the U.S. Department of Housing and Urban Development to provide money for homeless shelter programs.

Table 1: Summary of the Lease Extension Provisions

Provision	Lease Terms
Square Feet	41,490
Term	July 1, 2014 through June 30, 2024
First Year Monthly Rent	\$60,687 (\$.146 per month)
First Year Base Rent	\$728,244 (\$17.55 per square foot)
Rent Increase	Based on a minimum rent increase 2%, at a maximum of 4%
Options to Extend	One 10-year options through June 30, 2034
Rent under Options to Extend	95% of Fair Market Value as determined by the Real Estate Division
Utilities, Janitorial, Security	Paid by City
Real Estate Taxes	Paid by Landlord

FISCAL IMPACT

Under the proposed resolution, DPH will pay Empress, LLC an initial annual rent of \$728,244 for the period of July 1, 2014 through June 30, 2015, the first year of the 10-year lease extension, as shown in Table 2 below. The base rent will increase by a minimum of 2% and a maximum of 4%. As shown in Table 2 below, under the proposed lease extension DPH will pay Empress, LLC between \$7,947,069 to \$8,743,375 over the course of the first 10-year term option.

Table 2: Minimum and Maximum Rent Payment by DPH for the Empress Hotel

Fiscal Year	Minimum Rent (Annual 2% Increase)	Maximum Rent (Annual 4% Increase)
2014-15	\$728,244	\$728,244
2015-16	\$742,809	\$757,374
2016-17	\$757,665	\$787,669
2017-18	\$772,818	\$819,175
2018-19	\$788,275	\$851,942
2019-20	\$804,040	\$886,020
2020-21	\$820,121	\$921,461
2021-22	\$836,523	\$958,319
2022-23	\$853,254	\$996,652
2023-24	\$870,319	\$1,036,518
TOTAL	\$7,974,069	\$8,743,375

* Lease years begin on July 1 and end June 30 of each year.

The FY 2014-15 rent of \$728,244 is \$49,294 or 7.3% more than FY 2013-14 rent of \$678,950. According to Mr. Dunn, the first year rent of \$728,244 represents 95% of fair market value based on the department's evaluation of market rates.

Sources of funds for the proposed lease extension are General Fund monies in the FY 2014-15 DPH budget, as approved by the Board of Supervisors, and U.S. Department of Housing and Urban Development (HUD) McKinney Vento Homeless Assistance Act grant funds. As shown in Table 3 below, HUD grant funds will contribute 62% of the base rent, for an amount of \$451,055 in FY 2014-15, and DPH funds will pay the remaining 38% of the base rent, or \$277,189 in 2014-15. According to Mrs. Margot D. Antonetty, Interim Director of Housing and Urban Health at the Department of Public Health, HUD grant funds are applied for and provided annually and are expected to be available at the same rate for the remainder of the first 10-year lease extension for the Empress Hotel.

Table 3: Funding for Base Rent for the Empress Hotel from July 1, 2014 to June 30, 2015.

Source of Funding	Percent	Amount
U.S. Department of Housing and Urban Development McKinney Vento Homeless Assistance Act Grant Funds	62%	\$451,055
Department of Public Health General Fund	38%	\$277,189
TOTAL		\$728,244

RECOMMENDATION

Approve the proposed resolution.